

1996 WL 679438 (S.C.A.G.)
Office of the Attorney General
State of South Carolina
October 8, 1996

Re: Informal Opinion

*1 Billy L. Jenkins
Route 1, Box 146
Jefferson, South Carolina 29718

Dear Mr. Jenkins:

You indicate you are presently a member of the school advisory council for Jefferson Elementary School Attendance area in Chesterfield County. You also state that you are considering running as a write-in candidate for the position of conservation district commissioner with the Chesterfield Soil and Water Conservation District. This position will be elected county-wide in the November 5, 1996 general election. You wish to know whether the occupancy by you of both of these positions simultaneously would constitute a violation of the Constitutional prohibition against dual office holding.

Article XVII, Section 1A of the state Constitution provides that "no person may hold two offices of honor or profit at the same time . . .," with exceptions specified for an officer in the militia, constable, or a notary public. 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).

This Office has previously concluded that a soil and water commissioner holds an office. See, Ops. Atty. Gen., November 1, 1991; December 17, 1990. However, in an Opinion of October 5, 1993, we stated:

[t]his Office has previously advised that a member of a school advisory council would not be considered an office holder, due to the advisory nature of the position. See Op. Atty. Gen. dated May 3, 1978, School advisory councils are now called School Improvement Councils; while the relevant statute (S.C.Code Ann. Sec. 59-20-60(3)) has been amended by Act No. 135, 1993 Acts and Joint Resolutions, and is now Sec. 59-20-60(6), . . . the amendments would not cause our previous opinion to be changed. Based on the foregoing, from the perspective of dual office holding, it is our opinion that an individual may serve concurrently on the State Board of Education and on a School Improvement Council without violating the dual office prohibitions of the state Constitution.

Based upon the foregoing authority, it is my opinion that you may serve concurrently as a member of school advisory council (School Improvement Council) and as a member of a soil and water conservation district without violating the dual office holding provision of the state Constitution.

This letter is an informal opinion only. It has been written by a designated Assistant Deputy Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

*2 With kind regards, I am
Very truly yours,

Robert D. Cook
Assistant Deputy Attorney General

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