

February 26, 2007

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Brown, Jefferies & Boulware
Post Office Box 248
Barnwell, South Carolina 29812

Dear Mr. Boulware:

From your letter, we understand you represent the City of Barnwell. You informed us that a member of the Barnwell City Council “has been asked to consider an appointment to the Barnwell County Hospital Board of Trustees.” Thus, on behalf of the City of Barnwell, you ask “whether or not service and acceptance of an appointment to the Barnwell County Hospital Board of Trustees will create a dual office”?

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).

In numerous opinions, this Office opined that a position on a city or town council is an office for purposes of dual office holding. See, e.g., Ops. S.C. Atty. Gen., December 28, 2006; November 5, 2003; April 2, 1998. In fact, in an opinion issued on October 25, 1984, we opined that a position on the Barnwell City Council is an office. Op. S.C. Atty. Gen., October 25, 1984. Thus, we must

determine whether a position on the Barnwell County Hospital Board of Trustees is also an office.

In 1984, we issued an opinion finding members of the Barnwell County Hospital and Nursing Home Board are officers for purposes of dual office holding. Op. S.C. Atty. Gen., September 6, 1984. We based our opinion on our examination of the enabling legislation passed by the Legislature establishing the Barnwell County Hospital and Nursing Home Board. Id. Since the issuance of that opinion, we understand the Barnwell County Council reestablished the body governing the operations of the hospital via an ordinance dated September 26, 1988. Attached to your request, you included a copy of that ordinance, which establishes the seven-member board now know as the Barnwell County Hospital Board of Trustees (the "Board"). According to the ordinance, members of the Board serve four-year terms and must be residents of Barnwell County. The ordinance specifies the Board shall include the hospital administrator, two members of the hospital's medical staff, and four residents of Barnwell County appointed at large by the Barnwell County Council. The ordinance sets for the compensation of the Board's members at \$600.00 per year and allows reimbursement for reasonable expenses incurred in connection with the members' service on the Board. Thus, the Board was established by statute, which sets forth the members' terms of office, compensation, and qualifications. Accordingly, the ordinance indicates membership on the Board is likely an office.

In addition, the ordinance contains an extensive list of powers and duties afforded to the members of the Board. These powers and duties include, but are not limited to, the authority to adopt bylaws; operate the hospital and its facilities; accept gifts, donations and devises; improve and maintain the hospital facilities; establish rates charged by the hospital; contract for equipment, supplies, and personal property used in the operation of the hospital; expend the proceeds derived from revenue generated by the hospital; sue and be sued; employ various personnel needed to operate the hospital; establish personnel policies; and adopt a budget to be approved by the Barnwell County Council. We believe these powers evidence the Board's ability to exercise some sovereign power of the State.

Based on our review of the ordinance establishing the Board, we believe membership on the Board constitutes an office for purposes of dual office holding. This conclusion is consistent with several other opinions of this Office finding membership on a county hospital board is an office for purposes of article XVII, section 1A of the South Carolina Constitution. See, e.g., Ops. S.C. Atty. Gen., June 1, 2005 (Bamberg County Hospital Board); April 20, 2004 (Abbeville County Memorial Hospital Board of Trustees); January 11, 1999 (Regional Medical Center of Orangeburg Board of Trustees); January 9, 1992 (Edgefield County Hospital Board); August 6, 1991 (Live Oaks Hospital Board of Commissioners).

Mr. Boulware
Page 3
February 26, 2007

Finding both membership on the Barnwell City Council and the Board to be offices for purposes of dual office holding, we conclude simultaneous service in both positions constitutes dual office holding in violation of article XVII, section 1A of the South Carolina Constitution.

Very truly yours,

Henry McMaster
Attorney General

By: Cydney M. Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Assistant Deputy Attorney General