



ALAN WILSON  
ATTORNEY GENERAL

June 13, 2023

The Honorable Harvey S. Peeler, Jr.  
PO Box 742  
Gaffney, SC 29342

Dear Senator Peeler:

You have requested an opinion of this Office regarding whether it would constitute dual office holding for an individual to serve as a member of the Cherokee County Council and as the Cherokee County member of the Spartanburg County Commission for Higher Education.

### LAW/ANALYSIS

The South Carolina Constitution provides for dual office holding:

[n]o person may hold two offices of honor or profit at the same time, but any person holding another office may at the same time be an officer in the militia, member of a lawfully and regularly organized fire department, constable, or a notary public .... The limitation above set forth does not prohibit any officeholder from being a delegate to a constitutional convention.

S.C. Const, art. XVII § 1 A.

The South Carolina Supreme Court explains that an “office” for dual office holding purposes is:

“[o]ne 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.” Sanders v. Belue, 78 S.C. 171, 174, 58 S.E. 762, 763 (1907). “In considering whether a particular position is an office in the

constitutional sense, it must be demonstrated that “[t]he power of appointment comes from the state, the authority is derived from the law, and the duties are exercised for the benefit of the public.” Willis v. Aiken County, 203 S.C. 96, 103 26 S.E.2d 313, 316 (1943). “The powers conferred and the duties to be discharged with regard to a public office must be defined, directly or impliedly, by the legislature or through legislative authority ...” 63C Am Jur.2d Public Officers and Employees § 5 (2009).

Segars-Andrews v. Judicial Merit Selection Commission, 387 S.C. 109, 691 S.E.2d 453 (2010).

In State v. Crenshaw, 274 S.C. 475, 478, 266 S.E.2d 61, 62 (1980), the Court provided some criteria to consider when determining if a position is an office:

Criteria to be considered ... include whether the position was created by the legislature; whether the qualifications for appointment are established; whether the duties, tenure, salary, bond, and oath are prescribed or required; whether the one occupying the position is a representative of the sovereign; among others.

In a prior opinion of this Office, we determined that a member of the Cherokee County Council holds an office for dual office holding purposes. See Op. S.C. Atty. Gen., 2016 WL 2933093 (May 6, 2016). We have also opined that an individual who serves on the Spartanburg County Commission for Higher Education (“Commission”) would most likely hold an office for dual office holding purposes. See Op. S.C. Atty. Gen., 1992 WL 575619 (March 27, 1992). We reached this conclusion based on the following analysis:

The Spartanburg County Commission for Higher Education was created by act of the General Assembly. See Act No. 36 of 1967, as amended by Act No. 504 of 1967 and Act No. 202 of 1991. The Commission is to consist of fifteen members, appointed by the Governor upon the recommendation of a majority of the House of Representatives members of Spartanburg County and the “senators from District 4.” A term of four years and until one's successor is appointed and qualifies, is specified. A member is to serve without compensation. No mention is made of taking an oath. No

qualifications are specified for membership. Certain powers and duties are specified in these acts, including encouraging higher education in Spartanburg County, establishing facilities for college courses in the county, entering into agreements, soliciting funds, accepting donations, exercising eminent domain, and appointing an educational advisory committee.

This Office has previously examined membership on county higher education commissions, concluding that such membership would constitute an office for dual office holding purposes. Enclosed are copies of opinions dated May 12, 1977 (as to the Allendale County commission) and January 27, 1976 (as to the Georgetown County commission). The duties and powers exercised by members of the Spartanburg County commission are very similar to those exercised by similar commissions and appear to involve an exercise of a portion of the sovereign power of the State (particularly eminent domain). Thus, it is our opinion that one who serves on the Spartanburg County Commission for Higher Education would most probably hold an office for dual office holding purposes.

Id.

As you pointed out in your letter, however, the act establishing the Commission has been amended since our 1992 opinion to provide for additional members. See 1995 S.C. Acts 184. The title of Act No. 184 of 1995 provides:

An Act To Amend Act 36 of 1967, As Amended, Relating To The Spartanburg County Commission For Higher Education, So As To Provide For One Additional Member Of The Commission From Greenville County, And One Additional Member From Cherokee County And To Provide For The Manner In Which These Members Shall Be Appointed.

We have previously explained that “[i]t is well settled that the title or caption of an act may be considered to aid in the construction of a statute and to show the intent of the Legislature.” Op. S.C. Atty. Gen., 2014 WL 3886690 (July 28, 2014) (citing Lindsay v. Southern Farm Bureau

The Honorable Harvey S. Peeler, Jr.  
Page 4  
June 13, 2023

Cas. Ins. Co., 258 S.C. 272, 188 S.E.2d 374 (1972). University of S.C. v. Elliott, 248 S.C. 218, 149 S.E.2d 433 (1966)). The title of Act No. 184 of 1995 indicates that the primary difference between the regular members of the Commission and the additional members is their residency.

A review of the text of Act No. 184 of 1995 (“Act”) shows that the regular members and the additional members are appointed in the same manner. The regular fifteen members are “to be appointed by the Governor on the recommendation of a majority of the resident members of the House of Representatives and the Senate from Spartanburg County.” The additional members from Greenville County and Cherokee County “shall be appointed by the Governor upon the recommendation of a majority of the resident members of the Spartanburg County Legislative Delegation.”

The terms of the regular members and the additional members appear to be the same. The regular members are granted terms of four years and “until their successors are appointed and qualify.” The Act does not provide for the additional members having a different term. Furthermore, the compensation is the same, as “[a]ll members of the commission . . . shall serve without compensation.”

While the Act modifies the composition of the Commission, the powers and duties of its members appears to remain the same. As such, we continue to believe individuals serving on the Commission exercise a portion of the sovereign power of the State. The Act assigns additional duties to the Commission as a whole. “The commissioners” are instructed to “elect a chairman, vice-chairman, secretary, and treasurer from among their members” and to “organize and adopt appropriate rules and procedures” at their first meeting. “The commission” is also empowered to appoint an Educational Advisory Committee to “facilitate its work.” The only difference between the regular members and the additional members appears to be their residency. Accordingly, our conclusion in our 1992 opinion has not changed. An individual who serves on the Spartanburg County Commission for Higher Education would most likely hold an office for dual office holding purposes, regardless of his residency.

The Honorable Harvey S. Peeler, Jr.  
Page 5  
June 13, 2023

**CONCLUSION**

In our opinion, service as a member of the Cherokee County Council and as the Cherokee County member of the Spartanburg County Commission for Higher Education would violate the dual office holding prohibition of the South Carolina Constitution.

Sincerely,



Elinor V. Lister  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Solicitor General