



HENRY McMASTER
ATTORNEY GENERAL

April 10, 2006

Terry A. Finger, Esquire
Attorney, Town of Bluffton
Post Office Box 24005
Hilton Head Island, South Carolina 29925

Dear Mr. Finger:

By letter dated July 19, 2005, you requested an opinion of this office regarding dual office holding. By fax received August 23, 2005, you requested that this Office evaluate the following positions of the Town of Bluffton for purposes of dual office holding:

1. Simultaneously serving on the Historical Preservation Commission and as Chairman of the Public Safety Committee
2. Simultaneously serving on the Historical Preservation Commission and on the Development Agreement Negotiating Committee¹
3. Simultaneously serving on the Public Safety Committee and the Municipal Election Commission
4. Simultaneously serving as chairman of the Planning Commission and serving on the Annexation/Development Agreement Negotiating Committee
5. Simultaneously serving on the Planning Commission and on the Watershed Advisory Committee

On August 26, 2005 we sent you an email requesting that you provide the following information with respect to the aforementioned positions:

1. duties/description of the position
2. whether advisory
3. whether established by ordinance; if so please provide ordinance
4. whether individuals serve term of office

¹I am assuming that the reference to the "Development Agreement Negotiating Committee" is a typographical error and that you are referencing the same "Annexation/Development Agreement Negotiating Committee" as referenced in position 4.

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5. whether individuals take oath of office

On December 12, 2005 your office was contacted by telephone. A message was left requesting that you provide a more detailed description of the aforementioned positions. As of yet, we have not received a response. Absent a more precise description of the powers and duties of the aforementioned positions, we are limited in our ability to issue an opinion regarding all of the positions set forth above.

As to the law regarding dual office holding, 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, a member of a lawfully and regularly organized fire department, a constable, or a notary public." For this provision to be contravened, a person must simultaneously 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). However, "[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.

On numerous occasions this Office has advised that a member of a county or municipal election commission would be considered an office holder for dual office holding purposes. See, *Ops. S.C. Atty. Gen.*, April 23, 2000; April 21, 1998; February 23, 1995. We have also advised that a member of the Bluffton Public Safety Commission would not be an office holder because the board was strictly advisory in nature and reported to the town council. *Op. S.C. Atty. Gen.*, March 23, 2004. That opinion cited the fact that the commission was not established by ordinance, its members did not serve terms of office and these members were not required to take an oath of office as evidence that the position did not constitute an office. Additionally, this Office has advised that a member of a county or municipal planning and zoning commission would hold an office for dual office holding purposes. See, *Ops. S.C. Atty. Gen.*, July 8, 2003 (Hollywood Planning and Zoning Commission); October 16, 1995 (Gaffney Zoning and Planning Commission); August 24, 1992 and April 5, 1990 (Florence Planning Commission); April 24, 1979 (Anderson Planning and Zoning Commission).

A determination, however, as to whether members of the Historical Preservation Commission, the Annexation/Development Agreement Negotiating Committee and the Watershed Advisory Committee are officers requires a more detailed description of these positions for proper analysis. As to a member of the Historical Preservation Commission, this Office has had the opportunity on several occasions to advise as to whether a member of such a commission holds an office for dual office holding purposes. See, *Ops. S.C. Atty. Gen.*, November 5, 2003 (member of Darlington County Historical Commission is an office holder); November 7, 1975 (member of

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Camden Historical Commission is an office holder); February 24, 1965 (member of York County Historical Commission is an office holder). *However, see, Ops. S.C. Atty. Gen.*, April 16, 1985 (member of Georgetown County Historical Commission is not an office holder); January 17, 1985 (member of Marlboro County Historical Commission is not an office holder). Our conclusion in these opinions considered whether the General Assembly had expressly exempted membership on a Historical Commission from the dual office holding provision in the enabling statute. In the case of both Georgetown and Marlboro Counties, we advised that the General Assembly's use of language expressly exempting the Historical Commissions from the dual office holding provision should render those positions exempt. In the April 16, 1985 opinion we noted that, "[w]hile there is some question as to the Legislature's authority to interpret as exempt, by statute, a position from the dual office holding prohibitions of the State Constitution, such an interpretation is nevertheless entitled much weight." *Acker v. Cooley*, 177 S.C. 144, 181 S.E. 10 (1935). As to those Historical Commissions lacking express exemption, we had advised that the duties of their members included the exercise of a sufficient portion of the State's sovereign power so as to render such members office holders. However, in the present case, we are unaware of any direct statutory authority pertaining to the powers of such positions in Bluffton. As a result, we are reluctant to issue an opinion as to the status of a member of the Bluffton Historical Preservation Commission absent a more precise description of the position.

As to the Annexation/Development Agreement Negotiation Committee and the Watershed Advisory Committee, we are unaware of any authority which would absolutely render these positions an office. However, in making any analysis, we are unaware of the specific powers and duties provided to individuals holding positions on such committees. As a result, absent a more precise description, we are unable to issue an opinion regarding their status.

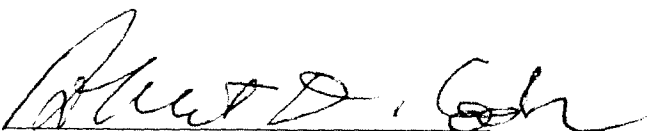
With kind regards, I am,

Sincerely,



Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Assistant Deputy Attorney General