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The State of South Carolina



Office of the Attorney General

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June 25, 1986

Murray D. Bonnoitt
Chairman, Election Committee
Association of Citadel Men
Johnson, Lane, Space, Smith & Co., Inc.
Post Office Box 996
Charleston, South Carolina 29402

Dear Mr. Bonnoitt:

By your letter of June 20, 1986, you have asked whether a faculty or staff member of The Citadel may offer for election to and serve on the Board of Visitors of that institution. You advised that a present member of the faculty has notified you of his intention to offer for election to fill an upcoming vacancy on the Board of Visitors. For the reasons following, we do identify certain problems for one who would serve in both capacities.

One consideration which would not present a problem is dual office holding. We have held, by an opinion dated March 25, 1986, that a trustee of South Carolina State College would hold an office; that office would be analogous to The Citadel's Board of Visitors. However, one who is a professor for a state educational institution is deemed to be an employee rather than an officer. See Ops. Atty. Gen. dated October 31, 1973 and July 17, 1961. Thus dual office holding is not a problem.

To serve as both a professor and on the board of trustees or visitors for the same state educational institution would create a master-servant problem, however. The relationship of master and servant is based on common law rather than statutory law in this State and is summarized as follows:

[A] conflict of interest exists where one office is subordinant to the other, and subject in some degree to the supervisory

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power of its incumbent, or where the incumbent of one of the offices has the power of appointment as to the other office, or has the power to remove the incumbent of the other or to punish the other. Furthermore, a conflict of interest may be demonstrated by the power to regulate the compensation of the other... .

* * *

The offices may be incompatible even though the conflict in the duties thereof arises on but rare occasions... . In any event, the applicability of the doctrine does not turn upon the integrity of the officeholder or his capacity to achieve impartiality... .

67 C.J.S. Officers § 27. See also Op. Atty. Gen. dated March 3, 1978. Applying common law principles to the situation you have described, if the professor were also to serve on the Board of Visitors of The Citadel, it is very likely that a conflict of interest would exist. In such situations, we have advised in the past that the problem may be cured by permitting the individual to choose which position he wished to hold, giving up the remaining position. Op. Atty. Gen. dated May 21, 1984.

We trust that the foregoing has satisfactorily responded to your inquiry. Please advise if you should need clarification or additional assistance.


Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP:hcs

REVIEWED AND APPROVED BY:



Robert D. Cook
Executive Assistant for Opinions