

1976 S.C. Op. Atty. Gen. 332 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4469, 1976 WL 23086

Office of the Attorney General

State of South Carolina

Opinion No. 4469

September 28, 1976

\*1 The Honorable Wanda L. Forbes  
Member  
Commission on Higher Education  
Route 1  
Clover, South Carolina 29710

Dear Mrs. Forbes:

In reply to your letter of September 27, 1976, I advise that membership on the Commission on Higher Education is an office within the meaning of the dual officeholding provision of the Constitution. Similarly, membership on the board of trustees of a school district in this State is such an office. Therefore, by virtue of the constitutional provision, the same person cannot at the same time occupy both of such offices. It is immaterial that one or the other is not compensated or that one may be a Statewide office and one a local office. The test is whether it is an office of 'honor, trust or profit' as those terms are used in the constitutional provision. The word 'office' is somewhat ambiguous but it can be succinctly defined as one of specific duration, the duties of which involve the exercise of some portion of the sovereignty of the State. Undoubtedly, the authority vested in members of boards of trustees of school districts and the authority vested in members of the Commission on Higher Education involves the exercise of a portion of the sovereignty in that each possesses some degree of regulatory power. It is clear that each of these positions is an office.

As a member of the Commission on Higher Education, should you seek election to a school board, it is not necessary that you resign as a member of the Commission. In the event you are elected to the board of trustees, the acceptance of this latter office would have the effect of causing a vacancy in your previous position on the Commission. This simply is not a physical vacancy but is a vacancy in the sense that it is in order to have that position filled in the manner provided by law to select your successor. Both positions, in my opinion, may continue to be held until the vacancy in the former is filled and, while this is, in effect, dual officeholding, it is a means by which both bodies continue to function.

In summary, the same person cannot be a member of the Commission on Higher Education and a member of a school board of trustees at the same time without violating the dual officeholding provision of the Constitution. The acceptance of a later office has the effect of vacating the former office in the sense that the vacancy created must be filled.

If there is any further clarification, please feel free to call upon me.

Very truly yours,

Daniel R. McLeod  
Attorney General

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