

7766 Liberty



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

June 16, 2004

Gregory D. DeLoach, Esquire
Legal Department Director / Assistant Town Manager
Town of Hilton Head Island
One Town Center Court
Hilton Head Island, South Carolina 29928

Dear Mr. DeLoach:

The Town of Hilton Head has requested an opinion concerning dual office holding. By way of background, you have provided the following information:

[a] person is a member of the Town of Hilton Head Island's Accommodation Tax Advisory Committee. Membership on the Town Committee is determined by State Code Section 6-4-25. The person is not paid but took an oath as a condition of membership on the Town committee. In addition, the person is a member of the Beaufort County Aviation Board, and is not compensated. The person is also a member of the State Tourism Expenditure Review Committee and was appointed via State Code Section 6-4-35, without compensation.

The duties (applicable Town Code, County Code, and State Code sections) of the Town's Accommodations Tax Advisory Committee, the Beaufort County Aviation Board, and the State Tourism Expenditure Review Committee are attached.

Does membership on the Municipal, County, and State Committee constitute dual office holding?

Law / Analysis

Article XVII, § 1A of the South Carolina Constitution states 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, constable, or a notary public. The South Carolina Supreme Court has held that 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)." 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

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occasional or intermittent, is a public officer." *Id.*, 78 S.C. at 174. Other relevant considerations, as identified by the Court, are whether statutes or other 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).

We have addressed each of the positions referenced in your letter in previous opinions, which I enclose for your information. In an opinion of January 15, 2003, we concluded that while membership on the State Tourism Expenditure Review Committee constitutes an office for dual office holding, the position of member of the Town of Hilton Head's Accommodation Tax Advisory Committee does not. As we noted in that opinion, members of the Town of Hilton Head Accommodation Tax Advisory Committee are not charged with exercise of any portion of the sovereign power of the State, but only "make recommendations as to expenditures of revenue" By contrast, members of the State Tourism Expenditure Review Committee do exercise a portion of the State's sovereign power.

Although the earlier opinion concluded that no dual office holding problem would arise by the simultaneous occupation of these two positions, we also cautioned therein with respect to a potential conflict of interest in holding the two positions. Accordingly, we recommended contacting the State Ethics Commission to insure that no problem existed under the Ethics Act.

Regarding the Beaufort County Aviation Board, such position was addressed in an opinion dated October 12, 1990. Following our review of the duties of the Board, we concluded therein that "... it appears that the Beaufort County Aviation Board is largely advisory in nature and that the actual exercise of sovereign power is carried out by the Beaufort County Council, based on the duties and responsibilities specified in the ordinance." Thus, in our view, "one who serves on the Beaufort County Aviation Board probably would not be considered an office holder for dual office holding purposes."

These opinions remain the opinions of this Office. We are unaware of any changes either in State law or in the local ordinances which would alter the conclusions expressed previously therein. Accordingly, simultaneous occupancy of the positions referenced in your letter would not, in our opinion, constitute dual office holding.

Very truly yours,



Robert D. Cook
Assistant Deputy Attorney General

RDC/an
Enclosures