

1979 WL 43620 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 26, 1979

***1 RE: Requested Attorney General's Opinion**

Mr. Charles E. Lee
Director
South Carolina Department of Archives and History
1430 Senate Street
Columbia, South Carolina 29201

Dear Mr. Lee:

You have requested an Opinion of this Office, concerning our State's constitutional provision prohibiting dual office holding. [Article VI, Section 3, Constitution of South Carolina](#), states: 'No person shall hold two offices of honor or profit at the same time; provided, that the limitation shall not apply to officers in the militia, notaries public, or delegates to a Constitutional Convention.' Specifically, you inquire whether one individual may simultaneously hold a seat on the South Carolina Commission of Archives and History and a seat on the State Higher Education Tuition Grants Committee. The individual in question serves on the Commission of Archives and History as the nominee of the South Carolina Historical Society, appointed by the Governor. The seat in question on the Higher Education Tuition Grants Committee is held as a representative of one of South Carolina's independent institutions of higher learning.

The South Carolina Supreme Court, in the case of [Sanders v. Belue, 78 S.C. 171, 58 S.E. 762 \(1907\)](#), defined the term 'public officer' as follows:

One who is charged by law with duties involving an exercise of some part of the sovereign power, either small or great, in the performance of which the public is concerned, and which are continuing, and not occasional or intermittent, is a public officer.

[Section 60-11-40, CODE OF LAWS OF SOUTH CAROLINA](#), 1976, prescribes that the South Carolina Department of Archives and History shall be under the control of the Commission of Archives and History. Section 6-11-50 enumerates the various powers and duties of the Commission, which include, among others, the following:

- (6) Control the expenditure in accordance with law such public funds as may be appropriated to the Department;
- (7) Accept gifts, bequests, and endowments for purposes consistent with the objectives of the Department;
- (8) Make annual reports to the General Assembly of the receipts, disbursements, work, and needs of the Department; and
- (9) Adopt policies designed to fulfill the duties and attain the objectives of the Department as established by law.

The exercise of the powers just enumerated clearly bring the individual in question within the definition of public officer as stated in [Sanders v. Belue](#).

Section 59-113-10 provides for the Higher Education Tuition Grant Committee and states in part that, 'The Committee shall administer the provisions of this chapter and shall make such rules and regulations as may be necessary in order

to carry out the intent of this chapter.’ While denominated a ‘committee’, rather than a commission or board, the Higher Education Tuition Grants Committee, apparently, stands on equal footing with other state agencies, commissions and boards in carrying out the legislative intent in creating such Committee. For budgetary purposes the Committee is accorded equal treatment with other state agencies, as indicated in a review of past general appropriations acts. e.g., Act No. 655, ACTS AND JOINT RESOLUTIONS OF SOUTH CAROLINA, 1978. The Committee controls the expenditure of appropriated funds, and thus the Committee exercises a sovereign power in its regulating and implementing the statutory tuition grant scheme.

*2 Therefore, the Opinion of this Office is that [Article VI, Section 3 of the Constitution of South Carolina](#) prohibits one person from simultaneously holding positions as a Commissioner of Archives and History and on the Higher Education Tuition Grants Committee. No Opinion is rendered concerning the possibility of a member of the Tuition Grants Committee designating another person to represent an institution on the Committee. The SOUTH CAROLINA CODE OF LAWS, and rules and regulations of the Higher Education Tuition Grants Committee are silent as to the manner of selection of the representatives of individual institutions on the Committee; therefore, I feel that this matter is best left to the Tuitions Grants Committee itself.

Please call upon me if I can be of further service to you.

Sincerely,

Paul S. League
Assistant Attorney General

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