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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

July 8, 2005

The Honorable Vida O. Miller
Chairman, Georgetown County Legislative Delegation
P.O. Box 421270
Georgetown, South Carolina 29442-1270

Dear Representative Miller:

You have requested an opinion regarding dual office holding. Specifically, you have inquired as to whether an individual currently serving on Georgetown County Registration and Elections Commission can simultaneously serve on the Georgetown County Library Board without violating the dual office holding prohibition. We advise that concurrently holding such positions would constitute dual office holding in contravention of the South Carolina Constitution.

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.

We have advised previously that members of county voter registration boards and members of county election commissions would both be considered office holders for purposes of dual office holding. *See, Op. S.C. Atty. Gen.*, July 23, 1996. We have also concluded that members of county boards of elections and registration would hold offices for purposes of dual office holding. *Op. S.C. Atty. Gen.*, July 9, 1998 (Allendale County Board of Elections and Registration); July 23, 1996 (Beaufort County Board of Elections and Registration); March 23, 1995 (Union County Board of Election and Registration). Accordingly, it is our opinion that a member of the Georgetown County Registration and Election Commission is an office holder for purposes of dual office holding.

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Although we have not addressed the position of member of the Georgetown Library Board, we have advised on numerous occasions that a member of a county library board holds an office for purposes of dual office holding. *Op. S.C. Atty. Gen.*, December 10, 2002 (Spartanburg County Library Board); November 1, 1995 (Charleston County Library Board); October 23, 1995 (Charleston County Library Board); September 25, 1989 (Barnwell County Library Board); February 11, 1981 (Allendale County Library Board); July 24, 1980 (Greenville County Library Board); March 11, 1976 (Florence County Library Board). By contrast, when the duties of the members of a particular library board are recommendatory only, we have concluded these members do not hold offices for dual office holding purposes. *See, Op. S.C. Atty. Gen.*, February 3, 1995 (Beaufort County Library Board).

Section 4-9-35 requires all county councils, prior to July 1, 1979, to establish by ordinance a "county public library system." This Section further states, however, that "notwithstanding any other provision of this chapter, the governing body of any county may by ordinance provide for the composition, function, duties, responsibilities, and operation of the county library system." Section 4-9-36 provides generally for the powers and duties of county library trustees including employment of a chief librarian; the purchase, lease and disposition of real and personal property; the power to contract; the power to receive and expend grants, appropriations, gifts and donations and the power to "[t]ake any actions deemed necessary and proper ... to establish, equip, operate and maintain an effective library system"

Crucial, however, to any analysis of whether members of the Georgetown Library Board hold an office for dual office holding purposes is examination of that particular County's ordinance creating such Board. That Ordinance – No. 354 of 1980 – provides for a seven person Board whose members have a "term of office" of two years. Board members are required to take the oath of office "required under the constitution" and be issued a commission to be recorded in the Office of Clerk of Court for Georgetown County." The Board is authorized to "govern[]" the Georgetown Memorial Library and "to manage and operate ... all activities relating thereto." Section 4 of the Ordinance deems the Board the "custodian of all property, real and personal" and gives the Board "power to accept gifts and donations to be used for the support and maintenance of the Library and for related purposes." In addition, the Board is required to adopt a budget, it may employ and discharge employees and direct their actions as necessary and is authorized to "provide and make available, as far as the resources allow, good literature and books calculated to educate and advance the citizenship of Georgetown County."

Based upon the foregoing Ordinance, as well as the previously recited opinions concluding that members of other county library boards are officers for dual office holding purposes, we conclude that members of the Georgetown County Library Board are public officers. Like other board members elsewhere, members of the Georgetown Library Board do not possess recommendatory authority only, but exercise sovereign powers. Also, members take an oath and serve a fixed term. Important too is the fact that the Ordinance itself speaks of members holding a "term of office," thus recognizing that such members are "officers." In the past, we have given

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weight to such legislative recognition. *See, Op. S.C. Atty. Gen.*, June 7, 2004. Accordingly, we conclude Georgetown County Library Board members hold an office.

Conclusion

It is our opinion that a person simultaneously serving on the Georgetown County Registration and Elections Commission and the Georgetown County Library Board would contravene the dual office holding provision of the South Carolina Constitution.

Very truly yours,



Robert D. Cook
Assistant Deputy Attorney General