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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

August 10, 2004

Randall Bryant, Assistant Deputy Director
South Carolina Department of Labor, Licensing & Regulation
Post Office Box 11329
Columbia, South Carolina 29211-1329

Dear Mr. Bryant:

In a letter to this office you raised a question as to whether Mrs. Patsy Towery, Director, Center for Special Programs and Community Education at Midlands Technical College may serve on the State Auctioneers' Commission. I am interpreting your question as to whether her service with the Auctioneers' Commission would be a violation of this State's prohibition on dual office holding. Mrs. Towery has already received an opinion from the State Ethics Commission on her question. That body is the appropriate agency to render opinions construing the State Ethics Act. See: S.C. Code Ann. Section 8-13-320 (11) (Supp. 2003).

Article XVII, Section 1A of the State Constitution provides that "no person may hold two offices of honor or profit at the same time ...," with exceptions specified for an officer in the militia, a member of a lawfully and regularly organized fire department, a constable, or a notary public. For this provision to be contravened, a person concurrently must hold two public offices which have duties involving an exercise of some portion of the sovereign power of the State. Sanders v. Belue, 78 S.C. 171, 58 S.E. 762 (1907). Other relevant considerations are whether statutes, or other such authority, establish the position, prescribe its tenure, duties or salary, or require qualifications or an oath for the position. State v Crenshaw, 274 S.C. 475, 266 S.E.2d 61 (1980).

The State Auctioneers' Commission is established pursuant to the provisions of S.C. Code Ann. Sections 40-6-05 et seq. (Supp. 2003). While this office has not previously addressed the question as to whether a member of the Auctioneers' Commission would hold an office for dual office holding purposes, a review of the statutory provisions regarding the Commission results in our interpretation that a Commission member would hold an office for such purpose. The Commission is composed of five members appointed by the Governor who hold office for terms of three years and until their successors are appointed and qualify. Section 40-6-10. Duties are specified in Sections 40-6-80, 40-6-100 through 40-6-130. The Board is empowered to administer oaths and subpoena witnesses for purposes of investigation, take evidence, compel compliance, issue cease and desist orders, petition for injunctive relief, take action against a licensee, revoke, suspend or restrict the license of an individual licensed by the Commission and deny licensure. It is clear that these

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duties involve an exercise of a portion of the sovereign power of the State. Therefore, in my opinion, a member of the State Auctioneers' Commission would hold an office for dual office holding purposes of the State Constitution.

As to Mrs. Towery's position as Director of the Center for Special Programs and Community Education at Midlands Technical College, I am unaware of any such provision having been created by statute. Mrs. Towery has provided a description of her duties in that position and it is my opinion that such duties do not qualify as an office for dual office holding purposes. As a result, there would not be any dual office holding prohibition to Mrs. Towery serving both as Director of the aforementioned program and as a member of the State Auctioneers' Commission.

If there is anything further, please advise.

Sincerely,



Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Assistant Deputy Attorney General