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The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER  
ATTORNEY GENERAL

August 29, 2005

E.R. McConnell, City Manager  
City of Walterboro  
242 Hampton Street  
Walterboro, South Carolina 29488

Dear Mr. McConnell:

By letter, you request an opinion regarding dual office holding. Specifically, you ask whether an individual serving as the Executive Director of the Lowcountry Regional Council of Governments and as a compensated secretary for the Walterboro-Colleton County Airport Commission may serve on the City Planning Commission without violating the dual office holding provision. We advise that an individual serving as the Executive Director of the Lowcountry Regional Council of Governments and as a compensated secretary for the Walterboro-Colleton County Airport Commission may serve on the City Planning Commission without violating the dual office holding provision.

Law/Analysis

Article XVII, Section 1A of the South Carolina 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). Furthermore, "[O]ne who merely performs the duties required of him under an express contract or otherwise, though such persons themselves be public officers, and though the employment be in or about a public work or business, is a mere employee." *Sanders*, supra, 78 S.C. at 174.

On several occasions, this Office has advised that membership on a regional council of governments does not constitute an office for dual office holding purposes. *See, Op. S.C. Atty. Gen.*, April 28, 2003; June 28, 1995; May 6, 1992; February 7, 1984. Specifically, in *Ops. S.C. Atty. Gen.*, May 6, 1992, we advised:

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[m]embership on a council of governments, as to elected or appointed officials or employees, is not deemed to be an office, by virtue of express exemption of the state Constitution. *See* Art. VIII, § 13 and Art. VII, § 15 of the state Constitution; also *Ops. Atty. Gen.* Dated February 7, 1984 and November 4, 1991.

As Executive Director of the Lowcountry Regional Council of Governments, the referenced individual more than likely acts in the capacity of an employee. An executive director typically does not hold an office. *See, Op. S.C. Atty. Gen.*, May 3, 2005. Accordingly, consistent with our previous opinions, we advise that the Executive Director of the Lowcountry Regional Council of Governments does not hold an office for purposes of dual office holding.

Furthermore, we have advised on a number of occasions that an individual serving on a county airport commission would hold an office for purposes of dual office holding. *See, Ops. S.C. Atty. Gen.*, April 29, 1985; January 19, 1983; November 9, 1982; August 22, 1975. *See also, Ops. S.C. Atty. Gen.*, July 11, 2005 (service on Richland-Lexington Airport Commission is an office for purposes of dual office holding); January 17, 2001 (service on Pickens County Aeronautics Commission is an office for purposes of dual office holding). However, in telephone conversations with this Office it became apparent that the position of "secretary" for the Walterboro-Colleton Airport Commission is not that of an elected official, but an employee. We have advised that "some county employees are considered public officers.... A determination of whether a county employee is a public officer for dual office holding purposes is most effectively accomplished by providing this Office with a job description of the employee." *Ops. S.C. Atty. Gen.*, May 13, 1997.

In a telephone conversation, you have provided a brief job description of the secretary for the Walterboro-Colleton Airport Commission. It was explained that this included comprising the Commission's agenda and distributing it to the commissioners, keeping minutes of Commission meetings, and maintaining the financial records. It appears that none of the aforementioned duties encompasses an exercise of a portion of the sovereign power of the State. Accordingly, we advise that the position of secretary for the Walterboro-Colleton Airport Commission is not an office for dual office holding purposes.

Thus, it is evident that the individual in question would not contravene the dual office holding provision, regardless of our conclusion regarding the Walterboro Planning Commission.

We observe here that we have previously advised that a member of a county or municipal planning and zoning commission holds an office for purposes of dual office holding. *See, Ops. S.C. Atty. Gen.*, July 8, 2003 (Hollywood Planning and Zoning Commission); October 16, 1995 (Gaffney Zoning and Planning Commission); August 24, 1992 and April 5, 1990 (Florence Planning Commission); April 24, 1979 (Anderson Planning and Zoning Commission).

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**Conclusion**

Accordingly, we advise that an individual serving as the Executive Director of the Lowcountry Regional Council of Governments is not an office holder. Likewise, an individual working as a compensated secretary for the Walterboro-Colleton Airport Commission does not hold an office. While it is likely that an individual serving on the Walterboro Planning Commission does hold an office, the dual office holding prohibition is not contravened in the situation you present, because the other two positions which the individual holds, would not be considered offices. Thus, no dual office holding is present in this instance. Accordingly, we would advise that an individual serving on the Walterboro Planning Commission, while acting as the Executive Director of the Lowcountry Regional Council of Governments and also working as a secretary for the Walterboro-Colleton Airport Commission would not violate the dual office holding provision of the South Carolina Constitution.

Very truly yours,

A handwritten signature in black ink, appearing to read 'R. D. Cook', written over a horizontal line.

Robert D. Cook  
Assistant Deputy Attorney General