



HENRY McMASTER
ATTORNEY GENERAL

July 21, 2009

The Honorable Robert W. Harrell, Jr.
Speaker of the House
South Carolina House of Representatives
1625 Bull Creek Lane
Charleston, South Carolina 29414

Dear Speaker Harrell:

We received your request for an opinion of this Office concerning dual office holding. You state your question as follows: “Does your office believe it would be a violation of the South Carolina constitutional provisions prohibiting ‘dual office holding’ for a person to simultaneously serve on the Charleston Area Regional Transportation Authority Board as well as the Joint Transportation Review Committee?”

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).

According to an opinion issued by this Office in 2000, the Charleston Area Regional Transportation Authority (“CARTA”) was created pursuant to sections 58-25-10 et seq. of the South Carolina Code (Supp. 2008). Op. S.C. Atty. Gen., October 17, 2000. Although, we have not specifically addressed whether a position on the CARTA Board is an office, in an opinion issued in 1987, we concluded generally that an individual serving on the governing board of a regional

transportation authority created pursuant to sections 58-25-10 et seq. of the South Carolina Code holds an office for purposes of dual office holding. Op. S.C. Atty. Gen., December 14, 1987. We noted that section 58-25-40 of the South Carolina Code (Supp. 2008) provides: “members of such boards are appointed by the governing bodies of the member cities and counties.” In addition, we stated as follows:

A term of three years is specified. Members may be reimbursed for expenses incurred in their service on the authority, but no salary or other compensation is to be paid. In case extensive services have been rendered, however, a per diem may be paid by a two-thirds vote of the authority. No qualifications are specified by statute, nor is an oath required by statute.

Powers and duties are specified by Section 58–25–50 in both the 1976 Code and the 1986 Cumulative Supplement. In either instance, the authority through its governing body is authorized to provide transportation services, exercise eminent domain, enter into contracts, sue and be sued, establish rates, borrow money, issue negotiable bonds and notes, promulgate rules and regulations, and exercise many other powers and duties.

Id.

While the Legislature amended some of the provisions referred to in this opinion since the date it was issued, no changes were made that would impact our determination that generally members of regional transportation authority boards are officers. Moreover, in several opinions, this Office specifically concluded that members of particular regional transportation authority boards are officers for purposes of dual office holding. See Ops. S.C. Atty. Gen., July 11, 2005 (Central Midlands Regional Transit Authority); February 14, 2005 (Dorchester County Transportation Authority); October 20, 1983 (Destinations Transportation Authority). Therefore, we are of the opinion that a member of the CARTA Board is an officer for purposes of dual office holding.

In your letter, you informed us that the Joint Transportation Review Committee (the “Committee”) was created by Act 111 of 2007 and its duties are set forth in section 57-1-720 of the South Carolina Code (Supp. 2008). According to section 57-1-720, the Committee is composed of ten members, which consist of various House of Representatives and Senate members or their designees, two individuals appointed by the President Pro Tempore, and two members appointed by the Speaker of the House of Representatives. Section 57-1-720 does not specify that members of the Committee shall serve a term or that they are required to take an oath. This provision also does not specify qualifications or set forth any compensation for its members. Moreover, section 57-1-730 of the South Carolina Code (Supp. 2008), providing the powers and duties of the Committee, States the Committee’s primary responsibility is to screen candidates for service on the Department

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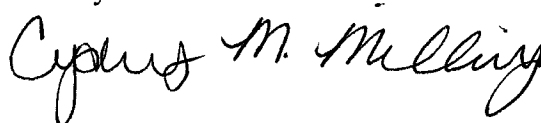
of Transportation Commission. Thus, while the Legislature established the Committee by statute, we believe the Committee lacks a majority of the factors indicating an office. Furthermore, and most significantly, we do not believe the Committee exercises a portion of the sovereign power of the State. As such, serving as a member of the Committee likely does not constitute an office for purposes of dual office holding.

Conclusion

While we are of the opinion that service on the CARTA Board is an office for purposes of dual office holding, we do not believe service on the Committee is an office. As such, we do not believe one individual's service in both of these positions constitutes a violation of article VI, section 3 or 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