

1975 S.C. Op. Atty. Gen. 263 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 4221, 1975 WL 22518

Office of the Attorney General

State of South Carolina

Opinion No. 4221

December 22, 1975

\*1 Dual office holding would occur if an individual simultaneously served as a member of the S. C. Board of Dental Examiners and as a member of the S. C. State Ethics Commission.

TO: Daniel R. McLeod,  
Attorney General

QUESTION PRESENTED:

Can an individual simultaneously serve as a member of the Board of Dental Examiners and as a member of the State Ethics Commission without violating constitutional restrictions on dual office holding?

STATUTES, CASES, ETC:

South Carolina Constitution, Article XVII, Section 1A and Article VI, Section 3;

[Sanders, et al. v. Belue, et al.](#), 78 S. C. 171, 58 S. E. 762;

[Edge v. Town of Cayce](#), 187 S. C. 172, 197 S. E. 216;

Act No. 191, 1975 S. C. Acts and Joint Resolutions;

Code of Laws of South Carolina, 1962, Section 56–501, et seq.;

DISCUSSION OF ISSUES:

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. An office has been defined by the South Carolina Supreme Court in the Sanders case, supra, 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.

The State Ethics Commission is created by Act No. 191, supra, Section 3. The Commission's duties are spelled out in Section 4. These sections read together leave no doubt that membership on the Ethics Commission meets the Sanders definition of an office. The duties are defined by law, are exercised on a continuing basis, are the concern of the public, and are an exercise of sovereign authority. The method of appointing Commission membership and the term of office are spelled out in the statute. The Commission's responsibility of promulgating rules and regulations, investigating alleged violations of the Act, issuing advisory opinions, holding hearings and recommending disciplinary action or criminal prosecution all combine to satisfy the definitions of an office.

The State Board of Dental Examiners and its duties are created and defined in Code Section 56-501, et seq. This body also meets the Sanders test of an office. The duties are legally defined, the terms of office are specific and continuing and the sovereign authority is exercised in an area of public concern, that of regulating the access to and quality of the dental profession.

CONCLUSION:

Since both positions discussed constitute offices, it would be in violation of the South Carolina Constitution for an individual to simultaneously hold both positions.

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