



ALAN WILSON
ATTORNEY GENERAL

July 8, 2011

F.K. Lancaster, Jr., Interim Director
S.C. Department of Public Safety
PO Box 1993
Blythewood, SC 29016

Dear Mr. Lancaster:

We received Mr. Mark Keel's letter dated June 21, 2011 requesting an opinion of this Office concerning dual office holding. Your office asked whether one would be prohibited "from holding his commission as a State Trooper while simultaneously serving on the WEOC [Waccamaw Economic Opportunity Council] Board of Directors."

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).

This Office has previously concluded that "a highway patrolman holds an office for dual office holding purposes." Ops. Atty. Gen. June 21, 1999; November 9, 1982; October 14, 1982. Also, in State v. Bridges, the South Carolina Supreme Court held that "**Highway Patrol officers and troopers are 'public officials'** within the meaning of section 16-3-1040 of the South Carolina Code of Laws." Bridges, 329 S.C. 11, 15, 495 S.E.2d 196, 199 (1997) (emphasis added). The Court further explained that:

First, as law enforcement officers, they are **charged with the discretionary exercise of the sovereign power**. Specifically, the officers and troopers must enforce the “traffic and other related laws.” S.C.Code Ann. § 23-6-100(A) (Supp. 1996). Second, their positions were created by the Legislature. See id., Third, their duties and powers are established by statute and include accepting money in the form of bail for traffic violations, serving criminal process, and making arrests. See, S.C.Code Ann. §§ 23-6-140 to -150 (Supp. 1996). Finally, each Highway Patrol officer and trooper must file a bond that is conditioned on the faithful performance of his duties. See, S.C.Code Ann. § 23-6-120; see also, S.C.Code Ann. § 8-3-30 (1986) (providing the form of the bond to be given by all public officers).

Bridges, 329 S.C. 11, 14 (emphasis added).

While this Office has written on the WEOC,¹ we have never addressed whether a position on the WEOC is an office. However, in an opinion of this Office dated April 16, 1968, we discussed a similar organization:

The Chesterfield-Marlboro **Economic Opportunity Council, Inc.** is a **non-profit, eleemosynary corporation** chartered under the laws of this State. Its **funds are primarily derived from the Federal government through the Office of Economic Opportunity with certain contributions** coming from ‘in kind’ use of facilities and personnel furnished by the local government agencies.

This agency appears to be a private agency, and membership on the governing body thereof is not, in the opinion of this office, an office within the meaning of the constitutional provision. The duties of the office are not prescribed by the laws of this State, nor do the holders of such offices exercise any portion of the sovereign function of this State. **It appears clear that they occupy a position of private concern and are not officers of this State.**

There would, therefore, **appear to be no reason why membership on the council may not be held by one who occupies another office under the laws of this State.**

Op. S.C. Atty. Gen., April 16, 1968 (emphasis added). Similar to service on the Chesterfield-Marlboro Economic Opportunity Council, it does not appear that service on the WEOC Board of Directors would constitute an office for dual office holding purposes as there is no exercise of sovereign power of the State.

¹ Op. S.C. Atty. Gen., October 16, 2006.

Mr. Lancaster
Page 3
July 8, 2011

Conclusion

While serving as a State Trooper would likely be found to be an office for dual office holding purposes, serving on the WEOC Board of Directors would not be considered an office. Therefore, it is the opinion of this Office that there would be no dual office holding violation should one simultaneously serve as a State Trooper and on the WEOC Board of Directors.

Sincerely,

A handwritten signature in blue ink that reads "Leigha Blackwell Sink". The signature is written in a cursive, flowing style.

Leigha Blackwell Sink
Assistant Attorney General

REVIEWED AND APPROVED BY:

A handwritten signature in blue ink that reads "Robert D. Cook". The signature is written in a cursive, flowing style.

Robert D. Cook
Deputy Attorney General