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HENRY McMASTER
ATTORNEY GENERAL

April 21, 2006

Betty S. Kilgus, Chairperson
Bamberg County Board of Registration and Elections
Post Office Box 947
Bamberg, South Carolina 29003

Dear Ms. Kilgus:

We issue this opinion in response to your letter in which you present the following:

A member of the Bamberg County Registration and Election Commission has filed to run in the June Primary Election, for a seat on the County Council. Does this person still retain her seat on the Election Commission, or does she need to resign this position? If she needs to resign, to whom does she direct her resignation?

Law/Analysis

Article XVII, section 1A of the South Carolina Constitution prohibits a person from holding "two offices of honor or profit at the same time . . ." S.C. Const. art. XVII § 1A (Supp. 2005). For this provision to be contravened, a person concurrently must hold two public offices that 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).

In an opinion of this Office, dated August 23, 2000, we considered the same issue presented in your letter. In that opinion, we addressed "whether the dual office holding prohibitions of the State Constitution would be violated if [the requester] were to serve simultaneously as a member of the Bamberg County Election Commission and as a member of Bamberg County Council." Op. S.C. Atty. Gen., August 23, 2000. In addition, the requester also "asked whether [she is] required to resign from the election commission when [she files] as a candidate for Bamberg County Council." Id. Finding both a member of county council and a member of the county election commission to be officers for dual office holding purposes, we concluded if the requester were "were to serve simultaneously as a member of the Bamberg County Election Commission and as a member of Bamberg County Council, the dual office holding prohibitions of the State Constitution would be

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violated.” Id. Given the longstanding position of this Office that “we will not overrule our prior opinions unless clearly erroneous or unless applicable law has changed” and in keeping with our position in the August 23, 2000 opinion, we reiterate that a member of the Bamberg County Registration and Election Commission is prohibited by the Constitution from simultaneously serving as a member of the Bamberg County Council.

We note, the constitutional prohibition on dual office holding does not prevent an individual from running for office. Op. S.C. Atty. Gen., May 6, 2002. As we explained in a prior opinion:

When a dual office holding situation occurs, the law operates automatically to “cure” the problem. If an individual holds one office on the date he assumes a second office, assuming both offices fall within the purview of Article XVII, Section 1A of the Constitution (or one of the other applicable constitutional prohibitions against dual office holding), he is deemed by law to have vacated the first office held. Thus, the law operates automatically to create a vacancy in that first office. However, the individual may continue to perform the duties of the previously held office as a de facto officer, rather than de jure, until a successor is duly selected to complete his term of office (or to assume his duties if the term of service is indefinite).

Op. S.C. Atty. Gen., May 27, 2003. Nevertheless, as we discussed in our August 23, 2000 opinion regarding running for a seat on the Bamberg County Council while serving on the Bamberg County Election Commission, section 7-13-75 of the South Carolina prevents a member of a county election commission from running for county council while remaining in their position. Section 7-13-75 of the South Carolina Code (Supp. 2005) provides:

No member of a county or municipal election commission, voter registration board, or combined election and voter registration commission may participate in political management or in a political campaign over whose election the member has jurisdiction during the member’s term of office. No member may make a contribution to a candidate or knowingly attend a fundraiser held for the benefit of a candidate over whose election the member has jurisdiction. Violation of this section subjects the member to removal by the Governor or appropriate appointive authority.

In our August 23, 2000 opinion, we interpreted the word “participate” in this statute as “as meaning to take part in something or to share in something.” Op. S.C. Atty. Gen., August 23, 2000. Therefore, we concluded:

[S]ince it is impossible to run for elective office without participating in a political campaign, it appears that § 7-13-75 prohibits you, as a

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county election commissioner, from being a candidate for Bamberg County Council during your term of office. For this reason, it is my opinion that you would be required to resign your position with the election commission when you file as a candidate for Bamberg County Council.

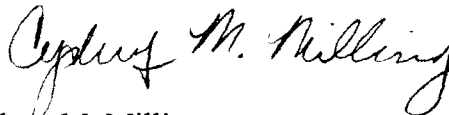
Id. We note, the Legislature amended this statute in 2000, after we issued our opinion, by adding "over whose election the member has jurisdiction" after the word "campaign." This change does not impact our analysis under our August 23, 2000 opinion. But, we add, with regard to the situation presented in your letter, we believe a member of Bamberg County Registration and Election Commission must resign if he or she has jurisdiction over her own election.

Finally, we address your question of to whom the member of the Bamberg County Registration and Election Commission must resign. We discussed what is required to make a resignation effective in an opinion of this Office dated July 10, 1986. Op. S.C. Atty. Gen., July 10, 1986. We stated in order for a resignation to be effective it must be "tendered by the official and accepted by the appropriate governmental body." Id. Thus, for the member of the Bamberg County Registration and Election Commission to effectively resign, she must tender her resignation to the governmental body that appointed her and that governmental body must accept her resignation.

Conclusion

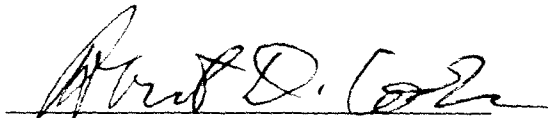
We find, consistent with a prior opinion of this Office, both a member of the Bamberg County Registration and Election Commission and a member of the Bamberg County Council are officers for dual office holding purposes. Therefore, an individual is prohibited by the South Carolina Constitution from holding both offices at one time. In addition, based on our interpretation of section 7-13-75 of the South Carolina Code, if the member of the Bamberg County Registration and Election Commission has jurisdiction over the election of Bamberg County Council members, she must resign to the governmental body that appointed her.

Very truly yours,



Cydney M. Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Assistant Deputy Attorney General