

7983 *Liberty*



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

July 11, 2005

Francenia B. Heizer, Esquire
McNair Law Firm, P.A.
1301 Gervais Street
Columbia, South Carolina 29201

Dear Ms. Heizer:

By letter, you have requested an opinion on behalf of the Honorable Pat G. Smith, Mayor of the Town of Springdale, and Chair of the Central Midlands Regional Transit Authority regarding dual office holding. Specifically, you inquire as to whether an individual currently serving on the Central Midlands Regional Transit Authority (the "Transit Authority") can simultaneously serve on the Richland-Lexington Airport Commission (the "Airport Commission") without violating the dual office holding prohibition. As explained more fully below, it is our opinion that such concurrent service would constitute dual office holding.

In your letter, you explain that the Transit Authority is a regional authority established pursuant to S.C. Code Ann. Section 58-25-40. You note that the Transit Authority consists of 15 members. Transit Authority members appoint the Board of Directors who function as the governing body of the Authority.

With respect to the Richland-Lexington Airport District, you indicate that it is a body politic and corporate and a political subdivision of the State which operates the Columbia Metropolitan Airport (the "Airport"). The District is governed by the Richland-Lexington Airport Commission (the "Airport Commission"), which is appointed by Governor upon the following recommendations: five members are recommended by the Legislative Delegation representing Richland County; five members are recommended by the Legislative Delegation representing Lexington County; and two members are recommended by the Columbia City Council.

You also explain that a member of the Transit Authority Board has recently been appointed to the Airport Commission. However, you note that the individual has tendered his resignation on the Transit Authority Board in order that he may accept his position on the Airport Commission and not violate the dual office holding prohibition. You thus seek guidance to determine whether the Transit Authority should accept this individual's letter of resignation.

Robert F. Dennis

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, "one 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.

In a December 14, 1987 opinion, we advised that an individual serving on the governing body of a regional transportation authority created pursuant to § 58-25-10 *et seq.* holds an office for purposes of dual office holding. *Op. S.C. Atty. Gen.*, Op. No. 87-101 (December 14, 1987). Our review of the Authority's powers and duties of such a Board member convinced us that the Authority exercises sovereign powers pursuant to § 58-25-50. While we also noted therein that if an elected official served as a member of the Board *ex officio*, such additional service would not constitute a separate office, such is apparently not the case here. Accordingly, we advise that a member serving on the Board of Directors for the Central Midlands Regional Transit Authority holds an office for purposes of dual office holding.

Likewise, we have counselled on numerous 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, Op. S.C. Atty. Gen.*, January 17, 2001 (Pickens County Aeronautics Commission office for purposes of dual office holding). While we apparently have not addressed the specific position of members of the Richland-Lexington Airport Commission, such members clearly exercise sovereign powers similarly to those of other airport commissions. *See*, § 55-11-340. Like other such commissions, the Richland-Lexington Airport Commission possesses the general power pursuant to § 55-11-340 to govern and oversee "such airports and air navigation facilities" of the Richland-Lexington Airport District. Thus, we advise that an individual serving on the Richland-Lexington Airport Commission would hold an office for dual office holding purposes.

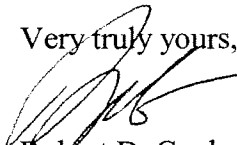
Conclusion

It is our opinion that an individual simultaneously serving on a regional transportation authority and a county airport commission would contravene the dual office holding provision of the South Carolina Constitution. Specifically one serving as a board member of the Central Midlands Regional Transportation Authority and as a member of the Richland-Lexington Airport Commission

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would be dual office holding. However, as noted, the individual has tendered his letter of resignation and therefore has taken the necessary steps to terminate his position on the Transit Authority. Accordingly, as to your question regarding accepting such letter of resignation, it should be accepted it because he cannot hold both positions without violating the South Carolina Constitution.

Very truly yours,

A handwritten signature in black ink, appearing to read 'R. Cook', written over the typed name.

Robert D. Cook
Assistant Deputy Attorney General