



HENRY McMASTER
ATTORNEY GENERAL

February 17, 2009

The Honorable Bill Sandifer
Member, House of Representatives
Post Office Box 11867
Columbia, South Carolina 29211

Dear Representative Sandifer:

We received your letter requesting an opinion on behalf of the Oconee County Delegation (the "Delegation"). You state that the Delegation wishes to know "whether there is a provision of law that would preclude a county appointed member of the Oconee County Arts and Historical Commission from also being appointed to the Oconee County Board of the South Carolina Department of Disabilities and Special Needs by the Oconee County Delegation of the General Assembly."

Law/Analysis

Article XVII, section 1A of the South Carolina Constitution (Supp. 2008) 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).

Several prior opinions of this Office discuss whether a member of a county or multi-county board of disabilities and special needs is considered to be an office holder for purposes of dual office holding. Ops. S.C. Atty. Gen., April 9, 2004 (Marion-Dillon County Disabilities and Special Needs Board); April 5, 1995 (Charleston County Disabilities Board); January 10, 1995 (Newberry County

The Honorable Bill Sandifer

Page 2

February 17, 2009

Disabilities and Special Needs Board); September 10, 1993 (Richland/Lexington Board of Disabilities and Special Needs). These opinions all conclude that a position on these types of boards is an office. As such, we believe a position on the Oconee County Board of the South Carolina Department of Disabilities and Special Needs is also an office. Thus, we must consider whether a position on the Oconee County Arts and Historical Commission (the "Commission") is an office.

The Legislature created the seven-member Commission via act 814 of 1967. 1967 S.C. Acts 1832. This act calls for the members, appointed by the Governor on the recommendation of the Oconee County Delegation, to serve a four-year term of office. Id. In addition, the enabling legislation specifies that the members of the Commission serve without receiving compensation. Id. The act describes the duties of the Commission as stimulating and encouraging the study and presentation of performing and fine arts. Id. The act gives the Commission the authority to hold public and private hearings; enter into contracts; accept gifts, contributions and bequests; make and sign agreements; and request data from departments or agencies of the State that enable the Commission to carry out its duties. Id. Furthermore, the enabling legislation allows the Commission to receive and disburse funds for programs related to the creative and interpretive arts. Id.

Based on our review of the Commission's enabling legislation, we find that its members have some of the attributes of an office in that their positions are established by statute and for a proscribed term. However, we found no indication that the Commission's members must take an oath. Additionally, while the ability to receive and disburse funds is significant, we do not believe this authority alone amounts to an ability to exercise the sovereign power of the State. Moreover, we note the following provision included in the Commission's enabling legislation:

Service of an individual as a member of the commission shall not be considered as service or employment bringing the individual within the provisions of the law concerning the prohibition of such service; nor shall any member of the commission, by reason of his status as such, be deemed an officer of the government within the meaning of dual office holding, as prohibited by the Constitution and law of this State.

1967 S.C. acts 1832. Thus, this provision specifically expresses the Legislature's intent for a position on the Commission to not be treated as an office for purposes of dual office holding. Accordingly, this provision further solidifies our opinion that Commissioners do not hold an office. As such, we do not believe an individual's simultaneous service as a member of the Commission and a member of Oconee County Board of the South Carolina Department of Disabilities and Special Needs violates the dual office holding prohibition found in our Constitution.

The Honorable Bill Sandifer
Page 3
February 17, 2009

Conclusion

Although we believe a position on the Oconee County Board of the South Carolina Department of Disabilities and Special Needs is an office for purposes of article XVII, section 1A, we do not believe a position on the Commission also is an office. Therefore, in our opinion serving in both positions at the same time does not violate the dual office holding prohibitions in 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