

6843 Liberty



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON
ATTORNEY GENERAL

February 24, 2000

Ms. Alzena Robinson
102 Rhoad Park Street
Bamberg, South Carolina 29003

Dear Ms. Robinson:

Your opinion request has been forwarded to me for reply. You ask whether the dual office holding prohibitions of the state constitution would be violated if you were to simultaneously serve as a member of the Bamberg County Election Commission and as a member of the Bamberg County Development Board.

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 public 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 county or municipal election commission would be considered an office holder for dual office holding purposes. Ops. Atty. Gen. dated April 21, 1998 and February 23, 1995.

In an opinion dated January 31, 1994, we concluded that a member of the Bamberg County Economic Development Commission is an office holder for dual office holding purposes. This opinion was based on Ordinance No. 11-85-1 of the Bamberg County Code. However, you have provided information which indicates that Ordinance No. 11-85-1 has been repealed by county council, and Ordinance No. 11-7-98 (hereinafter the "Ordinance") now governs the Bamberg County Development Board (hereinafter the "Board"). Therefore,

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we must review the Ordinance to determine whether it alters the conclusions reached in the 1994 opinion.

The Ordinance sets forth the composition of the Board. In addition to other specified members, each county council member, including the chairman of council, nominates one individual for service on the Board, subject to the approval of a simple majority of council members present. Each Board member's term of membership is concurrent with the regular term of the council district whose elected member of council made the nomination and serves at the pleasure of council. The Ordinance does not provide for compensation of members or require members to take an oath of office.

Duties and powers of the Board are set forth in Section 2 of the Ordinance. The overall purpose of the Board is to advance the general welfare of all of the people of Bamberg County, and to retain and expand the county's tax base. Among other things, the Board shall promote and encourage industrial development, commercial enterprises, private business and the production of agricultural products; seek opportunities to promote infrastructure development; promote and encourage tourist trade; and, advise county council on all economic development matters and appropriate financial matters. Pursuant to Section 3 of the Ordinance, the Board, with county council's approval, may accept gifts and grants of money, real property, and anything else of value from public and private sources to be used in carrying out its functions.

In light of the powers granted to the Board under the Ordinance, it now appears that members of the Board are analogous to members of those development boards which this Office has previously concluded would not likely be office holders. See Ops. Atty. Gen. dated June 12, 1997 (Marlboro County), August 9, 1991 (Dillon County), April 5, 1990 (Florence County), July 27, 1989 (Hampton County), and October 18, 1988 (Kershaw County). Therefore, it does not appear that the dual office holding prohibitions of the state constitution would be violated if one were to serve as a member of the Bamberg County Election Commission and the Bamberg County Development Board.¹

This letter is an informal opinion only. It has been written by a designated assistant attorney general and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

¹ To the extent that today's opinion is inconsistent with the prior opinion of this Office dated January 31, 1994, today's opinion will be deemed controlling.

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With best personal regards, I am

Sincerely yours,



Paul M. Koch
Assistant Attorney General

REVIEWED AND APPROVED BY:



Zeb C. Williams, III
Deputy Attorney General