

1985 WL 259109 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 11, 1985

***1** Mr. Claude Driggers
Marlboro County Supervisor
Post Office Box 419
Bennettsville, South Carolina 29512

Dear Mr. Driggers:

By your letter of November 30, 1984, you have asked whether one person serving simultaneously as an employee of the Department of Social Services and as a member of the Alcohol and Drug Commission would contravene the dual office holding prohibition of the Constitution of the State of South Carolina.

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 Commission on Alcohol and Drug Abuse for Marlboro and Chesterfield Counties was created by Act No. 730, 1973 Acts and Joint Resolutions. A term of two years is provided by the Act, and members are to serve without compensation. Powers and duties of the Commission are specified in Sections 3 and 4 of Act No. 730 and include the power to purchase land, enter into contracts, expend monies and contributions, prescribe rules and regulations, and to formulate and administer alcohol and drug programs for the community. This Office has previously determined that a member of a county alcohol and drug abuse commission would be an officer for dual office holding purposes. See Ops. Atty. Gen. dated February 13, 1984 and December 10, 1981, copies of which are enclosed. Because the Commission on Alcohol and Drug Abuse for Marlboro and Chesterfield Counties is so similar to the commissions examined in our prior opinions, we would conclude that a member of the Commission would hold an office for dual office holding purposes.

You have not specified which position the individual holds within the Department of Social Services. It is assumed for purposes of this opinion that you refer to an employee hired by the Marlboro County (or other county) Department of Social Services as authorized by Section 43-3-70, Code of Laws of South Carolina (1976), serving in a position other than county director. Such a position would not have been created by statute; tenure of the employee would be by contract or at will; and no oath would be required for the position. Duties and qualifications would be specified on the individual's Position Questionnaire and on the position's classification form, though not otherwise (by statute or ordinance) provided for. It would appear that an employee of the County Department of Social Services, below the level of county director, would be an employee rather than an officer. In that regard, the following from Sanders v. Belue is pertinent:

***2** [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.

78 S.C. at 174. This Office concluded previously that a planner for the Department of Social Services was merely an employee. See Op. Atty. Gen. dated January 17, 1975. Based on the foregoing and given the assumption stated above, it appears that a county Department of Social Services employee would not hold an office.

In conclusion, one may most probably serve as a member of the Commission on Alcohol and Drug Abuse for Marlboro and Chesterfield Counties and as an employee of a county Department of Social Services without contravening the dual office prohibitions of the State Constitution.

Sincerely,

Patricia D. Petway
Assistant Attorney General

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