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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

March 19, 2003

A. G. Solomons, Jr., Esquire
Hampton County Attorney
P. O. Box 969
Estill, South Carolina 29918

Dear Mr. Solomons:

As Hampton County Attorney, you have asked for an opinion regarding dual office holding. By way of background, you provide the following information:

[w]e have an individual who has been appointed by Hampton County Council to the Hampton County Economic Development Board. This Board meets regularly to discuss industrial prospects for the County and for other economic development reasons. The individual is also seeking appointment by Hampton County Council to the Lawcountry Work Force Investment Board. It is my understanding that this board administers employment training programs and funds associated therewith. Would contemporaneous appointments to these two Boards violate the prohibition against dual office holding as proscribed by Article XVII, Section 1A 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).

With respect to the Hampton County Economic Development Board, we are aware of no opinion of this Office in which this entity has been addressed in terms of whether membership thereupon constitutes an office for dual office holding purposes. However, in an opinion dated July 27, 1989, we concluded that the Hampton County Industrial Commission was not an office for

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dual office holding purposes. It is not clear from your letter whether this is the same entity or a predecessor to the Hampton County Economic Development Board. However, in that same opinion, we noted that we had reached a similar conclusion with respect to the Kershaw County Industrial Development Board. Moreover, we have similarly opined as to the Bamberg County Development Board, the Bamberg County Economic Development Commission, the Marlboro County Development Board, the Dillon County Development Board and the Florence County Development Board. See, Op. S.C. Atty. Gen., February 24, 2000; January 31, 1994 (Bamberg); June 12, 10997 (Marlboro); August 9, 1991 (Dillon); April 5, 1990 (Florence); October 18, 1988 (Kershaw). 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 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 Hampton 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.

However, even if we assume for the sake of argument that membership on the Hampton County Economic Development Board constitutes an office, the situation you reference would not, in our opinion, constitute dual office holding. The Lowcountry Workforce Investment Board is created pursuant to federal law, the Workforce Investment Act, PL 105-220, 112 Stat. 936. The Attorney General of Delaware has described the federal legislation's purpose and implementation as follows:

[t]he Workforce Investment Act ... is a federal appropriations bill that envisions a relationship between the U.S. Department of Labor and the Governors of participating states. The Act sets the criteria for qualifying grants to the states, establishes oversight through the U.S. Department of Labor and requires the establishment of local boards through the Governors of the participating states. The Board's powers and responsibilities arise from the federal statutes and the delegation of authority by the Governor.

Del. Op. Atty. Gen. 01-1307 (April 26, 2001).

We have located no statute enacted by the General Assembly which deals with this federal program or sets forth additional powers under state law with respect to local boards such as the Lowcountry Workforce Investment Board. You have likewise indicated that no ordinance exists regarding additional powers of the Lowcountry Workforce Investment Board. Thus, it is evident that the Workforce Investment program in South Carolina is established through the Office of Governor, presumably by executive order. PL 105-220 bestows broad authority upon local boards, including submitting a local plan to the Governor, selection and certification of certain personnel, identification of eligible providers of intensive services, budgetary responsibilities, etc.

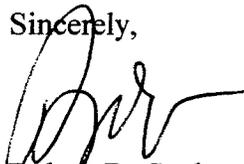
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Numerous opinions which have been issued by this Office in past years have considered whether positions required by or established under federal law would be considered offices for purposes of dual office holding. We have consistently concluded that a position established pursuant to federal law would not be an office for purposes of Article XVII, § 1A. See, Ops. S.C. Atty. Gen., May 31, and opinions cited therein. Moreover, in an Opinion dated April 5, 1994, we concluded that service on the Governor's Workforce Initiative did not constitute an office for dual office holding purposes because such position was created pursuant to executive order of the Governor rather than statute, regulation or ordinance. There, we commented as follows:

The Governor's Work Force Initiative was created by the Governor by Executive Order # 90-31. We can locate no statutory or constitutional authority which specifically mandated that the entity be created. In the absence of such authority, this Office has consistently concluded that membership of an entity created pursuant to executive order by a governor most probably would not constitute an office. As examples, see Ops. Atty. Gen. dated May 6, 1992 (as to the Council on Vocational and Technical Education); August 1, 1985 (as to the Youth Employment Coordinating Council (as to the Youth Employment Coordinating Council)); March 27, 1985 (as to the Governor's School for the Arts board); and July 9, 1982 (as to the Governor's Resource Panel for the Elderly), among others.

Accordingly, based upon the information which you have provided, as well as the foregoing authorities, it is our opinion that concurrent service on the Hampton County Economic Development Board and the Lowcountry Workforce Investment Board would not constitute dual office holding under Article XVII, § 1A of the South Carolina Constitution.

Sincerely,



Robert D. Cook
Assistant Deputy Attorney General

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