



ALAN WILSON
ATTORNEY GENERAL

September 16, 2011

C. Havird Jones, Jr., Esquire
Assistant Deputy Attorney General
PO Box 11549
Columbia, SC 29211

Dear Mr. Jones:

We received your correspondence requesting an opinion of this Office concerning dual office holding. Of course this Office is aware of your position as Assistant Deputy Attorney General, and you informed us of your recent appointment to be a member of the Clemson University Humanities Advancement Board. You asked “whether accepting this appointment would constitute dual office holding.”

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 consistently opined that one holding the position of Assistant Attorney General or, in this instance, Assistant Deputy Attorney General, would be considered an officer for dual office holding purposes. As Assistant Attorney General or Assistant Deputy Attorney General, “the person exercises some portion of the sovereign power of the State of South Carolina, great or small.” Op. S.C. Atty. Gen., January 7, 2002 (2002 WL 99008). Therefore, your employment

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with this Office as Assistant Deputy Attorney General would constitute an office for dual office holding purposes. See also, Op. S.C. Atty. Gen., May 24, 1995.

To determine whether simultaneous service as a member of the Clemson University Humanities Advancement Board and as Assistant Deputy Attorney General would violate the dual office holding prohibition, we must turn to whether the position of board member on the Clemson University Humanities Advancement Board also constitutes an office.

The Clemson University Humanities Advancement Board (HAB) is not created pursuant to any legislative enactment. It is provided for in the bylaws of the Clemson University Humanities Advancement Board, which states that the board “is a volunteer auxiliary unit of the College of Architecture, Arts and Humanities of Clemson University. The constitution and bylaws of that organization, to the extent they are applicable, take precedence over the bylaws of HAB.” Article I, Section 2. Board members “are responsible for overall policy and direction of HAB.” Article II, Section 1. However, the policy and direction set “shall be in accordance and in alliance with the Clemson University Board of Trustees and the strategic plan of Clemson University. The HAB Board receives no compensation.” *Id.* “All Board members shall serve four-year terms. . . . [and] are required to contribute at least \$1,000 to the Humanities General Operating Account during the fiscal year . . . each year of service.” Article II, Section 7. “The Board shall have no fewer than fifteen (15) members, and no more than fifty (50) members.” Article II, Section 2.

This Office acknowledges that some indicators of an office are present such as a proscribed term and duties for the position. However, we note that there does not appear to be an oath requirement, no compensation is provided, nor do the duties proscribed indicate the Board's ability to exercise sovereign power of the State. Moreover, the provision explaining such duties indicates that the Board is subordinate to the College of Architecture, Arts and Humanities of Clemson University and is mostly a fundraising¹ and advisory body.²

According to the Humanities Advancement Board Mission Statement, “[t]he purpose of the Humanities Advancement Board is to foster the advancement of the humanities at Clemson University.” This office has previously concluded in similar, although not identical, situations

¹ In an opinion of this Office dated July 5, 2005, we found that one’s service on the South Carolina Museum Commission, whose primary function is to provide fundraising support, did not constitute an office for dual office holding purposes. Op. S.C. Atty. Gen., July 5, 2005.

² 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).

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that persons serving on this type of board are not officers for dual office holding purposes. See, Op. S.C. Atty. Gen., November 12, 1975 (Lander College Board of Visitors board member does not constitute an office); June 24, 1983 (one serving on Clemson University Board of Visitors would not be considered an officer); March 27, 195 (Board of Directors of the Governor's School for the Arts did not constitute an office; however, since that time, the S.C. Code of Laws has been amended such that a director would be considered an officer).

The Clemson University Humanities Advancement Board does not appear to exercise any sovereign power of the State, but appears to serve functions of a fundraising and an advisory nature. This being the case, a member of the Clemson University Humanities Advancement Board would not be an officer for dual office holding purposes.

Conclusion

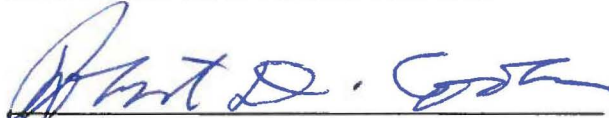
Based on the foregoing, it is the opinion of this Office that a person working as an Assistant Attorney General or Assistant Deputy Attorney General would be considered an officer for dual office holding purposes. However, a person serving on the Clemson University Humanities Advancement Board would not be considered an officer. Therefore, simultaneous service on the Clemson University Humanities Advancement Board and as an Assistant Attorney General or Assistant Deputy Attorney General would not be in violation of the dual office holding provisions of the South Carolina Constitution.

Very truly yours,



Leigha Blackwell Sink
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General