



HENRY McMASTER
ATTORNEY GENERAL

June 1, 2006

The Honorable Ken Clark
Member, House of Representatives
314-D Blatt Building
Columbia, South Carolina 29211

Dear Representative Clark:

We understand from your letter you desire an opinion as to the impact of the dual office holding prohibition on the an advisory board created by the South Carolina Education and Economic Development Act ("EEDA"). Specifically, you ask: "Are the EEDA Regional Education Center (REC) Advisory Board legislative appointments impacted by the Dual Office Holding mandates?"

Law/Analysis

In 2005, the Legislature passed the EEDA, which for the most part charges the South Carolina Department of Education with developing a curriculum "organized around a career cluster system that must provide students with both strong academics and real-world problem solving skills" and lays responsibility with local school districts for the implementation of the curriculum. S.C. Code Ann. § 59-59-20 (Supp. 2005). As part of this legislation, the Education and Economic Development Council, also created by the EEDA, shall designate regional education centers to coordinate and facilitate career development activities provided under the EEDA. Section 59-59-180(D) of the South Carolina Code (Supp. 2005) states: "The Education and Economic Development Coordinating Council, in consultation with the Department of Education, shall provide oversight to the regional centers, and the centers shall provide data and reports that the council may request." Additionally, section 59-59-180(E)(1) of the South Carolina Code (Supp. 2005) states:

Each regional center shall have an advisory board comprised of a school district superintendent, high school principal, local workforce investment board chairperson, technical college president, four-year college or university representative, career center director or school district career and technology education coordinator, parent-teacher organization representative, and business and civic leaders. Appointees must reside or do business in the geographic area of the center. Appropriate local legislative delegations shall make the appointments to the regional center boards.

Request Letter

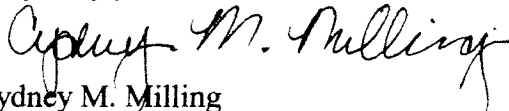
The Honorable Ken Clark
Page 2
June 1, 2006

We gather from your letter, you wish to know whether members of the advisory board described in section 59-59-180(E)(1) are office holders for dual office holding purposes. 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." Over the years, our Supreme Court has provided some guidance as to what constitutes a public office for dual office holding purposes. In Sanders v. Belue, 78 S.C. 171, 174, 58 S.E. 762, 763 (1907), the Court determined one who exercises the sovereign power of the State holds a public office. The Court provided further guidance in State v. Crenshaw, 274 S.C. 475, 478, 266 S.E.2d 61, 62-63 (1980), finding whether statutes, or other such authority, established the position, prescribe its tenure, duties or salary, or required qualifications or an oath for the position to be other relevant considerations for determining whether a person holds a public office.

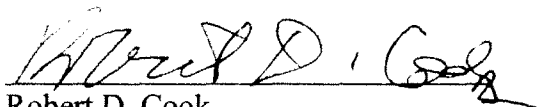
In our review of the EEDA, we only found reference to the REC advisory boards in section 59-59-180(E)(1). This provision establishes the board and instructs board members are to be appointed by local legislative delegations. S.C. Code Ann. § 59-59-180(E)(1). In addition, it states who shall comprise the board and mandates appointees reside or do business in the geographic area of the center. Id. However, this provision does not establish a term of service or compensation for service on the board. Moreover, the statute does not provide for the powers or responsibilities to be carried out by the board and makes no mention of an oath requirement. These factors indicate under the Supreme Court's opinions in Sanders and Crenshaw, the board members are not officers for dual office holding purposes.

Furthermore, prior opinions of this Office determined members of advisory bodies are not officers for dual office holding purposes because they are not deemed to exercise a portion of the sovereign power of the State. See Op. S.C. Atty. Gen., February 24, 2004 (Beaufort County Solid Waste and Recycling Board); January 15, 2003 (Town of Hilton Head Accommodations Tax Advisory Committee); February 27, 2001 (legal advisory board for the Department of Natural Resources); December 1, 2000 (drought response committee); December 14, 1987 (Children's Foster Care Review Board). In addition to the statute failing to indicate any sovereign power afforded to the advisory board, the statute indicates the board is advisory in nature. Thus, in keeping with our prior opinions, we find members of the advisory board created by section 59-59-180(E)(1) are not officers for dual office holding purposes. Therefore, we do not believe their membership the REC advisory board would prohibit their service as an officer in another capacity.

Very truly yours,


Cydney M. Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:


Robert D. Cook
Assistant Deputy Attorney General