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The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER  
ATTORNEY GENERAL

February 24, 2004

Mr. Gordon R. Bowers  
Beaufort County Solid Waste and Recycling Board  
46 Brickyard Point Road North  
Beaufort, South Carolina 29907

Dear Mr. Bowers:

You have requested an advisory opinion from this Office concerning dual office holding. You have indicated that you serve as on the Beaufort County Solid Waste and Recycling Board, as a member appointed by the Beaufort County Council. You have provided a copy of the county ordinance that creates and governs the Board, Beaufort County Code Section 62-66, et seq. You have inquired whether you may be appointed by the Governor as a commissioner for the Lady's Island-St. Helena Fire District without violating the dual office holding provisions of the State Constitution.

**Law/Analysis**

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, member of a lawfully and regularly organized fire department, constable, or notary public. For this provision to be contravened, a person concurrently must hold two 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 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).

This Office has consistently advised that a position on one of the various district boards of fire control across the state would be considered an office for purposes of the dual office holding prohibition. See as representative of those numerous opinions: Ops. S.C. Attn. Gen., dated December 19, 2003 (commissioner for the Holly Springs Volunteer Fire District); January 19, 1994 (member of Cherokee Springs Board of Fire Control); September 18, 1986 (member of Chester County Board of Fire Control); November 18, 1983 (member of Monarch Fire Department Board of Trustees); and November 30, 1963 (commissioner of the Converse Area Fire District). There appears to be no reason to treat any differently a commissioner of the Lady's Island-St. Helena Fire District. The exception for a "member of a lawfully and regularly organized fire department" would not apply to a member of a fire district board. Therefore, I am of the opinion that a Lady's Island-St. Helena Fire District commissioner would also be considered an officer for dual office holding purposes.

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The question of whether a member of a Beaufort County Solid Waste and Recycling Board would be considered an office holder for dual office holding purposes is far less certain. We were unable to locate any prior opinion of this Office that addresses members of county waste and recycling boards in the context of dual office holding. This Office has held that a related position, a member of the South Carolina Recycling Market Development Council, is not an office holder. Op. S.C. Atty. Gen., dated June 16, 1992. There, we opined that although the question was a close one, considering that the position was created and governed by statute and appointed by the Governor, the functions which the Council could perform were advisory only and likely did not entail sufficient exercise of the State's sovereign power to constitute an office. After reviewing the relevant Beaufort County ordinances which you have provided, it appears that the function of the Solid Waste and Recycling Board is similarly advisory only in nature. Neither the purpose statement of the Board, Section 62-66 of the Beaufort County Code, nor the powers and duties of the Board, enumerated in Section 62-68, indicate that the Board exercises any real sovereign power of the State. Sanders v. Belue, *supra*. The role of the Board is primarily to act as an advisor and consultant to the Beaufort County Council on matters of solid waste and recycling, so that Council may make decisions on those issues. Furthermore, the Board is created not by state statute, but by county ordinance to assist County Council in carrying out its statutorily-authorized management role over solid waste disposal and recycling efforts within Beaufort County. See S.C. Code Ann. Sections 44-55-1010, -1210, for county authority over waste collection and disposal. Based upon a thorough review of these facts in light of the relevant case law, it is the opinion of this office that as a member of the Beaufort County Solid Waste and Recycling Board, you do not currently hold an office for purposes of dual office holding. Accordingly, we advise that you may serve concurrently as a commissioner for the Lady's Island-St. Helena Fire District without violating the dual office holding provisions of the State Constitution.

While there does not appear to be any constitutional prohibition on the dual service that you seek, we would note that the Beaufort County Code, in Section 2-193(c), prohibits dual membership on county boards, agencies, and commissions. It stipulates that, "The council shall not appoint an individual to serve on more than one board, agency, or commission at the same time." We decline to speculate on whether this ordinance simply codifies the state dual office holding provisions, or provides a more restrictive rule on dual membership for Beaufort County than which is provided for by the state constitution. We would advise that you consult with County Council, or the County Attorney, to determine whether this ordinance would have any effect on your situation.

Very truly yours,



Robert D. Cook  
Assistant Deputy Attorney General

RDC/an