

8280 Literary



HENRY McMASTER
ATTORNEY GENERAL

November 8, 2006

Judith M. Frank, Clerk
Jasper County Council
Post Office Box 1149
Ridgeland, South Carolina 29936

Dear Ms. Frank:

We received your letter requesting an opinion of this Office on behalf of the Vice Chairman of the Jasper County Council regarding dual office holding. In your request, you asked us the following three questions:

can a person serve on the transportation committee and the election committee; can a person serve on the election committee and zoning appeals board; can a local contractor serve on the planning commission?

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).

First, with regard to an individual serving both on the transportation committee and the election committee, we note several opinions of this Office addressing whether a position on a county transportation committee is an office for purposes of dual office holding. In these opinions, we concluded such positions are offices. Ops. S.C. Atty. Gen., April 20, 2006 (Chesterfield County Transportation Committee); February 14, 2005 (Dorchester County Transportation Committee); December 18, 1996 (York County Transportation Committee). Furthermore, in speaking with you,

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we learned the election committee to which you refer is the Jasper County Board of Elections and Registration. In past opinions, we addressed whether positions on county election commissions and boards of voter registration are considered offices. In those opinions, we found such positions are offices. Ops. S.C. Atty. Gen., May 18, 2006 (Beaufort County Board of Elections); April 21, 2006 (Bamberg County Registration and Election Commission); July 9, 2004 (Charleston County Election Commission); December 17, 2002 (Union Board of Election and Registration). Because these two positions are considered offices for purposes of dual office holding, an individual serving in both positions would be in violation of the dual office holding prohibition contained in the South Carolina Constitution.

Next, we address whether one individual may simultaneously serve on the Jasper County Board of Elections and Registration and on a zoning appeals board. Because we already determined a position on the Jasper County Board of Elections and Registration is an office, we must only determine whether a position on a zoning appeals board is also an office to determine whether service in both positions constitutes dual office holding. In prior opinions, this Office addressed the issue of local zoning appeals boards and dual office holding. In an opinion issued in August of this year, we determined a member of the City of Conway's Zoning Board of Appeals holds an office. Op. S.C. Atty. Gen. August 2, 2006. We came to the same conclusion in numerous other opinions as well. Ops. S.C. Atty. Gen., June 8, 2000 (Berkeley County Zoning Appeals Board); March 16, 1999 (City of North Myrtle Beach Board of Zoning Appeals); February 20, 1985 (City of Greenville Board of Zoning Appeals). Thus, we find serving both as a member of the Jasper County Board of Elections and Registration and on a local zoning appeals board would violate article XVII, section 1A of the South Carolina Constitution.

Lastly you inquire as to whether a local contractor may serve on a local planning commission. Because an individual's occupation as a contractor is not an office, his or her service on a local planning commission would not violate the prohibition on dual office holding. However, issues may, on occasion, arise under the State Ethics Reform Act due to this the nature of the individual's occupation and his or her service on a planning commission. For instance, section 8-13-700 of the South Carolina Code (Supp. 2005) prohibits a public official from using his or her position for financial gain. Nonetheless, this provision provides for a method by which a public official may recuse himself or herself from matters in which the public official may have an economic interest. Therefore, section 8-13-700 does not necessarily prohibit the contractor's service on the planning commission. However, we note that the State Ethics Reform Act specifically affords authority to the South Carolina State Ethics Commission to interpret and issue opinions pertaining to this act. Thus, we suggest you contract the State Ethics Commission to address potential conflicts of interest that may arise under section 8-13-700 or any other provision of the State Ethics Reform Act. S.C. Code Ann. § 8-13-320(11) (Supp. 2005).

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Conclusion

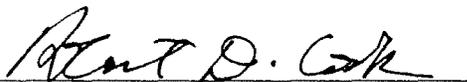
Based on our analysis above, we believe service as both a member of a county transportation committee and on the Jasper County Board of Elections and Registration constitutes dual office holding. Furthermore, we also believe service on the Jasper County Board of Elections and Registration while serving on a local zoning appeals board also constitutes dual office holding. Thus, simultaneous service in these positions violates article XVII, section 1A. However, we do not find the dual office holding prohibition prevents a local contractor from serving on a local planning commission. Nonetheless, we caution that such service may give rise to potential conflicts of interest under the State Ethics Reform Act, which are best addressed by the State Ethics Commission.

Very truly yours,



Cydney M. Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Assistant Deputy Attorney General