

1975 WL 29186 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

November 19, 1975

*1 The Honorable James B. Edwards
Governor
Columbia, South Carolina

Dear Governor Edwards:

You have requested my opinion concerning the status of the following officials who are presently serving as members of the South Carolina Board of Social Services with respect to the applicability of the dual officeholding provision of the Constitution of this State.

Mrs. J. Durham Lewis. Mrs. Lewis, according to the records in the Office of the Secretary of State, was elected as a member of the Board of Social Services on April 15, 1970, to serve a four-year term pursuant to the provisions of Section 71-2 of the Code of Laws. That term would have expired on or about May 1974. Mrs. Lewis is therefore holding over as a member of the Board of Social Services.

I have been informed that before the expiration of Mrs. Lewis' term as a member of the Board of Social Services, she was, in January 1974, elected as a member of the Mullins City Council. Assuming this information to be correct, it is my opinion that the following legal conclusions are proper:

Each of these positions is an office within the meaning of the dual officeholding provision of the Constitution of this State, but she is required under the Rogers case, cited below, to continue her present de facto status as a member of the Board of Social Services until her successor has been elected or appointed and has qualified. Should she be reappointed as a member of the Board of Social Services, the effect of this would be to create a vacancy in the position which she holds on the Mullins City Council and the procedure for filing such a vacancy would then be in order with respect to that Council.

It is my opinion that a vacancy now exists in the office which Mrs. Lewis now holds on the Board of Social Services.

Mr. Patrick Flack. The records in the Office of the Secretary of State show that Mr. Flack was appointed as a member of the Board of Social Services on July 24, 1973, to fill an unexpired term which would end on May 13, 1975.

I am informed that on March 8, 1974, Mr. Flack was appointed as a member of the Anderson County Board of Election Commissioners. Such Commissioners are appointed pursuant to the provisions of Section 23-400 of the Code of Laws, which provides that:

'For the purpose of carrying on general and special elections—the Governor shall, at least thirty days prior to any such election, appoint for each county not less than three nor more than five Commissioners of Election upon the recommendation—. Such Commissioners shall continue in office until their successors are appointed and qualified.'

In addition, other statutes vest in the County Commissioners of Election certain appellate jurisdiction. Sections 400.451, et seq., Code of Laws. The statute requires their appointment for each general or special election. General elections are conducted in each alternate even-numbered year. Section 23-391. It is my opinion that the term of the office is referable to general elections and is thus fixed at two years.

*2 It is my opinion that membership upon a County Board of Commissioners of Election is an office.

I am further informed that subsequent to his appointment as a Commissioner of Election, Mr. Flack resigned that position. The effect of this does not, in my opinion, obviate the vacancy in the office which he previously held in that the dual officeholding provision of the Constitution, as construed and applied by the decisions of the courts of this State, establish that the acceptance of a second office while holding a first works a vacancy as a matter of law in the office first held. The act of resigning does not remove the constitutional obstacle directed against dual officeholding and its consequent results. [100 A.L.R. 1162](#). There are no decisions on the precise point in this State of which I am aware but the general rule of law appears clearly to be in accordance with the conclusions expressed herein.

In my opinion, a vacancy now exists in the position which Mr. Flack now holds as a member of the Board of Social Services, which may now be filled by appointment or election of a successor.

Section 71-2 of the Code of Laws, 1962, provides, with respect to vacancies on the membership of the South Carolina Board of Social Services:

‘In case of any vacancy by death, resignation or otherwise in the office of chairman or member from any district, the Governor shall appoint a successor to serve only for the unexpired term.’

It is my opinion that you have the authority to fill the vacancies in the positions now held by Mrs. Lewis and Mr. Flack for the reason that vacancies exist in those offices by virtue of the acceptance by the incumbents thereof of a second office.

Should an appointment be made by you under the provisions of the foregoing statute, it is my opinion that the appointee would hold office for the remaining part of the term, irrespective of any intervening sessions of the General Assembly, in accordance with the precise terms of the statute.

Very truly yours,

Daniel R. McLeod
Attorney General

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