

1982 WL 189338 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 22, 1982

*1 The Honorable Alexander S. Macaulay
Senator—District No. 1
Drawer 428
Walhalla, South Carolina 29691

Dear Senator Macaulay:

You have requested the opinion of this Office on a dual office holding question concerning a city councilman who is interested in possible appointment to several other boards or commissions. Your letter indicates that you are aware that the position of city councilman has been found to be an office within the meaning of Article VI, Section 3, and [Article XVII, Section 1A of the South Carolina Constitution](#). *See*, 1975 Op. Att'y. Gen. No. 3963, 1975 Op. Att'y. Gen. No. 4139, 1976 Op. Att'y. Gen. No. 4490, and 1977 Op. Att'y. Gen. No. 77-402. The focus of this inquiry then is on whether any of the other positions which you have listed in your letter are also offices for purposes of the dual office holding provisions of the Constitution.

In determining whether a position constitutes an office under either Article VI, Section 3, or [Article XVII, Section 1A of the South Carolina Constitution](#), the key factor to be considered is whether the position is charged by law with 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*, 266 S.E.2d 61 (1980).

The South Carolina Commission on Alcohol and Drug Abuse is established pursuant to [§ 44-49-10 et seq. of the Code of Laws of South Carolina](#), 1976, and the appointment of its members, their of office and most of their powers and duties are provided for therein. The Commission is given full authority to formulate, coordinate, and administer the State plans for controlling narcotics, controlled substances and alcohol abuse, and in so doing is vested with all the functions, powers, and duties of its predecessor, the South Carolina Commission on Alcoholism. This Office has previously concluded that the South Carolina Commission on Alcoholism exercises a portion of the sovereign power of the State and that its members therefore hold offices of profit or honor under South Carolina's Constitution. *See*, 1967 Op. Att'y. Gen., No. 2358 at p. 199. (copy enclosed). Consistent with this opinion and a review of the provisions of [§ 44-49-10 et seq.](#), we conclude that members of the South Carolina Commission on Alcohol and Drug Abuse hold offices within the meaning of the dual office holding provisions of the South Carolina Constitution.

This Office has similarly concluded that members of the South Carolina Arts Commission hold offices for dual office holding purposes. *See*, Opinion of May 31, 1973 to Wesley O. Brustad (copy enclosed). This opinion is based upon a finding that positions on the Arts Commission are created by statute which provides for the exercise of a portion of the sovereign power of the State. *See*, [§ 60-15-10, et seq. Code of Laws of South Carolina](#), 1976. We find no reason to depart from the conclusion reached in our prior opinion and therefore conclude that members of the South Carolina Arts Commission hold offices under the dual office holding provisions of the South Carolina Constitution.

*2 The Children's Bureau of South Carolina is established pursuant to [§ 20-7-2300 et seq. of the Code of Laws of South Carolina](#), 1976, as amended, which provides for the appointment of members to the Board of Directors and prescribes their duties. They are given the authority, thereunder, to establish the policies and administrative duties necessary for governing the Children's Bureau. Among the responsibilities of this Bureau are the placement of children committed to its care in homes for adoption, and the authority to act as the guardian of such children. *See*, [§§ 20-7-1830 and 20-7-1860, Code of Laws of South](#)

[Carolina](#), 1976, as amended. It is our opinion that these functions involve an exercise of the sovereign power of the State and, thus, positions on the Board of Directors are offices for purposes of the dual office holding provisions of the Constitution.

The South Carolina Advisory Board for Review of Foster Care of Children is established pursuant to [§ 20-7-2390 et seq. of the Code of Laws of South Carolina](#), 1976, as amended. This Board consists of sixteen members selected by the local boards from their membership, so that each member of the Advisory Board performs not only the duties set forth in [§ 20-7-2390 et seq.](#), but also those conferred on the local review boards by [§ 20-7-1930 of the Code of Laws of South Carolina](#), 1976, as amended. The local review boards are given authority, *inter alia*, to review cases of children committed to foster care for more than six months to determine what efforts have been made by the supervising agency or institution to find a permanent home for the child, and to conduct hearings when requested by parties aggrieved by their actions or decisions. *See*, [§ 20-7-1640, Code of Laws of South Carolina](#), 1976, as amended. The Advisory Board is empowered under [§ 20-7-2390](#) to promulgate rules and regulations relating to the function and procedures of local review boards. These duties involve an exercise of the sovereign power of the State and therefore members of the South Carolina Advisory Board for Review of Foster Care of Children would hold offices under the dual office holding provisions of the South Carolina Constitution. The Commission on Consumer Affairs is provided for in [§ 37-6-610](#), and the powers and duties thereof delineated in [§ 37-6-506, of the Code of Laws of South Carolina](#), 1976, as amended. The Commission is given broad authority to act as the policymaking and governing authority of the Department of Consumer Affairs and is charged with the responsibility of enforcing the provisions of the Consumer Protection Code. It is further given the power to appoint an Administrator and act through the administrator to adopt, amend and repeal rules and regulations to interpret and explain provisions of the Consumer Protection Code. In our opinion this constitutes an exercise of the sovereign power of the State and thus positions on the Commission on Consumer Affairs are offices for dual office holding purposes.

***3** The State Commission on Higher Education is created, and its membership defined, by [§ 59-103-10 of the Code of Laws of South Carolina](#), 1976, as amended. Among its powers and duties are the adoption or modification of the proposed budgets of the state's institutions of higher education for submission to the legislature and Budget and Control Board, the approval or disapproval of new programs at these institutions, and the authorization of construction of any facilities for these institutions away from their main campuses. *See*, [Sections 59-103-35 and 59-103-110, Code of Laws of South Carolina](#), 1976, as amended. Since these duties involve an exercise of the sovereign power of the State, the members of the Commission on Higher Education would hold offices under the dual office holding provisions of the South Carolina Constitution.

The South Carolina Industrial Commission is created, and the duties of its members, provided for pursuant to [§ 42-3-10 et seq. of the Code of Laws of South Carolina](#), 1976, as amended. A review of these statutes leaves little doubt that members of this Commission hold offices under the South Carolina Constitution. Their powers include the authority to hear and determine contested workmen's compensation cases and the authority to promulgate all regulations relating to the administration of the workmen's compensation laws of the State. *See* [§§ 42-3-20 and 42-3-30, Code of Laws of South Carolina](#), 1976, as amended. These duties clearly involve an exercise of the sovereign power of the State.

The South Carolina Insurance Commission is created pursuant to [§ 38-3-20 of the Code of Laws of South Carolina](#), 1976, as amended. It is empowered under [§ 38-3-60](#) to select and employ a Chief Insurance Commissioner and to issue to him general policies and broad objectives regarding the operation of the insurance industry. The Commission is further empowered to require the Chief Insurance Commissioner to pursue these policies and objectives. Although their duties are described in very general terms, the Commissioners play a vital role in the Functioning of the Department of Insurance in that they determine the course and direction the department will take on important policy matters. In so doing, it is the opinion of this Office that a portion of the sovereign power of the State is exercised, and thus the conclusion is reached that members of the Insurance Commission hold offices under the South Carolina Constitution.

The South Carolina Public Service Commission is established pursuant to [§ 58-3-10 et seq. of the Code of Laws of South Carolina](#), 1976, as amended. The Commission is given broad authority to supervise and regulate the rates and service of every public utility in the State and 'to fix just and reasonable standards, classifications, regulations, practices and measurements of service to be furnished, imposed or observed and followed by every public utility in this State.' *See*, [§ 58-3-140, Code of](#)

[Laws of South Carolina](#), 1976, as amended. The Public Service Commission is further authorized to regulate motor vehicle transportation for compensation within the State of South Carolina. [§§ 58-23-20 et seq.](#), [Code of Laws of South Carolina](#), 1976, as amended. These functions clearly involve an exercise of the sovereign power of the State and thus members of the Public Service Commission would hold offices under the dual office holding provisions of the South Carolina Constitution.

*4 The South Carolina Board of Social Services is empowered under [§ 43-1-60 of the Code of Laws of South Carolina](#), 1976, as amended to create a State Advisory Council of Social Services to advise the Department of Social Services on problems and issues with which it is faced. Since this Council serves merely in an advisory capacity and does not have the authority to exercise any powers of its own, its members would not be considered officeholders for dual office holding purposes.

The Board of Youth Services is created pursuant to [§ 20-7-2440 of the Code of Laws of South Carolina](#), 1976, as amended and is given the power therein to function as the governing body of the Department of Youth Services. Its powers are further delineated in [§§ 20-7-2470 et seq.](#) and include the exclusive authority 'to supervise generally the respective schools [South Carolina School for Boys, the South Carolina School for Girls, the John G. Richards School for Boys, the Riverside School for Girls, etc.] and make rules and regulations for their conduct and management and for the government and discipline of persons under their care.' The Board is authorized to make contracts and expend public funds necessary for the management and support of the schools under its jurisdiction. A view of the Boards' statutes indicates that its members would be officeholders since they are given authority to exercise a portion of the sovereign power of the State.

This concludes the list of positions of which you inquired. If we can be of any further assistance to you, please do not hesitate to contact us.

Very truly yours,

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Staff Attorney

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