



HENRY McMASTER
ATTORNEY GENERAL

May 18, 2006

The Honorable William G. Herbkersman
Member, House of Representatives
151 Gascoigne Bluff
Bluffton, South Carolina 29910

Dear Representative Herbkersman:

You forwarded a letter to this office on behalf of an individual who is currently a member of the State Human Affairs Commission and who has been asked to serve on the Beaufort County Board of Elections. The question has been raised as to whether serving on both boards presents a conflict. In responding to your question, it must be determined whether the simultaneous serving in both capacities would constitute dual office holding in violation of this State's Constitution.

Article XVII, §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 concurrently must 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).

This office has advised previously that members of county voter registration boards and members of county election commissions would both be considered office holders for purposes of dual office holding. See, Op. S.C. Atty. Gen. July 8, 2005. It has also been determined that members of county boards of elections and registration would hold offices for purposes of dual office holding. Op. S.C. Atty. Gen., July 9, 1998 (Allendale County Board of Elections and Registration); July 23, 1996 (Beaufort County Board of Elections and Registration); March 23, 1995 (Union County Board of Election and Registration). Accordingly, it is my opinion that a member of the Beaufort County Board of Elections is an office holder for purposes of dual office holding.

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The State Human Affairs Commission was created pursuant to S.C. Code Ann. §§ 1-13-10 et seq. A prior opinion of this office dated June 6, 1979 stated in part that such statutes "...grant the Commission numerous powers which involve a continuing and substantial exercise of the sovereign power of the State...Therefore, membership on the Commission is an office within the meaning of Article XVII, § 1A."

Consistent with these prior opinions, it is my opinion that an individual simultaneously serving on the Beaufort County Board of Elections and as a member of the State Human Affairs Commission would contravene the dual office holding provisions of the State Constitution.

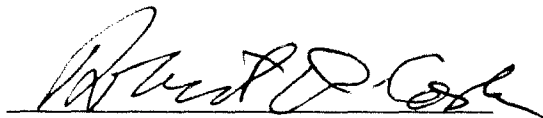
If there are any questions, please advise.

Sincerely,



Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Assistant Deputy Attorney General