

The State of South Carolina



Office of the Attorney General

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March 31, 1987

J. Arthur Bridges, Jr., NHA
Administrator
Habilitation Services
959 East O'Neal Street
Gaffney, South Carolina 29340

Dear Mr. Bridges:

By your letter of February 16, 1987, you have inquired as to the possibility of a conflict of interest or dual office holding if one were to serve on the Cherokee County Mental Retardation Board and as a mayor of a municipality or as a member of a county council. You have advised that until January of this year, the Board was a nineteen member, self-perpetuating board; in January, however, the Board members began to be appointed by the Governor upon the recommendation of the county legislative delegation. The dual office holding aspect will be addressed first.

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 concluded on numerous occasions that one who serves as a mayor would hold an office for dual office holding purposes. See Op. Atty. Gen. dated July 24, 1980, as representative of those opinions. Similarly, this Office has determined on numerous occasions that a county council member

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would hold an office for dual office holding purposes. See Op. Atty. Gen. dated July 9, 1986, for example. Copies of these two opinions are enclosed.

This Office has opined that one who would serve on the Georgetown County Mental Retardation Board would hold an office for dual office holding purposes. Op. Atty. Gen. dated October 14, 1976, enclosed. However, the statutes cited within that opinion refer to creation of local mental health boards. For that reason, a review of the opinion is undertaken.

Section 44-21-810 et seq., Code of Laws of South Carolina (1976), provides for the establishment of county mental retardation boards and such local mental retardation services. Section 44-21-830 provides for membership on the county boards; members are to be appointed by the Governor upon the recommendation of a majority of the members of the county legislative delegation. The term of the members is set at four years and until their successors are appointed and qualify; appointments of the original board members are to be staggered, however. No oath of office is specified within the statute. But see Article VI, Section 5 of the State Constitution. No provision for salary or other remuneration is specified in the statute, nor are qualifications for board membership.

The county mental retardation boards are defined by Section 44-21-820(4) of the Code to be the "administrative, planning, coordinating, and service delivery body provided for" in the above referenced Code sections; they are bodies politic and corporate, by Section 44-21-840(1). Duties are specified in Section 44-21-840 of the Code and include administration, planning, evaluation, financing, and so forth. It appears that an exercise of a portion of the sovereign power of the State is involved herein.

Having reviewed the statutes relevant to county mental retardation boards, it appears that the conclusion reached by the opinion of October 4, 1976, that a member of such a board would hold an office, is correct. Thus, one who would serve simultaneously on a county mental retardation board and as a mayor of a municipality or as a member of a county council would most probably be deemed to be holding dual offices in contravention of the State Constitution.

You have advised that the Town of Blacksburg, whose mayor is on the Board, does not fund any portion of the Habilitation Services operation. Without regard to dual office holding, we can identify no other conflict of interest which would exist.

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We have been advised that the member of county council whose name was recommended for appointment to the Board has declined the appointment. Thus, it is not necessary to address a conflict of interest in that instance. Public officials must always be aware of the Ethics Act, however, and should consult the State Ethics Commission any time a potential question might arise under that law. See also Op. Atty. Gen. dated July 9, 1986, referred to above.

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: Wesley L. Brown, Esquire
Cherokee County Attorney