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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

May 21, 2004

James D. Mosteller, Esquire
Barnwell County Attorney
207 Beattie Street
Simpsonville, South Carolina 29681

Dear Mr. Mosteller:

You have requested an advisory opinion from this Office concerning dual office holding. You have inquired whether a council member for the Town of Blackville may be appointed to the Barnwell County Economic Development Board without violating the provisions on dual office holding in the South Carolina 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 advised on numerous occasions that a member of a city or town council would be considered an officer for dual office holding purposes. See, as representative of those numerous opinions, Ops. S.C. Atty. Gen. dated July 19, 2001; April 12, 1998; June 12, 1995; February 4, 1994; July 23, 1993. Therefore, the question turns to whether a position on the Barnwell County Economic Development Commission would likewise be considered an office.

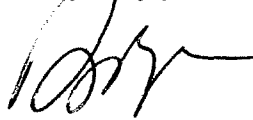
This Office has the opportunity in prior opinions to opine as to whether positions on the Allendale County Development Board, the Hampton County Economic Development Board, the Bamberg County Economic Development Commission, the Marlboro County Development Board, the Dillon County Development Board and the Florence County Development Board would constitute an office. See, Op. S.C. Atty. Gen., November 7, 2003 (Allendale); March 19, 2003 (Hampton); January 31, 1994 (Bamberg); June 12, 1997 (Marlboro); August 9, 1991 (Dillon);

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April 5, 1990 (Florence). In each of these opinions, we found membership on these entities did not constitute holding an office. While these entities possess slightly varying names, the principal function of each is the same—to promote and encourage economic development. Thus, it is probable that the authority of this commission is basically the same as the similar, above-referenced entities, and does not exercise any portion of the state's sovereign power.

Based on the foregoing authorities, we must conclude that membership on the Barnwell County Economic Development Commission does not constitute an office for dual office holding purposes. Accordingly, it is the opinion of this Office that a council member for the Town of Blackville may be appointed to the Barnwell County Economic Development Commission without violating the constitutional provisions prohibiting dual office holding.

Very truly yours,



Robert D. Cook
Assistant Deputy Attorney General