

1983 S.C. Op. Atty. Gen. 107 (S.C.A.G.), 1983 S.C. Op. Atty. Gen. No. 83-67, 1983 WL 142737

Office of the Attorney General

State of South Carolina
Opinion No. 83-67
September 12, 1983

*1 Ernest J. Naful, Jr., Esquire
Naful & Ellis
Post Office Box 2215
Columbia, South Carolina 29202

Dear Mr. Naful:

You have requested the opinion of this office on the question of whether it would be a violation of the dual office holding provisions of the South Carolina Constitution for a member of the Board of Trustees of Lexington County Hospital to also serve as a member of the Board of Directors of the Lexington County Health Care Association, Inc.

[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 \(1980\)](#).

The present Lexington County Hospital Board of Trustees was created pursuant to Act No. 792 of the 1967 Statutes at Large. Its members are empowered to do the following: all things necessary or convenient for the construction, operation and maintenance of hospital facilities in Lexington County; adopt bylaws, rules and regulations for conduct of business and expenditure of funds; staff and equip any hospital it operates; provide instructional programs; employ personnel and establish rates for hospital facilities, and expend the proceeds therefrom derived; accept private donations; and acquire, hold, sell and convey property. These functions involve the exercise of the sovereign power of the State, and therefore, the members of the Lexington County Hospital Board of Trustees would be considered officers for dual office holding purposes.

The Lexington County Health Care Association, Inc. Board of Directors has not yet been created pursuant to any legislative enactment. When the association is formed, the members of its Board of Directors will be entrusted pursuant to their bylaws or articles of incorporation with the following powers: engage in health-care related activities; develop alternate sources of revenue; develop methods of meeting short fall on Medicare and Medicaid reimbursement; acquire property; and generally exercise all powers granted to § 501(c)(3) corporations by the Internal Revenue Service.

The directors of the association will not be officers for dual office holding purposes, as they will not exercise the sovereign power of the State pursuant to any statute or other legislative authority. The Lexington County Health Care Association, Inc., upon its formation, will constitute a non-profit charitable organization. This office has previously determined that ‘any connection with these private corporations would not fall under dual office holding. [See](#) 1977 Op. Atty. Gen., dated July 1, 1977. (Copy enclosed).

*2 Furthermore, the directors of the association shall be the board of the hospital itself, by virtue of its articles of incorporation or bylaws, not by county ordinance.

The constitutional provision that no person shall hold two offices of honor or profit at the same time does not apply to those officers upon whom other duties relating to their respective offices are placed by law, such as ex officio membership upon a

board or commission of the unit of government which such officer serves in his official capacity where the functions of board or commission are related to the duties of the office. [Ashmore v. Greater Greenville Sewer Dist.](#), 211 S.C. 77, 44 S.E.2d 88 (1947).

In this instance, the members of the Board of Directors of the Lexington County Health Care Association, Inc. are members by virtue of the fact that they are already on the Board of Trustees of the Lexington County Hospital. Consequently, they (the directors of the association) would not be considered officers for dual office holding purposes; for, it is apparent that the duties of the Board of Directors of the association are related to those of the Board of Trustees of the hospital.

Based on the foregoing, it is the opinion of this office that a person serving on the Lexington County Hospital Board of Trustees and the Lexington County Health Care Association, Inc. Board of Directors would not be violating the dual office holding provisions of the South Carolina Constitution.

Sincerely,

Carol P. Black
Staff Attorney

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