

7632 Liberty



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

October 8, 2003

The Honorable J. G. McGee
S.C. House of Representatives
District No. 63, Florence County
420-A Blatt Building
Columbia, South Carolina 29211

Dear Representative McGee:

You have requested an advisory opinion from this Office concerning dual office holding. This request serves as a follow up to an opinion that this Office issued at your request on August 12 of this year regarding Mr. Charles A. Appleby. You have indicated Mr. Appleby was elected by the General Assembly to serve on the Board of Trustees of the Medical University of South Carolina (MUSC) in 2002, and has served continuously as a Trustee since his election. We concluded in our previous opinion that Mr. Appleby, as a Trustee for MUSC, could not simultaneously serve on the Florence Housing Authority without violating the constitutional prohibition on dual office holding. You indicate in your current request that Mr. Appleby is now being considered for a position on the advisory committee of the federal Small Business Administration. It is your understanding that since this is a federal appointment it would not violate the dual office holding provision of the South Carolina Constitution, but you inquire as to the legality of that position out of an abundance of caution.

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).

As we indicated in the August 12, 2003 opinion, this Office has advised on several occasions that a member of the Board of Trustees for MUSC would be considered an officer for dual office holding purposes. See Ops. S.C. Atty. Gen. dated March 30, 2000; July 27, 1989; June 28, 1984.

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Rembert C. Dennis, Attorney

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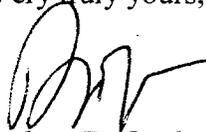
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This conclusion has been reached on the authority of other numerous opinions of this office that a college or university trustee undoubtedly exercises a portion of the State's sovereign power. See Ops. S.C. Atty. Gen. dated May 8, 2001; October 18, 2000; November 21, 1996. Therefore, the question turns is whether a position on the advisory committee of the federal Small Business Administration would likewise be considered an office.

The Small Business Administration is established and governed by 15 U.S.C.A. §631, et seq. 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., dated March 19, 2003; June 27, 1997; May 31, 1996 and opinions cited therein. We are aware of no state statute that comments as to the advisory committee for the federal Small Business Administration. Accordingly, we advise that a position on the advisory committee for the Small Business Administration would not be considered an office for dual office holding purposes.

Based on the forgoing authorities, it is our opinion that a person who simultaneously serves on the Board of Trustees for the Medical University of South Carolina and the advisory committee for the federal Small Business Administration would not violate the constitutional prohibition on dual office holding.

Very truly yours,



Robert D. Cook

Assistant Deputy Attorney General

RDC/an