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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

March 24, 2005

The Honorable Olin R. Phillips
Member, House of Representatives
Post Office Box 11867
Columbia, South Carolina 29211

Dear Representative Phillips:

You note that the Joint Committee for Boards of Trustees of State Colleges and Universities is seeking an opinion concerning possible dual office holding in two situations. Your letter states the following:

[i]f an individual serves on the Limestone College Board of Trustees and the Sherman College Board of Trustees, and is elected by the General Assembly to the South Carolina State University Board of Trustees, would that be a violation of the dual office holding clause of the constitution?

Also, if an individual serves on the Lancaster County Commission for Higher Education and is elected by the General Assembly to the Winthrop University Board of Trustees, would that be a violation of the dual office holding clause of the 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 of the militia, a member of a lawfully and regularly organized fire department, a constable and a 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*, 178 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).

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We have consistently concluded that a member of the Board of Trustees of South Carolina State University is an office holder for dual office holding purposes. *See, Op. S.C. Atty. Gen.*, November 21, 1996; *Op. S.C. Atty. Gen.*, Op. No. 86-43 (March 25, 1986).

On the other hand, we have also opined on a number of occasions that a member of a board of a nonprofit corporation is, generally speaking, not an office for dual office holding purposes. Our rationale is that these private entities do not, except in special circumstances, invoke the sovereign power of the State or any portion thereof. *See, Op. S.C. Atty. Gen.*, June 21, 2000 (County First Steps Board member does not hold an office); *Op. S.C. Atty. Gen.*, March 17, 1995; *Op. S.C. Atty. Gen.*, October 18, 1988; *Op. S.C. Atty. Gen.*, Op. No. 83-87 (November 10, 1983) [board members of South Carolina Protection and Advocacy System For the Handicapped, Inc. do not hold an office].

Both Limestone College and Sherman College, as we understand, are private entities, not public institutions. Thus, in our opinion, concurrent service either as a member of the Board of Trustees of Sherman or Limestone College, together with service on the Board of Trustees of South Carolina State University, would not constitute dual office holding.

The second situation is different, however. In an opinion dated June 28, 1976, former Attorney General McLeod advised that membership on the Winthrop Board of Trustees constitutes on office for dual office holding purposes.

With respect to the Lancaster County Commission on Higher Education, we have also concluded that membership thereupon is an office because "the duties imposed upon the Commission ... [by statute] seem to clearly indicate that a portion of sovereign authority is imposed in the Commission." *See, Op. S.C. Atty. Gen.*, Op. No. 1662 (April 7, 1964). The Commission was created by Act No. 126 of 1959. Members serve designated terms and are empowered to enter into contracts, make binding agreements, negotiate with educators and educational institutions and "generally, to take such actions in its name as are necessary to secure for Lancaster County and adjacent areas ... educational facilities" Thus, the earlier opinion, concluding that the members of this Commission hold an office, is correct.

Consistent therewith, we have concluded that members of other County Commissions of Higher Education, performing similar duties to that of Lancaster, hold offices for dual office holding purposes. *See e.g. Op. S.C. Atty. Gen.*, September 8, 2003 (Aiken County Commission of Higher Education); *Op. S.C. Atty. Gen.*, February 27, 2001 (Spartanburg County Commission on Higher Education); *Op. S.C. Atty. Gen.*, March 16, 1999 (Horry County Commission on Higher Education); *Op. S.C. Atty. Gen.* June 19, 1997 (Mid-Carolina Commission on Higher Education).

Thus, it is clear that if an individual were to serve simultaneously as a member of the Lancaster County Higher Education Commission and the Winthrop Board of Trustees, such would constitute dual office holding under the South Carolina Constitution.

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In summary, we therefore conclude that your first factual scenario would not constitute dual office holding under the South Carolina Constitution. However, the second factual scenario would constitute dual office holding.

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

RDC/an