

1984 WL 249815 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 31, 1984

***1** The Honorable E. Harrison Agnew, III
Member
House of Representatives
Post Office Box 1073
Anderson, South Carolina 29622

Dear Representative Agnew:

By our telephone conversation on Tuesday, **January 24, 1984**, you asked whether an employee of Homeland Park Water and Sewerage District would be permitted to serve on the governing board of the District and also retain his status as an employee. It is the opinion of this Office that the dual office holding provisions of the Constitution of the State of South Carolina would not be violated, but that the common law principle prohibiting a person from simultaneously serving as both master and servant would probably be contravened.

[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. Grenshaw, 274 S.C. 475, 266 S.E. 2d 61 \(1980\)](#).

Homeland Park Water and Sewerage District was created by Act No. 1101, 1950 Acts and Joint Resolutions, as amended by Act No. 275, 1977 Acts and Joint Resolutions. Provisions are made by Act No. 1101 for appointment of members by the Governor to serve a specific term of **four** years; compensation for the members is set by Act No. 275, Section 1. Powers and duties are specified in Sections **4** through 19 of Act No. 1101 and include such traditional sovereign powers exercised by the State as eminent domain and taxation. This Office has determined previously that members of governing boards of special purpose or public service districts are officers and finds no reason at this time to supersede the prior opinions. See, for example, Opinions of the Attorney General dated August 10, 1978; October 14, 1982; **January 3**, 1978; and August **4**, 1982.

The individual in question is employed by and subject to the control of the governing board of the Homeland Park Water and Sewerage District. He is paid an hourly wage. While the employee may make certain day-to-day decisions, he clearly is not responsible for exercising sovereign powers such as eminent domain and taxation. The South Carolina Supreme Court has stated: [O]ne who merely performs the duties required of him by persons employing him under an express contract or otherwise, though such persons be themselves public officers, and though the employment be in or about a public work or business, is a mere employee.

[Sanders v. Belue, 78 S.C. at 171](#). Hence, the individual in question is an employee rather than an officer, and provisions against dual office holding would not be violated.

***2** The type of situation in which one person would serve as both an employee and member of the governing board which would, in actuality, employ him is addressed by common law rather than by statutory law in this State. The law is summarized as follows:

[A] conflict of interest exists where one office is subordinate to the other, and subject in some degree to the supervisory 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 Opinion of the Attorney General dated March 3, 1978 (copy enclosed). Applying these common law principles to the fact situation as presented, a conflict of interest would appear to exist for an individual to be employed by a special purpose or public service district of whose governing board he would be a member.

This letter addresses only the potential conflict of interest if the individual were to be appointed to the governing board of the District and then qualify to serve. No conflict of interest would appear to exist by the individual's offering himself as a candidate for the governing board.

Also enclosed is Opinion SEC 83-007 from the South Carolina Ethics Commission concerning a similar fact situation. The Opinion, in interpreting the Ethics Act, notes that there is no statutory prohibition against one serving in a master-servant relationship but that certain concerns do exist. [Sections 8-13-410](#) and 160 of the Code of Laws of South Carolina (1976) must be observed by one who would elect to serve as both master and servant.

During our telephone conversation, you inquired about members of the General Assembly being employed simultaneously by the State. Our Office has addressed the issue in terms of dual office holding and [Article III, Section 24 of the Constitution of South Carolina](#). Enclosed are copies of Opinions of the Attorney General dated April 16, 1982; February 22, 1982; and May 21, 1982, holding that [Article III, Section 24](#) prohibits holding other public offices and serving in the General Assembly simultaneously.

I hope that the above discussion and the enclosed Opinions satisfactorily answer your inquiry. If we may assist you further, please advise us.

Sincerely,

Patricia D. Petway
Staff Attorney

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