

1976 S.C. Op. Atty. Gen. 383 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4521, 1976 WL 23138

Office of the Attorney General

State of South Carolina

Opinion No. 4521

November 17, 1976

**\*1 Memberships on the Old Exchange Building Commission and the Governor's Beautification and Community Improvement Board do not constitute dual office holding within the purview of the South Carolina Constitution.**

Member

Old Exchange Building Commission

You have inquired whether or not it is a violation of state constitutional provisions for an individual to serve simultaneously as a member of the Old Exchange Building Commission and the Governor's Beautification and Community Improvement Board.

Article XVII, Section 1A and Article VI, Section 3 of the South Carolina Constitution provide that no person shall hold two offices of honor or profit at the same time. A public officer has been defined by the South Carolina Supreme Court as: One who is charged by law with the 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. *See, Sanders, v. Belue, supra; Edge v. Town of Cayce, supra.*

The Old Exchange Building Commission was created by Act No. 678 of 1976. This office has previously expressed the opinion that this commission is empowered to exercise a portion of the sovereign authority of the State, and, accordingly, membership on the Commission would constitute the holding of an office. *See, Attorney General Opinion Letter, dated July 21, 1976, and attached hereto.*

There is no constitutional or statutory authority for the establishment of the Beautification and Community Improvement Board. Rather, this Board was created by Executive Order on June 18, 1964. Apparently, there have been no subsequent executive orders by succeeding Governors to reaffirm this order. The previous opinions of this Office have been that an executive order of the Governor does not qualify under the term 'charged by law,' since it is of no force and significance from a legal standpoint if it is issued without statutory authority. Therefore, a position created at the discretion of the Governor and alterable at his will is considered merely an organization arm of the Governor's Office for administrative purposes and is not a legal entity or office. *See Attorney General's Opinions, dated August 19, 1975 and November 20, 1975.*

In conclusion, membership on the Old Exchange Building Commission constitutes an 'office' within the purview of the State Constitution; however, membership on the Governor's Beautification and Community Improvement Board does not constitute an 'office' and, therefore, both positions may be held simultaneously without constituting dual office holding.

Richard B. Kale, Jr.

Assistant Attorney General

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