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# The State of South Carolina



## Office of the Attorney General

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September 18, 1986

John W. Parris, Executive Director  
Land Resources Conservation Commission  
2221 Devine Street, Suite 222  
Columbia, South Carolina 29205

Dear Mr. Parris:

By your letter dated September 5, 1986, you have asked whether an individual who would serve simultaneously on the Chester County Board of Fire Control and as a commissioner for the Chester Soil and Water Conservation District would contravene the dual office holding prohibitions of the Constitution of the State of South Carolina.

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 several occasions that one who serves on a soil and water conservation commission would hold an office for dual office holding purposes. See enclosed opinions

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dated July 21, 1986 and September 27, 1982, which are representative of the numerous opinions discussing this office.

A review of prior opinions reveals that this Office has apparently never opined on a member of the Chester County Board of Fire Control. The Board was established by the General Assembly by Act No. 892, 1966 Acts and Joint Resolutions, as most recently amended by Act No. 1259 of 1974. The Board consists of five members who are to be appointed by the Governor upon the recommendation of the Chester County Board of Directors. A "term of office" of four years and until successors are appointed and qualify is specified. Board members must meet certain residence requirements; they receive per diem and mileage for their service as is authorized by law for boards, commissions, and committees. See section 1 of Act No. 1259 of 1974. Duties of the Board are specified in Act No. 892 of 1966 and include formulating and carrying out a plan of fire control, promulgating rules and regulations, purchase and assignment of equipment, borrowing money, and others. These duties appear to involve an exercise of sovereign power.

This Office has opined that members of boards of fire control would hold offices for dual office holding purposes. See Ops. Atty. Gen. dated November 30, 1963; May 18, 1983; and November 18, 1983 (enclosed). Because the Chester County Board of Fire Control is so similar to the boards already addressed, there appears to be no reason to reach a different conclusion as to the Chester County Board. Thus, one who serves on that board would be deemed to hold an office.

In conclusion, it is the opinion of this Office that one who would serve simultaneously on the Chester Soil and Water Conservation District Commission and on the Chester County Board of Fire Control would most probably contravene the dual office holding prohibitions of the State Constitution. The Chester County Attorney, by letter to this Office dated September 16, 1986, concurs with our conclusion.

To advise you as to how the law on dual office holding operates, enclosed is an opinion dated February 10, 1984, which discusses de facto and de jure officers and creation of a vacancy in the first office by accepting a second office. If

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you need additional assistance or clarification about these matters, please do not hesitate to call.

With kindest regards, I am

Sincerely,

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

PDP/an

Enclosures

REVIEWED AND APPROVED BY:

  
\_\_\_\_\_  
Robert D. Cook  
Executive Assistant for Opinions

cc: William C. Keels, Chester County Attorney