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HENRY McMASTER
ATTORNEY GENERAL

September 11, 2006

Steven D. Murdaugh, Chairman
Walterboro-Colleton County Airport Commission
Post Office Box 8
Walterboro, South Carolina 29488

Dear Mr. Murdaugh:

We received your letter requesting on opinion of this Office on behalf of the Walterboro-Colleton Airport Commission "as to whether the members of the Walterboro-Colleton Airport Commission are in violation of the prohibition against dual office holding by serving on the Commission." You state as follows:

Members of the Airport Commission are the Chairman of Colleton County Council, the Colleton County Auditor, the Colleton County Treasurer, the Mayor of the City of Walterboro and the Chairman of the City of Walterboro Finance Committee. Each member serves by virtue of holding his or her office in the City or County government.

Included in your request, you provided us with copies of the enabling legislation and establishing the Walterboro-Colleton Airport Commission (the "Commission") and the subsequent amendments to this legislation.

Law/Analysis

In our research, we discovered prior opinions directly on point with your question. In an opinion dated April 24, 1978, we considered whether the members of the Commission violate the prohibition against dual office holding. Op. S.C. Atty. Gen., April 24, 1974. In that opinion, we cited the South Carolina Supreme Court Case of Ashmore v. Greater Greenville Sewer Dist., 211 S.C. 77, 44 S.E.2d 88 (1947), holding the constitutional prohibition against dual office holding does not apply to officers serving in an ex officio capacity. Id. In citing to Ashmore, we conclude because these members serve by virtue of their offices, "these office holders are not in violation of that constitutional provision." Id.

We again addressed the issue of whether the members of the Commission listed above violate the dual office holding prohibition in two opinions dated September 9 and September 28 of 1998. Ops. S.C. Atty. Gen., September 28, 1998; September 9, 1998. These opinions appear to be the

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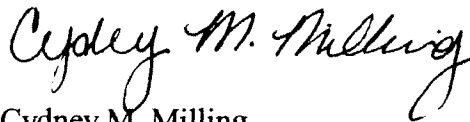
same, and we gather the last is a reissuance of the first. These opinions again determined the members hold their positions on the Commission as ex officio members. Id. Therefore, we concluded:

Based on the foregoing, the dual office holding prohibitions of the State Constitution would not be violated if the mayor of Walterboro, the chairman of the county council of Colleton County, the treasurer of Colleton County, the auditor of Colleton County, and a member of the Walterboro City Council to be elected by the council simultaneously serve on the Airport Commission. The reason for such a conclusion is that these individuals serve on the Airport Commission by virtue of their other offices or ex officio. As stated in Ashmore, supra: "[t]he rule here enforced with respect to double or dual office holding in violation of the constitution is not applicable to those officers upon whom other duties relating to their respective offices are placed by law."

Id. (quoting Ashmore, 211 S.C. 77, 92, 44 S.E.2d 88, 95). For your convenience, we included copies of the 1998 opinions, as well as the 1978 opinion, for your review.

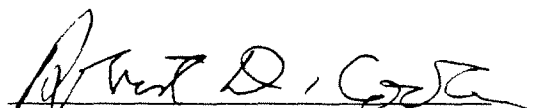
"Generally, this Office recognizes the principle that we will not overrule our prior opinions unless clearly erroneous or unless applicable law has changed." Op. S.C. Atty. Gen., July 27, 2006. We find no law contrary to the Court's conclusions in Ashmore and no change in the law since the issuance of our prior opinions. Thus, we agree with our prior determinations that Chairman of Colleton County Council, the Colleton County Auditor, the Colleton County Treasurer, the Mayor of the City of Walterboro, and the Chairman of the City of Walterboro Finance Committee serve as ex officio members of the Commission and therefore, are not in violation of the dual office holding prohibition contained in Article XVII, section 1A of the South Carolina Constitution (Supp. 2005).

Very truly yours,



Cydney M. Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Assistant Deputy Attorney General