

1975 WL 29077 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 18, 1975

\*1 Where the duties of a position are not defined by law, and where there is no direct exercise of the sovereign authority of the state on a continuing basis, there can be no 'public office.'

TO: Robert O. Conoley  
Greenville City Attorney

QUESTION PRESENTED:

Is membership on the Board governing the Police Service Bureau at the Greenville Joint Law Enforcement Center an office subject to dual office holding restrictions?

STATUTES, CASES:

South Carolina Constitution, Article 17, Section 1 A; Code of Laws of South Carolina, 1962, Sections 50-151 and 50-1; [Sanders v. Belue](#), 78 S.C. 171, 58 S. E. 762; [Edge v. Town of Cayce](#), 187 S. C. 171, 197 S. E. 216;

DISCUSSION OF ISSUES:

The City and County of Greenville have created by mutual agreement a Governing Board of the Police Service Bureau at the Joint Law Enforcement Center in Greenville. There is no specific statutory existence for such Board and it does not administer funds. The Board governs the Police Service Bureau which performs ministerial service support for the police and sheriff. These services include record keeping, training, laboratories, communications and canine service.

Apparently the Board has no discretionary authority, nor does it exercise the sovereign power of the state or administer public funds. Its duties are primarily to advise the Police Service Bureau, which it also regulates.

In [Sanders v. Belue](#), 78 S. C. 171, 58 S. E. 762, the South Carolina Supreme Court recognized the difficulty in defining 'public office' by a fixed set of criteria. The Court recognized that such fixed definitions cannot be exclusive, and attempted to set up a general concept of 'public office:'

Accepting any or all of the many definitions of public office which have been laid down by the jurists, it is still often difficult to say whether a particular position is an office or a mere employment . . . Laying aside for the moment the statutory definition of a public officer, we venture to think an examination of these and other authorities will lead to the approval of the following definitions as sufficiently expressing the generally accepted distinction between a public officer and an employee: 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 are continuing and not occasional or intermittent, is a public officer. Conversely, one 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.

Even this broad concept of 'public office' does not always determine if a particular position is an office. Criteria to also be considered are the nature of the office's creation, duration, and qualification as well as whether the office's duties are ministerial or discretionary, or involve an exercise of sovereign authority.

\*2 In the instant fact situation the members of the Board of the Police Service Bureau are appointed by the City and County to serve for staggered terms. The duties and powers of this Board are apparently limited solely to establishing procedures under which the Service Bureau can most efficiently supply its service functions to law enforcement agencies. These duties are not defined by statutory law nor do they involve the direct exercise of the sovereign power of the state. Rather, the duties are ministerial support functions which could easily be carried out by public employees hired by the law enforcement divisions.

It could be argued that any position created by county and city council is one created by law, since the councils have definite law making powers. However, the facts in this case indicate no duties defined by law other than general governance of the support group. No municipal ordinance or statute covering the Board has been passed. To read the statutory phrase 'persons whose duties are defined by law' to include the instant position would in my opinion be an unreasonably strained interpretation.

These duties are also not of a nature to directly concern the public, as required in the definition of public officer used in the Sanders case, *infra*. The public is concerned with law enforcement, an activity which is clearly an exercise of sovereign authority. But the ministerial support for law enforcement is a subordinate function and only incidental to the exercise of the state's police powers.

Attention should be given to 1969 Op. Atty. Gen. 289 where it was held that members of a statutorily created regional planning commission were not officers. The conclusion was based primarily on the facts that the number of members was indeterminate and the commission function was an advisory and recommending authority.

#### CONCLUSION:

Although the definition of public office is often a nebulous concept, it is my opinion that where there is no statutory or other legal definition of the office involved, its duties, or its duration and where there is no direct or discretionary exercise of the sovereign authority of the state on a continuing basis, there can be no 'public office.'

(See also: 1969 Op. Atty. Gen. 289)

George C. Beighley  
Staff Attorney

1975 WL 29077 (S.C.A.G.)