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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

June 1, 2005

Mr. Stuart B. Watson
Clerk/Treasurer, City of Bamberg
P.O. Box 300
Bamberg, South Carolina 29003

Dear Mr. Watson:

By letter, you requested an opinion concerning dual office holding. In your letter, you inquire as to whether an individual presently serving on the Bamberg City Economic Development Board may simultaneously serve on the Bamberg County Hospital Board without violating the state Constitution's dual office holding prohibition. You note that the Mayor and the Chairman of the Commissioners of the Board of Public Works appoint members of the Economic Development Board. Furthermore, you indicate that Economic Development Board members actively recruit industry and make recommendations to the City Council and to the Commissioners of the Board of Public Works. With respect to the County Hospital Board, you state that the Bamberg County Council appoints members. Finally, you explain that Hospital Board members set policy and make decisions concerning the operation of the Bamberg County Hospital. Following review of your inquiry, this Office advises that an individual simultaneously serving on the Bamberg City Economic Development Board and the Bamberg County Hospital Board would not violate the dual office prohibition.

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.

Mr. Watson
Page 2
June 1, 2005

On numerous occasions, this Office has advised that a member serving on a county hospital board would hold an office for purposes of dual office holding. See, *Ops. S.C. Atty. Gen.* April 20, 2004; January 11, 1999; January 7, 1997; January 9, 1992; April 5, 1991; September 12, 1983. Thus, it continues to be our opinion that an individual serving on the Bamberg County Hospital Board likely holds an office for purposes of dual office holding.

We have consistently advised that an individual serving on a county economic development board does not hold an office for purposes of dual office holding. See, *Ops. S.C. Atty. Gen.* May 21, 2004 (Barnwell County Economic Development Board); November 7, 2003 (Allendale County Development Board); March 19, 2003 (Hampton County Economic Development Board); January 31, 1994 (Bamberg County Economic Development Commission); June 12, 1997 (Marlboro County Development Board); August 9, 1991 (Dillon County Development Board); April 5, 1990 (Florence County Development Board). In each of these instances, we found that membership on the various boards did not constitute an office because the sovereign power of the State was not being exercised. Generally speaking, such boards make recommendations to the governing authority. While each board possesses a slightly different name, the principal function of each remains the same, to promote economic development. Absent any specific facts to the contrary, we advise that a member on the Bamberg County Economic Development Board does not hold an office for dual office holding purposes.

Conclusion

Because we conclude that membership on the Bamberg City Economic Development Board does not constitute an office for dual office holding purposes, it is our opinion that the dual office holding prohibition is not violated by an individual simultaneously serving on the Bamberg City Economic Development Board and the Bamberg County Hospital Board.

Very truly yours,



Robert D. Cook
Assistant Deputy Attorney General