



HENRY McMASTER  
ATTORNEY GENERAL

July 24, 2009

The Honorable Jimmy C. Bales, Ed.D.  
Member, House of Representatives  
District No. 80 - Richland County  
1515 Crossing Creek Road  
Eastover, South Carolina 29044

Dear Representative Bales:

We received your letter in which you requested an opinion of this Office concerning dual office holding. In your letter, you asked whether “any conflict or violation of federal or state law” exists that would prohibit you “from continuing to serve in the House of Representatives while serving as a member on the State Farm Service Committee[.]” From further conversations with you and with a representative of the U.S. Department of Agriculture (USDA)’s South Carolina State Farm Service Agency Office, we understand that the position about which you are inquiring is membership on South Carolina’s State Committee of the USDA’s Farm Service Agency (hereinafter “FSA State Committee”).

#### **Law/ Analysis**

Article XVII, Section 1A of the South Carolina Constitution provides that “No person may hold 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.” For this provision to be contravened, a person concurrently must hold two public 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). “One who is charged by law with duties involving an exercise of some part of the sovereign power, either small or great, in the performance of which the public is concerned, and which are continuing, and not occasional or intermittent, is a public officer.” Id., 58 S.E. 762, 763. Other relevant considerations are whether statutes, or other such authority, establish the position, prescribe its tenure, 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).

In a prior opinion of this Office concerning dual office holding, we stated as follows:

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Article III, Section 11 [of the South Carolina Constitution] provides that “Each house shall judge of the ... qualifications of its own members....” If a dual office holding problem or other question of a member's qualification should arise, resolution of the issue would be solely within the province of the particular house (here, the House of Representatives). Culbertson v. Blatt, 194 S.C. 105, 9 S.E.2d 218 (1940). Thus, this Office may only comment on your question, as the House of Representatives would be the entity to resolve the question if one should arise.  
Op. S.C. Atty. Gen, June 12, 1992.

We then opined, consistent with numerous prior opinions, that “a legislator holds an office within the purview of the state Constitution.” Id., citations omitted. On numerous occasions, we have opined that a member of the South Carolina House of Representatives holds an office for purposes of dual office holding. See, e.g., Ops. S.C. Atty. Gen. dated September 20, 2002; February 9, 2001; and June 11, 1992. Thus, in order to determine whether simultaneously serving as a member of both the South Carolina House of Representatives and the FSA State Committee would violate the dual office holding prohibition, we must now determine whether the latter position also constitutes an office.

FSA State Committees are established by federal legislation. 16 U.S.C. 590h(b) provides in part as follows:

The Secretary [of Agriculture] shall appoint in each State a State committee composed of not fewer than 3 nor more than 5 members who are fairly representative of the farmers in the State. The members of a State committee shall serve at the pleasure of the Secretary for such term as the Secretary may establish.  
16 U.S.C. 590h(b)(5)(A).

Subparagraph (E) of the above statute provides that “[t]he Secretary [of Agriculture] shall issue such regulations as the Secretary considers necessary relating to the selection and exercise of the functions of the respective committees, and to the administration through such committees of the programs described in subparagraph (D)....” 16 U.S.C. 590h(b)(5)(E).

Clearly, membership on the FSA State Committee, which falls under the authority of the U.S. Secretary of Agriculture, is a federal position. As such, it does not constitute an “office” for purposes of the dual office holding prohibition of the South Carolina Constitution. As we stated in a prior opinion, “this Office has consistently expressed the opinion that a Federal position of office is not within the scope of the prohibition against dual office holding. Op. S.C. Atty. Gen., June 11, 1976.

However, simultaneous service in the South Carolina House of Representatives and on the FSA State Committee could potentially pose a problem under federal law, an issue on which this Office does not opine. The information on eligibility requirements and restrictions that you forwarded to us from the USDA’s South Carolina State FSA Office provides as follows: “To be eligible to hold office as

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a member of STC, a person may not... serve as Federal, State, or local official having been elected in a partisan election..." Per our conversation with a representative of the State FSA Office, this provision is found in FSA Handbook No. 16-AO, State and County Organization and Administration, Section 2, Par. 35.

Interpretation of the federal regulations governing the membership of the FSA State Committee are beyond the scope of an opinion of this Office. As we stated in a prior opinion, "the question of the applicability of federal law to a particular situation is a factual matter which is beyond the scope of an opinion of this Office." Op. S.C. Atty. Gen., May 8, 1989. See also, Op. S.C. Atty. Gen., March 6, 2008 ("consistent with the policy of this Office, we do not interpret federal statutory law or regulations.") In such matters, this Office defers to the federal agency charged with the interpretation of the federal statute or regulation in question.

### Conclusion

Consistent with our prior opinions, we advise that while a Member of the South Carolina House of Representatives holds an office for purposes of the State Constitution's prohibition on dual office holding, membership on the State Committee of the USDA's Farm Service Agency is not within the scope of the prohibition, since it is a federal position. However, it appears that the appointment policy of the FSA may preclude a state official who was elected in a partisan election from serving on the FSA State Committee. We defer to the FSA's interpretation of its regulations, and we recognize the authority of the U.S. Secretary of Agriculture under 16 U.S.C. 590h(b) over the appointment of members of the FSA State Committees. Moreover, as a matter of policy, this Office does not opine on questions of federal law. Please do not hesitate to contact us with any further questions.

Yours very truly,

Henry McMaster  
Attorney General



By: Elizabeth H. Smith  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Deputy Attorney General