



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY MCMASTER
ATTORNEY GENERAL

November 7, 2003

Walter H. Sanders, Jr., Esquire
Allendale County Attorney
Post Office Box 840
Fairfax, South Carolina 29827

Dear Mr. Sanders:

You have requested an advisory opinion from this Office concerning dual office holding. You ask whether person may concurrently be a member of the Fairfax Town Council and the Allendale County Development Board without violating the dual office holding provisions of the South Carolina Constitution.

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 notary public. For this provision to be contravened, a person concurrently must hold two 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). Other relevant considerations are whether statutes, or other such authority, establish the position, prescribe its 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 a member of a city or town council would be considered an officer for dual office holding purposes. See, as representative of those numerous opinions, Ops. S.C. Atty. Gen. dated July 19, 2001; April 12, 1998; June 12, 1995; February 4, 1994; July 23, 1993. Therefore, the question turns to whether a position on the Allendale County Development Board would likewise be considered an office.

This Office has the opportunity in prior opinions to opine as to whether positions on the Hampton County Economic Development Board, the Bamberg County Economic Development Commission, the Marlboro County Development Board, the Dillon County Development Board and the Florence County Development Board would constitute an office. See, Op. S.C. Atty. Gen., March 19, 2003 (Hampton); January 31, 1994 (Bamberg); June 12, 1997 (Marlboro); August 9, 1991 (Dillon); April 5, 1990 (Florence). In each of these opinions, we found membership on these entities did not constitute holding an office. While these entities possessed slightly varying names, the

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principal function of each was the same – to promote and encourage economic development. Thus, while we have not examined the specific enabling authority or the powers and duties of the Allendale County Development Board, it is probable that the authority of this board is basically the same as other similar entities, referenced above. As indicated, our conclusion has been consistent that membership on these boards and commissions does not constitute an office for dual office holding.

Based on the forgoing authorities, it is the opinion of this Office that a person who concurrently holds membership on the Fairfax Town Council and the Allendale County Development Board would not violate the constitutional prohibition on dual office holding.

Very truly yours,

A handwritten signature in black ink, appearing to read 'R. Cook', written over the typed name.

Robert D. Cook
Assistant Deputy Attorney General