

November 27, 2007

Mr. Raymond C. Eubanks, III  
City Administrator, City of Mauldin  
Post Office Box 249  
Mauldin, South Carolina 29662-0249

Dear Mr. Eubanks:

We understand from your letter that you wish to request an opinion concerning whether a member of the City of Mauldin Planning Commission (the “Planning Commission”) may also serve on the Mauldin Cultural Center Board (the “Board”).

### **Law/Analysis**

Article XVII, section 1A of the South Carolina Constitution (Supp. 2006) 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 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 opined that a member of a county or municipal planning commission holds an office for purposes of dual office holding. See Ops. S.C. Atty. Gen., May 9, 2007 (Spartanburg Planning Commission); 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 (Charleston County Planning Commission). Thus,

we must only determine whether a position on the Board also constitutes an office for dual office holding purposes.

Along with your request letter, you provided us with a copy of the Board's by-laws, documentation of the Board's 501(1)(c)(3) status, minutes from two previous meetings of the Board, and minutes from several Mauldin City Council meetings discussing appointments to the Board. According to the Board's by-laws, the Board was established as a nonprofit corporation pursuant to chapter 31 of title 33 of the South Carolina Code for the purpose of preserving and renovating the old Mauldin Elementary School building and developing a cultural center for the benefit of the Mauldin community and Greenville County. The by-laws, as amended, call for the appointment of eleven members to the Board. "Six of the members shall be members of Mauldin City Council" and the other five members are to "be selected by the Mauldin City Council." The minutes from the Mauldin City Council ("City Council") meeting held on May 15, 2006 further indicate that the City Council members will be members of the Board and have authority to appoint another five members to the Board. However, in the information provided we did not find any authority indicating that City Council passed legislation creating the Board, giving the Board any specific powers or authority, or establishing terms of office for its members.

"On numerous occasions we have concluded that membership on the board of directors of a private nonprofit eleemosynary corporation would not constitute an office for purposes of dual office holding." Op. S.C. Atty. Gen., September 14, 2005 (citing Ops. S.C. Atty. Gen., July 5, 2005 (South Carolina Museum Foundation); April 12, 1993 (Charleston Citywide Local Development Corporation and Community Young Men's Christian Association of Rock Hill, S.C. not office); January 11, 1991 (Francis Marion Foundation); October 18, 1988 (Children's Trust Fund of South Carolina); September 8, 1987 (Horry County Council on Aging); October 20, 1983 (York County Council on Aging, Inc.)). We believe the same is true with respect to the Board due to the fact that it does not appear that City Council established the Board, proscribed through formal action the duties and powers held by the Board, or required specific qualifications or an oath for membership on the Board. Furthermore, based on the information you provided to us, it does not appear that the Board has the power to exercise any portion of the sovereign power of the State, as no such authority appears to have been given to the Board by City Council. Accordingly, we believe a court would likely find membership on the Board is not an office for purposes of dual office holding.

### **Conclusion**

Although we believe a position on the Planning Commission constitutes an office for purposes of dual office holding, we do not similarly find a position on the Board constitutes an office. Thus, based on the information you provided to us, we are of the opinion that an individual's

Mr. Eubanks  
Page 3  
November 27, 2007

simultaneous service in both positions does not violate the dual office holding prohibition contained in 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