



ALAN WILSON
ATTORNEY GENERAL

November 15, 2011

Chrissy Mobley, Executive Director
Union County Commission on Alcohol and Drug Abuse
Post Office Box 844
Union, South Carolina 29379

Dear Ms. Mobley,

We received your letter requesting an opinion of this Office concerning dual office holding. You ask whether an individual, who is currently the Director of both the Union County Airport Commission and the Union County Stadium Commission, may be appointed by the Union County Council to serve on the Board of Directors for the Union County Commission on Alcohol and Drug Abuse without violating the State's prohibition on dual office holding.

Law/Analysis

Article XVII, Section 1A of the South Carolina Constitution provides that "[n]o 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 a violation of this provision to occur, an individual must concurrently hold two public offices which have duties "involving an exercise of some part of the sovereign power" of the State. Sanders v. Belue, 78 S.C. 171, 174, 58 S.E.2d 762, 763 (1907). A public officer is "[o]ne who is charged by law with duties involving an exercise of some part of the sovereign power, either great or small, in the performance of which the public is concerned, and which are continuing, and not occasional intermittent, is a public officer." Id., 58 S.E.2d at 762-63. Other relevant considerations include: "whether the position was created by the legislature; whether the qualifications for appointment are established; whether the duties, tenure, salary, bond, and oath are prescribed or required; whether the one occupying the position is a representative of the sovereign; among others." State v. Crenshaw, 274 S.C. 475, 478, 266 S.E.2d 61, 62 (1980).

This Office has consistently opined that board members of county commissions on alcohol and drug abuse, including that of Union County, are public officers for purposes of dual office holding. *See Ops. S.C. Atty. Gen.*, April 22, 2005 (Union); May 6, 1992; December 10, 1991; January 17, 1985; February 13, 1984; and March 6, 1989. Therefore, the question is whether the position of director for either a county airport commission or a county stadium commission would likewise be considered a public office.

On numerous occasions, this Office has concluded that board members of county airport commissions are public officers for purposes of dual office holding. *See Ops. Atty. Gen.*, October 14,

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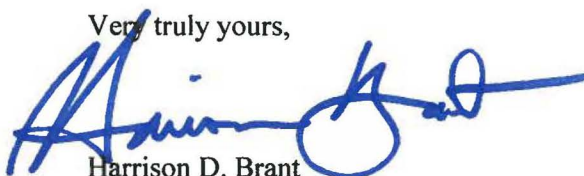
2010; August 29, 2005; July 11, 2005; January 17, 2001; April 29, 1985; January 19, 1983; November 9, 1982; *and* August 22, 1975. Likewise, we have previously opined that membership on a city stadium authority would constitute a public office. Op. S.C. Atty. Gen., February 24, 1975.

However, we have also repeatedly expressed the opinion that the position of "executive director or director is an administrative position which is not an office." Op. S.C. Atty. Gen., March 31, 2011; *see also* Ops. S.C. Atty. Gen., August 29, 2005; May 3, 2005; August 19, 2002; June 24, 1994; *and* May 15, 1989. This is because "[t]he director generally serves at the pleasure of the governing board and would be considered a mere employee." Id. Consistent with these prior opinions, we believe the Director of either the Union County Airport Commission or the Union County Stadium Commission is not a public officer for purposes of dual office holding.

Conclusion

Although one's service on the board of directors of a county commission on drug and alcohol abuse would be considered a public office for purposes of dual office holding, we do not believe the position of director for either a county airport commission or a county stadium commission also constitutes such an office. Consistent with prior opinions, we believe no violation of our State Constitution's prohibition against dual office holding results from one's service on the Board of Directors for the Union County Commission on Drug and Alcohol Abuse while simultaneously serving as Director for either the Union County Airport Commission or the Union County Stadium Commission.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Harrison D. Brant", with a large, stylized flourish at the end.

Harrison D. Brant
Assistant Attorney General

REVIEWED AND APPROVED BY:

A handwritten signature in blue ink, appearing to read "Robert D. Cook", with a large, stylized flourish at the end.

Robert D. Cook
Deputy Attorney General