



ALAN WILSON
ATTORNEY GENERAL

June 1, 2011

Robert E. Hughes, Chairperson
Board of Directors
SC Governor's School for the Arts and Humanities
15 University Street
Greenville, South Carolina 29601

Dear Mr. Hughes:

We received your letter requesting an opinion of this Office concerning dual office holding. You asked whether it is "a violation of the dual office holding provision of the state for an individual to serve on the Board of Directors of the Governor's School for the Arts and Humanities and another board of a state agency or the board of a unique entity, specifically the South Carolina Public Service Authority, known as Santee Cooper."

Law/Analysis

Article XVII, Section 1A of the state 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, 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).

In an opinion dated March 27, 1985, this Office concluded that service on the Board of Directors of the Governor's School for the Arts did not constitute an office for dual office holding purposes. However since that time the S.C. Code of Laws of 1976 has been amended, creating a chapter to govern the SC Governor's School for the Arts and Humanities. The 1985 opinion concluded as follows:

The Board of Directors of the Governor's School for the Arts was created by Governor Riley by Executive Order No. 83-26. Nine members are appointed by the Governor, three from the state at large and one from each of the state's six congressional districts. The members serve terms of three years each; there are no provisions for qualifications, an oath, or a salary. Powers and duties of the Board include reviewing and reporting to the Governor on the progress and success of the School for the Arts; reviewing and making recommendations on budgetary matters; providing direction on matters of major importance; and developing and implementing a funding program from the private sector for the School. The actual administration of the program occurs by way of an agreement between the Governor's Office and the School District of Greenville County. It thus appears that the powers and duties exercised by the Board do not involve an exercise of sovereign power but are more advisory in nature.

Op. S.C. Atty. Gen., March 27, 1985.

However, as mentioned above, in 1994, Act No. 447, § 1 added chapter 50 to Title 59 of the S.C. Code of Laws of 1976 which governs the Governor's School for the Arts and Humanities. Specifically, S.C. Code § 59-50-20 addresses the board of directors for the Governor's School for the Arts and Humanities:

The school is governed by a board of directors composed of sixteen members, as follows:

- (1) one member from each congressional district, appointed by the Governor;
- (2) six members from the State at large, appointed by the Governor;
- (3) the Chairman of the Education Oversight Committee or his designee who serves ex officio;
- (4) the State Superintendent of Education or his designee who serves ex officio;
- (5) the Executive Director of the Commission on Higher Education or his designee who serves ex officio; and
- (6) the chairman of the school's foundation board or his designee who serves ex officio.

Members appointed by the Governor serve for terms of four years and until their successors are appointed and qualify. Members receive mileage, subsistence, and per diem allowed by law for members of state boards, committees, and commissions.

In making the appointments, the Governor shall seek to obtain the most qualified persons from business, industry, and the educational and arts communities.

S.C. Code § 59-50-20.

The board has statutory responsibilities such as curriculum approval, the ability to adopt policies and regulations, and the authority to establish a foundation and maintain an endowment for the school. According to S.C. Code § 59-50-30, “[t]he board shall establish and approve the curriculum of study. The curriculum must include intensive, in-depth, pre-professional instruction in the arts as well as a broad based innovative academic and humanities program which constitutes the Southern Association and the state department approved courses of study and requirements for graduation. The program also must include advanced academic studies.” Additionally, “[t]he board of directors shall adopt policies and promulgate regulations necessary for the operation and management of the school.” S.C. Code § 59-50-60. Under S.C. Code § 59-50-70, “[t]he board shall establish a foundation and maintain an endowment fund for the school.” These statutory responsibilities appear to be an exercise of sovereign power of the State.

Because of the addition of Chapter 50 to Title 59 and the statutory authority given to members of the board of directors, it is our opinion that serving on the Board of Directors of the Governor’s School for the Arts and Humanities would constitute an office for dual office holding purposes.

The South Carolina Public Service Authority, also known as “Santee Cooper,” is established pursuant to S.C. Code § 58-31-10 et seq. In an opinion of this Office dated January 13, 1983, this Office held that members of the SC Public Service Authority board would likely be considered officers:

The South Carolina Public Service Authority . . . Board of Directors is established by § 58-31-20 thereof. In performing its duty as defined in § 58-31-20 of the Code of Laws of South Carolina, 1976, as amended, the Authority performs an important governmental function. Rice Hope Plantation v. South Carolina Public Service Authority, 216 S.C. 500, 59 S.E.2d 132 (1950). In exercising these functions, the Authority is given specific powers such as that of eminent domain and to issue bonds that are traditionally viewed as involving an exercise of the State's sovereign power. There is little doubt, therefore, that members of the board of directors of the South Carolina Public Service Authority hold offices within the meaning of the dual office holding provisions of the Constitution.

Op. S.C. Atty. Gen., January 13, 1983. See also, Ops. S.C. Atty. Gen., April 1, 1999 (members are “state officers” for other purposes such as dual office holding); July 10, 1972 (It would thus appear clear that both of these positions [South Carolina Public Service Authority and the Chairmanship of the County Welfare Board] were offices within the meaning of the South Carolina Constitution and the applicable case law). Therefore, it is the opinion of this Office that a court would likely find that one serving on the South Carolina Public Service Authority Board would be considered an officer for dual office holding purposes.

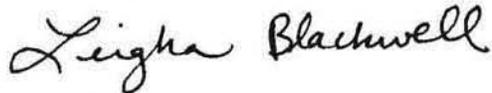
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Conclusion

Serving on the South Carolina Public Service Authority Board would be considered an office for dual office holding purposes. And even though the 1985 Attorney General's opinion stated that service on the board for the Governor's School for the Arts was not an office, there has since been a statutory change which gave members of the board more authority and direct responsibility. Hence, a court would likely find that serving on the Board of Directors for the Governor's School for the Arts and Humanities would be an exercise of sovereign power of the State and would consequently be considered an office for dual office holding purposes.

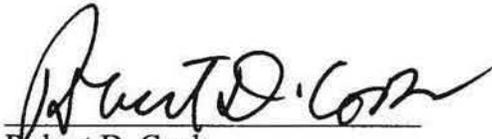
Therefore, it is the opinion of this Office that simultaneous service on the Board of Directors for the Governor's School for the Arts and Humanities and service on the South Carolina Public Service Authority Board known as Santee Cooper would be a violation of the dual office holding provision in the SC Constitution.

Sincerely,



Leigha Blackwell
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General