



HENRY McMASTER
ATTORNEY GENERAL

May 14, 2009

Mr. Ben Bryson
327-A Folly Road
Charleston, South Carolina 29412

Dear Mr. Bryson:

We understand from your letter that you desire an opinion of this Office concerning dual office holding. By your letter, you informed us that you currently hold a position on the Charleston County Board of Assessment Appeals (the "Board") and a position on the Provider of Workforce Housing Committee (the "Committee") for the Town of Mount Pleasant (the "Town"). Thus, you are requesting an opinion as to whether simultaneously holding these two positions violates the prohibition on dual office holding contained in the South Carolina Constitution.

Law/Analysis

Article VI, section 3 of the South Carolina Constitution (2009) provides: "No person may hold two offices of honor or profit at the same time. This limitation does not apply to officers in the militia, notaries public, members of lawfully and regularly organized fire departments, constables, or delegates to a constitutional convention." In addition, article XVII, section 1A of the South Carolina Constitution (2009) 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." To contravene these provisions, 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).

Numerous prior opinions of this Office conclude that one who serves on an assessment appeals board holds an office for purposes of dual office holding. Ops. S.C. Atty. Gen., May 14, 1995; August 6, 1991; December 11, 1990. Thus, we must consider whether serving as a member of the Committee also constitutes an office.

According to the information you provided, the Town created the Committee via a resolution adopted by the Town's council in March of 2006. In October of 2006, the Town's council amended the original resolution to add an additional member. The resolution, as amended, provides that the Committee "shall consist of ten volunteer members assigned to specific seats, all of whom shall be residents of the Town, except that the occupant of Seat 4 may reside outside the Town limits and the occupant of Seat 10 may reside anywhere East of the Cooper." In addition, the amended resolution states the following membership requirements and seat assignments:

[O]ne (1) advocate of law and very low income persons - Seat 1, two (2) banking or mortgage banking industry representatives - Seat 2 and 3, one (1) provider of workforce housing - Seat 4, one (1) real estate professional - Seat 5, two (2) residential home building industry representatives - Seats 6 and 7, two (2) citizens-at-large who are residents of Mount Pleasant - Seats 8 and 9 and one (1) citizen at large who resides anywhere East of the Cooper - Seat 10.

The amended resolution indicates that the Committee's members are to serve a four-year term. According to the original resolution, the Committee "acts in an advisory capacity to the Planning Committee of Town Council" and has the following duties:

- A. Provide advice on matters assigned to them for their review and recommendation.
- B. Provide recommendations on neighborhood redevelopment to include workforce housing opportunities.
- C. Provide recommendations that remove barriers to workforce housing production and promotes incentives for such development
- D. Inventory and review possible sites for workforce housing, including vacant parcels throughout the Town.
- E. Provide recommendations regarding criteria for workforce housing designation.
- F. Provide recommendations for a long-range plan for the provision of workforce housing for low and moderate income households that include special opportunities for senior citizens, employer-assisted housing, first time homebuyers, and adequate rental housing.

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- G. Provide recommendations for grant/loan programs for the purpose of rehabilitating existing deteriorating housing and increasing newly constructed workforce housing.
- H. With the assistance of staff, undertake special studies assigned to the committee.

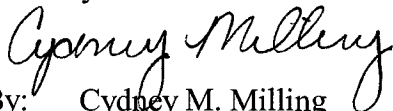
Because the Committee was created by resolution of the Town's council, which specifies qualifications for membership and establishes a term of office, membership on the Committee has some indications of an office. However, in our review of the duties and functions assigned to members of the Committee, these duties and functions appear to be advisory only and do not appear to be binding on the Town. Thus, we do not believe the Committee has the authority to exercise a portion of the sovereign power of the State. As we explained in a 1983 opinion, "This office has consistently expressed the view that committees which function in a purely advisory capacity are not offices within the meaning of the dual office holding provisions of the South Carolina Constitution." Op. S.C. Atty. Gen., October 4, 1983. Accordingly, we are of the opinion that membership on the Committee does not constitute an office for purposes of dual office holding. As such, we believe serving both on the Board and the Committee would not violate the dual office holding prohibition contained in the South Carolina Constitution.

Conclusion

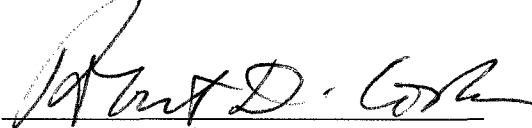
Although we find service on the Board to be an office for purposes of dual office holding, we do not believe service on the Committee constitutes an office. Therefore, it is our opinion that simultaneous service in both positions would not violate article VI, section 3 and article XVII, section 1A of 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
Deputy Attorney General