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HENRY McMASTER  
ATTORNEY GENERAL

August 16, 2006

Mr. Richard P. Dye  
1505 Poole Road  
Sumter, South Carolina 29154

Dear Mr. Dye:

We issue this opinion in response to your letter concerning dual office holding. According to your letter, you ask whether serving on the Sumter County School District Two School Board while employed as an enforcement officer with the South Carolina Department of Natural Resources ("DNR") violates the dual office holding prohibition contained in the South Carolina Constitution. Based on our findings below, we believe an enforcement officer with DNR is a constable. Therefore, your service in this capacity would be exempt from the dual office holding prohibition should you hold another office, including membership on the Sumter County School District Two School Board.

#### Law/Analysis

Article XVII, section 1A of the South Carolina Constitution (Supp. 2005) prohibits a person from holding "two offices of honor or profit at the same time, but any person holding another office may at the same time be an officer in the militia, member of a lawfully and regularly organized fire department, constable, or a notary public." In order to contravene this provision, a person concurrently must hold two offices having duties that involve the exercise of some portion of the sovereign power of the State. Sanders v. Belue, 78 S.C. 171, 174, S.E. 762, 763 (1907). Furthermore, our courts recognize other relevant considerations in determining whether an individual holds an office, such as, whether a statute, or other such authority, establishes the position, proscribes the position's duties or salary, or requires qualifications or an oath for the position. State v. Crenshaw, 274 S.C. 475, 477, 266 S.E.2d 61, 62 (1980).

On numerous occasions, this Office determined membership on a county school board or board of trustees constitutes an office for dual office holding purposes. See Ops. Atty. Gen., June 16, 2006; January 29, 1997; July 31, 1992. Accordingly, we must determine whether your position as an enforcement officer with DNR is an office for dual office holding purposes.

*Rebert C. Dennis*  
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In an opinion dated September 17, 2003, we addressed the issue of whether a commissioned officer of the DNR may serve in another office without violating the constitutional dual office prohibition. In that opinion, we noted previous opinions in which we determined commissioned officers of the DNR are officers for purposes of dual office holding. Op. S.C. Atty. Gen., September 17, 2003. However, the requester asked whether commissioned DNR officers are "constables" and therefore, exempt due to the constitutional amendment to article XVII, section 1A exempting constables from the dual office holding prohibition. Id.

We analyzed this issue in light of Richardson v. Town of Mount Pleasant, 350 S.C. 291, 566 S.E.2d 523 (2002). In that case, the Supreme Court considered whether a municipal police officer is a constable and therefore, is exempt from the dual office prohibition. Richardson, 350 S.C. at 291, 566 S.E.2d at 523. In analyzing that position, the Court noted unlike DNR officers, it is not required or authorized to obtain a state constable commission from the Governor. Id. at 296-97, 566 S.E.2d at 526-27. The Court appeared to heavily rely on a commission from the Governor in determining whether or not the position is that of a constable. The Court ultimately found municipal police officers, which are not commissioned by the Governor, are not constables.

In our 2003 opinion, considering the Court's references to DNR officers, we stated: "it is evident that the Court has determined (in dicta) that DNR officers are included within the exception." Op. S.C. Atty. Gen., September 17, 2003. Furthermore, we concluded:

Based upon the Court's analysis in Richardson v. Town of Mt. Pleasant, supra, it appears that DNR officers who are commissioned by the Governor fall within the exemption for "constables" contained in Article XVII, § 1A. Thus, any DNR officer who is in such category and who holds another office would not be dual office holding in contravention of the Constitution. The information which you have provided indicates that generally DNR officers do receive a commission from the Governor. You have enclosed information which indicates that regular (Class 1) enforcement officers as well as deputy law enforcement officers fall into this category. Accordingly, such officers, as well as any other DNR officials who are in this category, are "constables" within the meaning of Article XVII, § 1A's exemption.

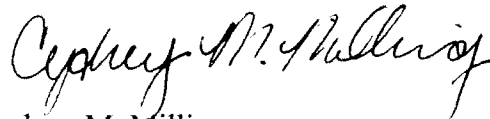
Id.

In a conversation with you, you confirmed you were appointed to your position as a DNR enforcement officer by receiving a commission from the Governor. Thus, based on Richardson and our 2003 opinion, we believe you are a constable for purposes of article XVII, section 1A and therefore, your position is exempt from the constitutional prohibition on dual office holding. As

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such, your service as a DNR enforcement officer would not prohibit you from serving in another office, such as a member of the Sumter County School District Two School Board.

Very truly yours,



Cydney M. Milling  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Assistant Deputy Attorney General