



ALAN WILSON  
ATTORNEY GENERAL

February 23, 2012

Mr. Kenneth C. Walker  
2810 E. North Avenue  
Anderson, South Carolina 29625

Dear Mr. Walker,

We received your letter requesting an opinion as to whether South Carolina law prohibits you from continuing to serve as Chairperson of the Anderson County Tax Assessment Appeals Board ("Tax Appeals Board") in consideration of your recent appointment to the South Carolina Medical Disciplinary Commission ("Commission"). You explain that is your understanding that you are one of forty-two members of the Commission. The Commission does not have regular meetings, but periodically conducts hearings. Three physician members and one lay member are selected to preside over each hearing. As a result, you indicate you have no way of knowing when or if you might be called upon to serve on a hearing panel for the Commission.

In light of the above information, you specifically ask whether the South Carolina Constitution requires that you resign from your position on the Tax Appeals Board and, if so, when must your resignation be effective.

#### 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 previously issued numerous opinions concluding that one who serves on a county or municipal assessment appeals board holds an office for purposes of dual office holding. See Ops. S.C. Atty. Gen., May 14, 2009; May 24, 1995; August 6, 1991; December 11, 1990. Therefore, the question we must answer is whether service as a member of the Commission also constitutes an office.

The Legislature created the Commission through the enactment of legislation, and has also provided for the appointment, qualifications, tenure, duties, and authority of its members:

(A) There is created the Medical Disciplinary Commission of the State Board of Medical Examiners to be composed of thirty-six physician members appointed by the board and twelve lay members appointed by the Governor. The physician members of the commission must be licensed physicians practicing their profession, and they must be without prior disciplinary action or conviction of a felony or other crime of moral turpitude. Five physician commissioners must be appointed from each of the six congressional districts and must reside in the district, which they are appointed to represent, and six physician members of the commission must be appointed from the State at large. At-large members must be currently licensed and actively practicing medicine in this State and must reside within the State at the time of appointment and throughout their terms. One physician commissioner initially appointed from each congressional district shall serve a term of one year and until a successor is appointed and qualified. One physician commissioner initially appointed from each congressional district shall serve a term of two years and until a successor is appointed and qualified. One physician commissioner initially appointed from each congressional district shall serve a term of three years and until a successor is appointed and qualified. The successors of the initial physician commissioners shall serve terms of three years or until their successors are appointed and qualified. The members of the commission are limited to three consecutive terms. A member of the board may not simultaneously serve as a commissioner. In case of a vacancy by way of death, resignation, or otherwise, the board shall appoint a successor to serve for the unexpired portion of the term. Where justice, fairness, or other circumstances so require, the board may appoint past commissioners to hear complaints in individual cases.

(B) All lay commissioners must hold a baccalaureate degree or higher, must not have been convicted of a felony or other crime of moral turpitude, and must not be employed or have a member of their immediate family employed in a health or medically related field. Two lay commissioners must be appointed by the Governor from each of the six congressional districts, with the advice and consent of the Senate. Each lay commissioner must be a registered voter and reside in the congressional district he represents throughout his term. Each lay commissioner initially appointed from each district shall serve for a term of three years and until his successor is appointed and qualified. Vacancies must be filled in the manner of the original appointment for the remainder of the unexpired portion of the term. The Governor may appoint a lay commissioner to serve a full term; however, a lay commissioner may not serve more than three consecutive terms.

(C) The commission is empowered to hear those formal complaints filed against practitioners authorized to practice under this chapter, unless otherwise provided in this chapter. These hearings must be conducted in accordance with the Administrative Procedures Act and with regulations promulgated by the board and must be before a panel composed of not more than three physician commissioners and one lay commissioner. **The panel is empowered to hear the matters complained of and to**

**recommend findings of fact and conclusions of law to the board. The panel shall submit a certified report of its proceedings, including its findings of fact, conclusions of law, and mitigating and aggravating circumstances, for consideration by the board in rendering a final decision and shall file this report with the department.**

(D) The physician members of the commission may serve as expert reviewers and witnesses in investigations and proceedings pursuant to this chapter. A physician commissioner who serves as an expert reviewer or witness in an investigation or proceeding may not serve on the hearing panel for that particular matter or related matters.

S.C. Code Ann. § 40-47-11.

Furthermore, section 40-47-117 provides that after a formal misconduct hearing before a panel of the Commission, the panel submits a certified report to the Board of Medical Examiners. If the panel finds the accused guilty of misconduct, the panel's certified report shall include "its *recommendation* as to findings of fact, conclusions of law, and mitigating and aggravating circumstances for consideration by the board ...." § 40-47-117(B)(3) (emphasis added). This subsection further provides that "[t]he panel *may not recommend* to the board whether a sanction should or should not be imposed." *Id.* (emphasis added). The Board of Medical Examiners has the sole authority to make a final determination as to whether the accused is guilty of misconduct. § 40-47-117(D)-(F).

We have never had the occasion to address whether the Commission is an office for purposes of dual office holding, although we have issued numerous opinions concluding that members of state professional and occupational licensing boards similar to the Board of Medical Examiners do hold an office for such purposes. See Ops. S.C. Atty. Gen., April 1, 2009 (Board of Examiners in Psychology); October 8, 2003 (Board of Law Examiners); April 12, 1993 (Board of Examiners in Opticianry, Board of Examiners in Optometry, and Board of Physical Therapy Examiners); March 8, 1979 (Board of Pharmaceutical Examiners); and December 22, 1975 (Board of Dental Examiners).

However, it is clear from sections 40-47-11 and 40-47-117 that the Commission's authority is limited to hearing formal complaints and making recommendations. The Board of Medical Examiners ultimately retains all disciplinary authority. We have repeatedly opined that the members of such advisory bodies, although they possess some characteristics of an office, do not exercise a portion of the sovereign power of the State and thus do not hold offices for purposes of dual office holding. See Ops. S.C. Atty. Gen., April 18, 2011 (Uniform Law Commission); August 5, 2008 (Commission for Lawyer Conduct); December 18, 2008 (Cherokee County Foster Care Review Board); December 1, 2000 (Local Drought Response Committee); May 15, 1989 (Work Support Advisory Council); May 9, 1989 (Indigent Care Advisory Board); and September 18, 1975 (State Personnel Advisory Council). Likewise, we are of the opinion that a member of the Commission does not hold an office for purposes of dual office holding.

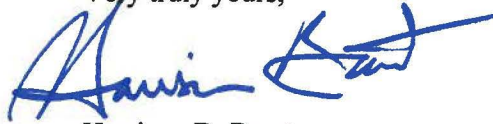
### Conclusion

Consistent with prior opinions of this Office, we believe that an individual who serves on the Anderson County Tax Assessment Appeals Board holds an office for purposes of the constitutional prohibition against dual office holding. However, we have concluded on numerous occasions that members of advisory bodies such as the Medical Disciplinary Commission do not exercise a portion of

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the sovereign power of the State and thus do not hold such an office. Accordingly, we believe you may continue to serve on the Anderson County Tax Assessment Appeals Board despite your recent appointment to the Medical Disciplinary Commission.

Very truly yours,



Harrison D. Brant  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Deputy Attorney General