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HENRY McMASTER  
ATTORNEY GENERAL

April 28, 2006

The Honorable John Courson  
Senator, District No. 20  
Post Office Box 142  
Columbia, South Carolina 29202

Dear Senator Courson:

We issue this opinion in response to your letter concerning an appointee to the Education Oversight Committee (EOC). According to your letter, an appointee to the ECO also holds an appointed position of the South Carolina Conservation Bank Board. Thus, you request an opinion as to whether "these appointments constitute dual office holding?"

#### 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).

This Office concluded a member of the EOC holds an office for dual office holding purposes in an opinion dated January 23, 2002. Op. S.C. Atty. Gen., January 23, 2002. We enclosed a copy of this opinion for your convenience. Therefore, we need only determine whether a member of the South Carolina Conservation Bank Board (the "Board") is an officer for dual office holding purposes.

Section 48-59-30(2) of the South Carolina Conservation Act (Supp. 2005) (the "Act") names the Board as the governing body of the South Carolina Conservation Bank (the "Bank"). Section 48-59-40 of the Act (Supp. 2005) establishes the Board, and among other things, describes its members and their terms of office. Specifically, this section provides that three of the Board's twelve members are to be appointed by the President Pro Tempore of the Senate. S.C. Code Ann. § 48-59-40(A)(4). By your letter, you indicate this is the method by which the member of the Board in question gained a position on the Board. Section 48-59-40(B) under the Act states Board members are to serve a term of four years and are to serve without compensation.

*Request Letter*

Section 48-59-50 of the Act (Supp. 2005) establishes the Bank's duties and powers. As its governing board, we presume the Board is to perform these powers and duties. These powers include the authority to award grants, make loans, apply for and receive additional funding from the federal government and other sources on behalf of trust funds, receive charitable contributions and donations, and "exercise its discretion in determining what portion of trust funds shall be expended, awarded, or loaned in any particular year, and what portion of trust funds shall remain in the trust fund from one fiscal year to the next." Id. § 48-59-50(A). This statute also mandates the Bank:

(1) operate a program in order to implement the purposes of this chapter;

(2) develop additional guidelines and prescribe procedures, consistent with the criteria and purposes of this chapter, as necessary to implement this chapter;

(3) submit an annual report to the Governor, Lieutenant Governor, and General Assembly that:

(a) accounts for trust fund receipts and dispersals;

(b) briefly describes applications submitted to the bank, and in greater detail describes grants and loans that were approved or funded during the current year, and the public benefits, including public access, resulting from such grants and loans;

(c) describes recipients of trust fund grants and loans; and

(d) sets forth a list and description of all grants and loans approved, and all acquisitions of land or interests in land obtained with trust funds since the bank's inception. The report shall include a map setting forth the location and size of all such protected lands.

(4) have an annual audit of the Conservation Bank and Conservation Bank Trust Fund conducted by outside independent certified public accountants and submitted to the Governor, Lieutenant Governor, and General Assembly. The accounting of trust fund receipts and expenditures required above shall be part of this annual audit.

The Honorable John Courson

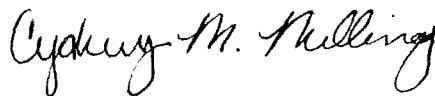
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Id. § 48-59-50(B). Section 48-59-70 of the Act (Supp. 2005), describing the procedures for granting funds to eligible trust funds, requires the Board evaluate the proposals received from trust funds according to a set of statutory criteria to determine whether they meet the stated qualifications. In addition, this section also requires the Board to make certain finding in relation to applications for grants and loans. S.C. Code Ann. § 48-59-70.

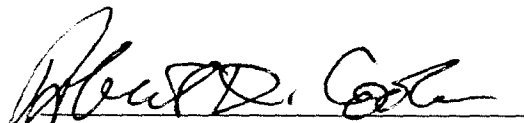
The Act clearly establishes a member of the Board's position and prescribes the term of the position and his or her powers and responsibilities. In addition, given the statutes provided above, we conclude a Board member's duties involve the exercise of a portion of the sovereign power of the State. Based on this determination, it is our opinion a member of the Board is an officer for dual office holding purposes. Accordingly, an individual serving simultaneously as a member of the Education Oversight Committee and on the Board of the South Carolina Conservation Bank would be in violation of the prohibition on dual office holding pursuant to article XVII, section 1A of the South Carolina Constitution.

Very truly yours,



Cydney M. Milling  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Assistant Deputy Attorney General