



HENRY McMASTER
ATTORNEY GENERAL

October 9, 2009

The Honorable G. Murrell Smith
Member, House of Representatives
123 Conyers Street
Sumter, South Carolina 29150

Dear Representative Smith:

In a letter to this office you questioned whether membership on the Sumter County Development Board constitutes an office for purposes of the dual office holding provisions of the State Constitution. You referenced that such Board was created by Act No. 388 of 1957 and membership is composed of appointments from the Sumter City Council and the local area chambers of commerce. Terms of office and the manner of filling vacancies are established. It is stated that the Board "...is created for the purpose of aiding the Chambers of Commerce of Sumter County in the promotion of the agricultural, industrial and commercial expansion and development in Sumter County."

Article XVII, Section 1A of the South Carolina Constitution provides that "no person may hold two offices of honor or profit at the same time ..." with exceptions specified for an officer in the militia, a member of a lawfully and regularly organized fire department, a constable, or a notary public. For this provision to be contravened, a person concurrently must hold two offices which have duties involving an exercise of some portion of the sovereign power of the State. Sanders v. Belue, 78 S.C. 171, 58 S.E. 762 (1907). Other relevant considerations are whether statutes, or other such authority, establish the position, prescribe its duties or salary, or require qualifications or an oath for the position. State v. Crenshaw, 274 S.C. 475, 266 S.E.2d 61 (1980).

Prior opinions of this office have considered other local economic development boards similarly constituted to the Sumter County Development Board and have concluded that such boards do not exercise a portion of the sovereign power of the State. As stated in an opinion of this office dated June 5, 2009 considering the question of whether membership on the Chesterfield County Economic Development Board constituted an office for dual office holding purposes,

...we determined in prior opinions issued by this Office considering other local economic development boards, the Board's principal function is to promote and

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encourage economic development. Ops. S.C. Atty. Gen. June 1, 2005; November 7, 2003; March 19, 2003. In those opinions, as well as several others, we concluded that membership on other economic development boards with similar composition and authority did not amount to an office for purposes of dual office holding. Ops. S.C. Atty. Gen., June 1, 2005 (Bamberg City Economic Development Board); May 21, 2004 (Barnwell County Economic Development Board); November 7, 2003 (Allendale County Development Board); March 19, 2003 (Hampton County Economic Development Board); February 24, 2000 (Bamberg County Development Board); May 6, 1992 (Dorchester County Economic Development Board); January 31, 1985 (Marlboro County Development Board).

Consistent with such, this office concluded that a position on the Chesterfield County Economic Development Board did not constitute an office. Similarly, it is the opinion of this office that a position on the Sumter County Development Board does not constitute an office for dual office holding purposes of the State Constitution.

With kind regards, I am,

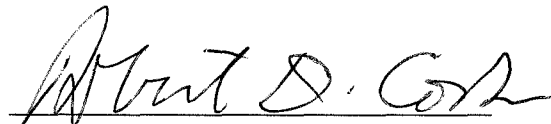
Very truly yours,

Henry McMaster
Attorney General



By: Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General