

STATE OF SOUTH CAROLINA

Office of the Attorney General

COLUMBIA

March 26, 1948

Honorable J. Strom Thurmond, As Governor
State House
Columbia, S. C.

My dear Governor Thurmond:

This will acknowledge receipt of your letter of March 26th,
reading as follows:

"Attached hereto is Senate Bill No. 1064, House
Bill No. 1403, and Act No. 751, of the 1948
Session of the General Assembly, which was
ratified March 23, 1948. Please give me your
opinion as to whether or not this Act is
constitutional.

"Please disregard my letter to you of March 25
regarding this same Act.

"In view of the fact that I must act today on this
matter, it is requested that you let me have your
opinion as early as possible. Also, please return
the Act with your opinion.

"Thanking you, and with kindest regards and best
wishes."

In reply I advise that in the very recent case of Ashmore, et al. vs. Greater Greenville Sewer District, et al. 211 S. C. Advance Sheet No. 2, page 77, 44 S. E. (2d) 88, where the Mayor of the City of Greenville and the Chairman of the County Board of Commissioners for Greenville County, were made members of the Board of Trustees, created by the Act therein question, our State Supreme Court held that "The Constitution contains another prohibition which (in addition to its applicability to the members of the legislature) prevents legal membership upon the Board of the mayor of the City of Greenville who is designated in the Act as a member. It is included in Section 2 of Art. II: 'But no person shall hold two offices of honor or profit at the same time'. Again applicable is the observa-

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tion that should the Mayor vacate that office by becoming a member of the Board he would thereby become ineligible for Board membership under the terms of the Act. It is a trap-like process from which no legal avenue of escape appears. The Chairman of the Board of County Commissioners of Greenville County is in a similar plight and he cannot constitutionally take or hold his auditorium Board membership along with his present office."

Again this same case declares:

"Similar observation may be made with respect to ex-officio membership upon a governing board, commission or the like of an agency or institution in which the unit of government of the officer has only a part or joint ownership or management. In mind as an example is an airport operated by two or more units of government. A governing board of it might be properly created by appointment ex-officio of officers of the separate governmental units whose duties of their respective officers have reasonable relation to their functions ex-officio. These observations are made to make clear that the present adjudication will not affect the state of the law with respect to ex-officio office-holding as it is recognized in the law of this and other jurisdictions."

From the language quoted from our State Supreme Court decision the trustee selected to serve in the Cameron School District by the Board of Trustees of each of the three adjoining school districts, would - upon qualifying, according to our State Supreme Court vacate his seat upon his local Board, and thus be ineligible to serve on the Cameron Board. I, therefore, hold that this makes this Act invalid - just as that part of the members of another Board made it invalid.

Yours very truly,

/s/ John M. Daniel

Attorney General

JMD/d

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