

May 2, 2007

R. Benjamin Baxley, Town Administrator  
Town of Springdale  
2915 Platt Springs Road  
Springdale, South Carolina 29170

Dear Mr. Baxley:

According to your recent letter addressed to Attorney General Henry McMaster, you request an opinion of this Office as to whether the Chairman of the Springdale Planning Commission (the "Planning Commission") may serve on the Lexington Medical Center Board of Directors (the "Board of Directors"). Specifically, you ask whether his service in both positions "would violate the dual office holding provision contained in the South Carolina Constitution."

#### **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).

On numerous occasions, this Office addressed whether a position on a county or municipal planning and zoning commission is an office for purposes of dual office holding. In these opinions, we concluded an individual serving in such a capacity holds an office. Ops. S.C. Atty. Gen., December 1, 2006 (Myrtle Beach Planning Commission); April 10, 2006 (Town of Bluffton Planning Commission); May 8, 2001 (Horry County Planning Commission); August 3, 2000 (September 3, 1994). Thus, we must consider whether membership on Board of Directors is also an office.

The Legislature originally created that Lexington County Hospital Board of Trustees (the “Board of Trustees”) in 1967. 1967 S.C. Acts 1751. The Legislature subsequently amended this legislation on numerous occasions to increase and change the membership on the Board of Trustees and to expand the Board of Trustees’ authority. 1967 S.C. Acts 1964; 1967 S.C. Acts 1780; 1970 S.C. Acts 3217; 1971 S.C. Acts 1563; 1973 S.C. Acts 1367; 1974 S.C. Acts 3381; 1976 S.C. Acts 2426; 1976 S.C. Acts 2431. In an opinion dated September 12, 1983, we examined the Board of Trustees’ enabling legislation to determine whether membership on the Board of Trustees constitutes an office for purposes of dual office holding.

Its members are empowered to do the following: all things necessary or convenient for the construction, operation and maintenance of hospital facilities in Lexington County; adopt bylaws, rules and regulations for conduct of business and expenditure of funds; staff and equip any hospital it operates; provide instructional programs; employ personnel and establish rates for hospital facilities, and expend the proceeds therefrom derived; accept private donations; and acquire, hold, sell and convey property. These functions involve the exercise of the sovereign power of the State, and therefore, the members of the Lexington County Hospital Board of Trustees would be considered officers for dual office holding purposes.

Op. S.C. Atty. Gen., September 12, 1983. We came to the same conclusion in opinions issued in 1982 and 1986, finding service on the Board of Trustees to be an office. Ops. S.C. Atty. Gen., April 5, 1982; July 15, 1986.

Since the issuance of these opinions, we understand the Lexington County Council (“County Council”) established the Lexington County Health Services District (the “District”), a regional health services district for the operation of Lexington County Hospital. Lexington County, S.C., Ordinance No. 88-1 (1988). As such, County Council also established the Board of Directors to govern the District consisting of twenty members appointed by County Council. Id. The ordinance specifies

Of the appointed members, there shall be appointed two (2) legal residents of each of the nine (9) County Council Districts and two (2) “at large” members who shall be legal residents of Lexington County, but may reside anywhere within the County. One (1) of these “at large” members shall be a medical doctor who is a member of the active medical staff of the Lexington County Hospital. In addition to the twenty (20) appointed members of the Board, the person occupying the position of Chief of Staff of the Lexington County Hospital shall be a member of the Board.

Id. The ordinance calls for each member of the Board of Directors to serve a three-year term. Id.

The ordinance specifies various powers and duties afforded to the Board of Directors. Initially, it incorporates by reference provisions under article 15 of chapter 7 of title 44 of the South Carolina Code (2002) dealing with regional health services districts. Id. Section 44-7-2060 of the South Carolina Code (2002) states the powers provided to boards of directors of regional health services districts and includes the power to make bylaws; acquire real and personal property; expend funds; build, maintain, equip, and operate regional health care facilities; exercise the power of eminent domain; hire personnel; lease land or hospital facilities; and issue bonds. The ordinance also incorporates by reference the authority given to regional health services districts under section 44-7-2157. Lexington County, S.C., Ordinance No. 88-1. Section 44-7-2157 of the South Carolina Code (2002) provides boards of directors with the following additional powers:

- (1) To lease or otherwise make available any health care facilities or other of its properties and assets under such terms and conditions as the board considers appropriate.
- (2) To provide instruction and training for and to contract for the instruction and training of nurses, technicians, and other technical, professional, and paramedical personnel.
- (3) To affiliate with and to contract to provide training and clinical experience for students of other institutions.
- (4) To contract for the operation of any department, section, equipment, or holdings of the district and to enter into those contracts which, in its judgment, are in the best interest of the district.
- (5) To assume any obligations of any entity that conveys and transfers to the district any health care facilities or other property or interests therein.
- (6) To make any expenditure of any monies under its control that would be considered as ordinary and necessary expenses of the district within the meaning of state and federal taxation laws.
- (7) To provide scholarships for students in training for work in the duties peculiar to health care.
- (8) To enter into affiliation, cooperation, territorial management, or other similar agreements with other institutions for the sharing,

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division, allocation, or exclusive furnishing of services, referral of patients, management of facilities, and other similar activities.

S.C. Code Ann. § 44-7-2157.

The powers afforded to the Board of Directors under the ordinance appear similar to those proscribed by the Legislature for the Board of Trustees and analyzed in our 1983 opinion. Based on these powers, we continue to believe the Board of Directors exercises the sovereign power of the State. Thus, because the Board of Directors was established through legislative action describing its member's qualifications and terms of office and the fact that the ordinance grants to the Board of Directors a portion of the sovereign power of the State, we find membership on the Board of Directors is an office. Furthermore, this conclusion is consistent with numerous opinions of this Office finding membership on a county hospital board to be an office for purposes of article XVII, section 1A. See Ops. Atty. Gen., February 26, 2007 (Barnwell County Hospital Board of Trustees); June 1, 2005 (Bamberg County Hospital Board); April 20, 2004 (Abbeville County Memorial Hospital Board of Trustees); January 17, 2000 (Edgefield County Hospital Board); January 11, 1999 (board of trustees for the Regional Medical Center of Orangeburg and Calhoun Counties). Accordingly, we believe membership on both the Planning Commission and the Board of Directors likely violates the dual office holding provision contained in the South Carolina Constitution.

Very truly yours,

Henry McMaster  
Attorney General

By: Cydney M. Milling  
Assistant Attorney General

REVIEWED AND APPROVED BY:

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Robert D. Cook  
Assistant Deputy Attorney General