



HENRY McMASTER
ATTORNEY GENERAL

September 3, 2010

Mr. James R. Taylor
City Administrator
PO Box 2109
Gaffney, SC 29342

Dear Mr. Taylor:

We received your letter requesting an opinion of this Office concerning dual office holding. You asked whether “a member of Gaffney’s Board of Zoning Appeals” can also serve on “the Cherokee County School Board.” This opinion will address prior opinions of this Office, relevant statutes and caselaw to determine if serving on the board of zoning and school board would constitute a violation of the dual office holding provisions of the South Carolina Constitution.

Law/Analysis

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, 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.” For this provision to be contravened, a person concurrently must hold two public 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). “One who is charged by law with duties involving an exercise of some part of the sovereign power, either small or great, in the performance of which the public is concerned, and which are continuing, and not occasional or intermittent, is a public officer.” Id., 58 S.E. 762, 763. Other relevant considerations are whether statutes, or other such authority, establish the position, prescribe its tenure, 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).

On numerous occasions, we have opined that a position on a city or county board of zoning appeals constitutes an office for purposes of dual office holding. Ops. S.C. Atty. Gen., January 29, 2007 (Summerville’s Zoning Board of Appeals); November 8, 2006; August 2, 2006 (City of Conway Zoning Board of Appeals); March 16, 1999 (City of North Myrtle Beach Zoning Appeals Board); May 2, 1977 (City of Greenville Zoning Appeals Board). In each of these opinions, we found service on these boards to be an office within the meaning of Article XVII, Section 1A of the South Carolina

Mr. Taylor
Page 2
September 3, 2010

Constitution. Id. Although, we have not particularly dealt with a position on Gaffney's Zoning Board of Appeals, in keeping with our prior opinions, we opine that such a position is an office.

Finding a membership on Gaffney's Zoning Board of Appeals to be an office, we next must determine whether a position as a school board member is an office for purposes of dual office holding.

On numerous occasions, we have also opined that a position on a county school board constitutes an office for purposes of dual office holding. Ops. S.C. Atty. Gen., December 12, 2007; June 16, 2006; January 29, 1997; July 31, 1992. Therefore, it is our opinion that serving as a member of the Cherokee County School Board would constitute an office within the meaning of Article XVII, Section 1A of the South Carolina Constitution.

Conclusion

Consistent with prior opinions, it is the opinion of this Office that simultaneously holding the positions of Gaffney Board of Zoning Appeals member and Cherokee County School Board member would constitute dual office holding in contravention of Article XVII, Section 1A of the South Carolina Constitution. Each position has continuing duties involving an exercise of some portion of the sovereign power of the State.

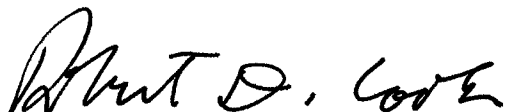
Sincerely,

Henry McMaster
Attorney General



By: Leigha Blackwell
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General