

1982 WL 189151 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 27, 1982

\*1 F. Hall Yarborough, Esquire  
Bryant, Fanning and Yarborough  
Post Office Box 1265  
Orangeburg, South Carolina 29115

Dear Mr. Yarborough:

You have asked the opinion of this Office on whether a person concurrently holding positions as a member of the Legislative Audit Council and a member of a soil and water conservation district commission would be in violation of the provisions in the South Carolina Constitution prohibiting dual office holding.

[Article XVII, Section 1A of the South Carolina Constitution](#) states that ‘. . . no person shall hold two offices of honor and profit at the same time.’ Also see Article VI, Section 3. 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 \(1907\)](#). 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](#), South Carolina Supreme Court, Op. No. 21189, 4-9-80.

The Legislative Audit Council, its composition, the manner of appointment thereto, the terms of its members, and most of its powers and duties and provided for by Sections 2-15-10 to 2-15-110 and [Sections 1-20-10 to 1-20-80 of the Code of Laws of South Carolina](#), 1976, as amended. A review of these statutes establishes that in performing its prescribed duties and powers the Council exercises a portion of the sovereign power of the State. Therefore, a member of the Council holds a public office within the meaning of [Article XVII, Section 1A](#).

Commissioners for soil and water conservation districts, the method of their nomination and election, their terms of office, and most of their powers and duties are provided for by [Sections 48-9-1210 to 48-9-1630 of the 1976 Code](#), as amended. A review of these statutes establishes that in performing their prescribed duties and powers district commissioners exercise a portion of the sovereign power of the State. Consequently, they also hold a public office.

Based on the foregoing, it is the opinion of this Office that a person concurrently serving as a member of the Legislative Audit Council and as a commissioner of a soil and water conservation district would be in violation of the provision of the South Carolina Constitution prohibiting dual office holding.

Sincerely,

James M. Holly  
Assistant Attorney General

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