

8031 Liberty



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

September 14, 2005

Sherron L. Skipper, City Clerk
City of Hartsville
P.O. Drawer 2497
Hartsville, South Carolina 29551

Dear Ms. Skipper:

By letter, you requested an opinion of this Office regarding dual office holding. Specifically, you inquire as to whether an individual currently serving as a councilmember for the City of Hartsville could concurrently serve on the board of directors for Rubicon Counseling Center without violating the dual office holding provision of the South Carolina Constitution. With your request, you included a letter from the South Carolina State Budget and Control Board expressing its belief that Rubicon Counseling Center was a private eleemosynary corporation. Furthermore, you provided evidence that the corporation is registered with the Internal Revenue Service as a 501 (c)(3) non-profit organization. Following review of this matter, we advise that if in fact Rubicon Counseling Center is an eleemosynary organization subject to 501 (c)(3) nonprofit status, then simultaneous service as a city councilmember and as a member of the board of directors for Rubicon Counseling Center would not violate 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.

This Office has advised on numerous occasions that a member of a city or town council would be considered an office holder for purposes of the dual office holding provision. See, as

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representative, Ops. S.C. Atty. Gen., July 19, 2001; April 12, 1998; June 12, 1995, February 4, 1994; July 23, 1993. Therefore, the question now turns to whether membership on the board of directors of Rubicon Counseling Center constitutes an office for purposes of dual office holding.

Attached to your request for an opinion of this Office, you included a letter from the South Carolina State Budget and Control Board. By letter dated June 27, 2005, the State Budget and Control Board indicated that it was of the opinion that "Rubicon, Incorporated is a private eleemosynary organization providing contracts services to Darlington County." Furthermore, you provided information that the corporation is registered with the Internal Revenue Service as a 501 (c)(3) nonprofit organization. On numerous occasions we have concluded that membership on the board of directors of a private nonprofit eleemosynary corporation would not constitute an office for purposes of dual office holding. *See, as examples, Ops. S.C. Atty. Gen.*, July 5, 2005 (South Carolina Museum Foundation); April 12, 1993 (Charleston Citywide Local Development Corporation and Community Young Men's Christian Association of Rock Hill, S.C. not office); January 11, 1991 (Francis Marion Foundation); October 18, 1988 (Children's Trust Fund of South Carolina); September 8, 1987 (Horry County Council on Aging); October 20, 1983 (York County Council on Aging, Inc.). Assuming that Rubicon Counseling Center is indeed a private nonprofit eleemosynary corporation, then we are aware of no reason why membership on the board of directors would constitute an office for purposes of the dual office holding provision.

Conclusion

It is our opinion that an individual who simultaneously serves as a member of the Hartsville city council and on the board of the Rubicon Counseling Center would not violate the dual office holding provision of the South Carolina Constitution.

Very truly yours,



Robert D. Cook
Assistant Deputy Attorney General