

The State of South Carolina



Office of the Attorney General

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August 13, 1986

The Honorable William S. Branton, Jr.  
Senator, District No. 38  
100 East Dorchester Road  
Summerville, South Carolina 29483

Dear Senator Branton:

You have asked whether one person may serve simultaneously on the Dorchester County Board of Social Services and as a magistrate without violating the dual office holding provisions of the State Constitution and whether any conflict of interest could arise by an individual so serving in both capacities. For the reasons following, this Office identifies both conflict of interest and dual office holding problems in the situation you have described.

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 opined on numerous occasions that a member of a county board of social services holds an office for dual office holding purposes. See Ops. Atty. Gen. dated February 11, 1986 (enclosed); March 6, 1979; January 16, 1979; and April 7, 1977, as representative of those numerous opinions.

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Likewise, this Office has determined on numerous occasions that a magistrate holds an office for dual office holding purposes. See, as representative opinions, Ops. Atty. Gen. dated November 3, 1983 (enclosed); September 3, 1982; August 5, 1981; and July 14, 1981. Thus, one who would serve simultaneously as a magistrate and on a county board of social services, such as Dorchester County's board, would most probably violate the dual office holding prohibitions of the State Constitution.

This Office has reviewed a letter of the Assistant General Counsel of the Department of Social Services dated June 22, 1982, which concluded that members of county boards of social services and county election commissions did not hold offices for dual office holding purposes, apparently relying upon previous opinions of the Attorney General. As noted above, this Office concluded well before the Assistant General Counsel's letter was written that service on a county board of social services was an office. Similarly, this Office has consistently advised that service on a county election commission constitutes an office. See, for example, Ops. Atty. Gen. dated May 20, 1986 (enclosed); March 12, 1984; September 24, 1982; and March 21, 1978. Thus, we must respectfully disagree with the conclusion reached in the letter of June 22, 1982.

The above notwithstanding, we can also see certain instances in which conflicts of interest might arise if a magistrate were to serve on a county board of social services. For example, the magistrate would be required to disqualify himself in civil or criminal cases involving food stamp or AFDC fraud, as stated in a letter of July 7, 1986, from the General Counsel of the Department of Social Services to the Director of the Dorchester County Department of Social Services. There might also be instances in which the magistrate would be disqualified to act, as in the issuance of criminal warrants in other matters involving the Department of Social Services. Because the magistrate must comply with the Code of Judicial Conduct (Rule 33 of the Supreme Court Rules) and because an interpretation of conflict of interest necessarily involves an interpretation of Rule 33, the magistrate might wish to obtain an advisory ruling from the Advisory Committee on Standards of Judicial Conduct.

In conclusion, it is the opinion of this Office that if an individual were to serve simultaneously as a magistrate and on the Dorchester County Board of Social Services, the dual office holding prohibitions of the State Constitution would most

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probably be violated and further that conflicts of interest could arise as a result. If you should need clarification or additional information, please advise this Office.

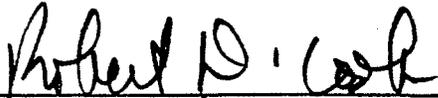
Sincerely,

*Patricia D. Petway*  
Patricia D. Petway  
Assistant Attorney General

PDP:hcs

Enclosures

REVIEWED AND APPROVED BY:

  
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Robert D. Cook  
Executive Assistant for Opinions

cc: James H. Risher, Director  
Dorchester County Department  
of Social Services