



ALAN WILSON  
ATTORNEY GENERAL

July 1, 2011

Thomas Martin, Esquire  
Oconee County Attorney  
PO Box 11390  
Columbia, SC 29211

Dear Mr. Martin:

We received your letter requesting an opinion of this Office concerning dual office holding. You asked whether "a member of the Oconee County School Board, as a holder of an office of honor and profit, [can] also serve as a member of the Oconee County Parks, Recreation and Tourism Commission, as established by Oconee County Ordinance 2011-12." Our Office has addressed the question of whether school board members are considered officers for purposes of dual office holding. We have also examined the position of those serving on county parks, recreation and tourism commissions. This opinion will address those prior opinions to determine if a dual office holding violation exists in this instance.

#### **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 advised on numerous occasions that one who serves on a county school board would be considered an officer for dual office holding purposes. Ops. S.C. Atty. Gen., September 3, 2010; December 12, 2007; June 16, 2006; January 29, 1997; July 31, 1992.

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Therefore, it is our opinion that serving as a member of the Oconee County School Board would constitute an office within the meaning of Article XVII, Section 1A of the South Carolina Constitution.

Attached to your request letter, you provided us with a copy of the Oconee County Ordinance creating the Oconee County Parks, Recreation and Tourism Commission ("the Commission"). This ordinance provides that the Commission shall consist of seven members, "selected and appointed by a majority vote of county council. . . . All members of the commission shall reside in the county . . . moving shall constitute a resignation by said member." Oconee County Ordinance No. 2011-12, Section 2-382. "No member may serve more than two full four-year terms consecutively." Oconee County Ordinance No. 2011-12, Section 2-383. The duties and responsibilities for the commission members are set forth as follows:

- (a) To **advise county council** on any matter affecting County Parks, Recreation and Tourism department . . .
- (b) To have the responsibilities and duties for tax advisory commissions . . . all acts of the commission recommending or involving the expenditure of funds and other matters shall be **subject to review and approval by county council**
- (c) To adopt guidelines for its duties and functions to fit the needs and time schedules of area . . . [including] requirements for application for funds generated by the accommodation tax
- (d) To participate in the **recommendation** for formulation of the budget and budgetary appropriations affecting the areas of concern for this commission
- (e) To prepare and present plans and **recommendations** to the Director of Oconee County Parks, Recreation and Tourism in the area of its activity, with recommendations for the implementation of such plans.

Oconee County Ordinance No. 2011-12, Section 385 (emphasis added).

Additionally, "[e]ach member of the commission shall be paid the sum of one hundred dollars per year, plus actual expenses for out of County travel, at the County's approved travel and per diem rates as sole compensation and only as funds allow.

This Office acknowledges that some indicators of an office are present. For example, via an ordinance, the Oconee County Council proscribed a term and duties for the position as well as a method of compensation for members. However, we note there does not appear to be an oath requirement, nor do the duties proscribed indicate the Commission's ability to exercise sovereign power of the State.<sup>1</sup> Moreover, the provision explaining such duties indicates that the Commission is an advisory body. See, Oconee County Ordinance No. 2011-12, Section 385.

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<sup>1</sup> Unlike the responsibilities given to the Commission pursuant to the Oconee County Ordinance 2011-12, section 385, our Office concluded that duties given to members of the Charleston County Parks and Recreation Commission involved the "exercise of the sovereign power of the State" and therefore "constituted an office for dual office

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Prior opinions of this Office concluded members of advisory bodies are not officers for dual office holding purposes because they are not deemed to exercise a portion of the sovereign power of the State. Ops. S.C. Atty. Gen., October 16, 2006 (Georgetown County Parks and Recreation Commission); June 1, 2006 (Education and Economic Development Act Regional Education Center Advisory Board); February 24, 2004 (Beaufort County Solid Waste and Recycling Board); January 15, 2003 (Town of Hilton Head Accommodations Tax Advisory Committee); February 27, 2001 (legal advisory board for the Department of Natural Resources); December 1, 2000 (drought response committee); December 14, 1987 (Children's Foster Care Review Board). Accordingly, we do not find membership on the Commission constitutes an office for purposes of dual office holding.

### Conclusion

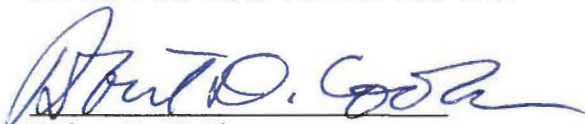
While one's service on the Oconee County School Board would be considered an office for dual office holding purposes, a position on the Oconee County Parks, Recreation and Tourism Commission would not be considered an office. Therefore, it is the opinion of this Office that an individual's simultaneous service in both positions would not violate the dual office prohibition contained in article XVII, section 1A of the South Carolina Constitution. See, Op. S.C. Atty. Gen., March 2, 1999.

Sincerely,



Leigha Blackwell Sink  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Deputy Attorney General

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holding purposes." Members of the Charleston County Parks and Recreation Commission were empowered to "acquire land whereupon to establish county parks and operate such facilities; acquire and operate equipment; fix rates and charges for the use of its facilities; make contracts for construction and other services; issue revenue bonds and expend all funds received." Ops. S.C. Atty. Gen., January 27, 2004; January 29, 1997.