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# The State of South Carolina



## Office of the Attorney General

**T. TRAVIS MEDLOCK**  
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING  
POST OFFICE BOX 11549  
COLUMBIA, S.C. 29211  
TELEPHONE 803-758-3970

August 1, 1985

The Honorable Warren K. Giese  
Senator, District No. 22  
4627 Perry Court  
Columbia, South Carolina 29206

Dear Senator Giese:

By your letter of July 1, 1985, you have requested the opinion of this Office as to whether one individual may serve concurrently as a member of a school board and as director of the Youth Employment Coordinating Council without contravening the dual office holding prohibition of the State Constitution.

Article XVII, § 1A of the South Carolina Constitution provides that "... no person shall hold two offices of honor or profit at the same time." For this provision to be contravened, a person concurrently must hold two public offices which have duties involving an exercise of some portion of the sovereign power of the State. Sanders v. Belue, 78 S.C. 171, 58 S.E. 762 (1907). Other relevant considerations are whether statutes, or other such authority, establish the position, prescribe its tenure, duties or salary, or require qualifications or an oath for the position. State v. Crenshaw, 274 S.C. 475, 266 S.E.2d 61 (1980).

This Office has determined on numerous occasions that a member of a school board would hold an office for dual office holding purposes. See Ops. Atty Gen. dated January 17, 1985; July 8, 1983; and March 6, 1979, copies of which are enclosed.

The Youth Employment Coordinating Council was created by Governor Riley by Executive Order No. 84-20, dated May 14, 1984. The Council itself is empowered by the Order to develop strategies aimed at meeting the employment needs of at-risk youth; comment on state agencies' policies and

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programming initiatives concerning the employability of these youth; and recommend the allocation of funds for programs to improve the employment situation for at-risk youth. The position of director is not provided for in the Order; likewise, there are no specifications as to tenure, salary, qualifications, oath, or duties.

In an opinion of this Office dated April 12, 1977, as to a county Grass Roots Citizens Advisory Committee not being an office, such committee having been created indirectly by Executive Order of the Governor, it was stated:

Previous opinions of this Office have been that a member of an office created by Executive Order is not an officer unless there is state statutory or constitutional authority for such action by the Governor.

Because we can locate no statutory authority relative to the creation of the position of director of the Youth Employment Coordinating Council, we would conclude that one who would serve as the director of the Council would not hold an office for dual office holding purposes. See also Ops. Atty. Gen. dated March 27, 1985; November 20, 1975; July 9, 1982; and January 25, 1979, enclosed.

We would advise further that even if the position of director of the Youth Employment Coordinating Council were not created by executive order, the position would nevertheless not be an office. On numerous occasions this Office has opined that the position of executive director of various agencies constitutes employment rather than an office. See Ops. Atty. Gen. dated January 17, 1985; June 11, 1985 (copies enclosed); and numerous others. There is no reason to treat this position of director of the Council any differently.

In conclusion, it is the opinion of this Office that an individual who would serve simultaneously as a member of a school board and as the director of the Youth Employment

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Coordinating Council would not contravene the dual office holding prohibition of the State Constitution.

Sincerely,

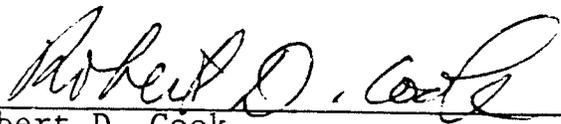
*Patricia D. Petway*

Patricia D. Petway  
Assistant Attorney General

PDP/an

Enclosures

REVIEWED AND APPROVED BY:



Robert D. Cook  
Executive Assistant for Opinions