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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

February 9, 2001

Peter P. Nomikos, Code Enforcement Administrator
County of Greenville
County Square
301 University Ridge, Suite 4100
Greenville, South Carolina 29601-3665

RE: Informal Opinion

Dear Mr. Nomikos:

By your letter of January 22, 2001, you have requested an opinion of this Office concerning dual office holding. You are commissioned as a code enforcement officer for the unincorporated areas of Greenville County pursuant to South Carolina Code of Laws Section 4-9-145. You have also been asked by the City of Fountain Inn to serve without compensation on the Construction Appeals Board.

You write in your letter that "appointment to the Construction Appeals Board for this municipality appears to be a violation of Article VI, Section 3 of the South Carolina Constitution." Although we have not reviewed the enabling ordinance creating the Construction Appeals Board, this Office concluded in an informal opinion dated July 17, 1996 that service on a municipal construction appeals board would constitute office holding for purposes of the Constitution's prohibition against dual office holding. This opinion is enclosed for your review. If the Construction Appeals Board created by the City of Fountain Inn is comparable to the Construction Appeals Board discussed in the opinion of July 17, 1996, this Office would likely conclude that service on the Fountain Inn Construction Appeals Board, while also serving in another office, would be prohibitive.

More importantly, in your letter you make significant arguments questioning the status of a code enforcement officer as an officer for dual office holding purposes. As you point out, Section 4-9-145 of the South Carolina Code of Laws states:

The governing body of a county may appoint and commission as many code enforcement officers as may be necessary for the proper security, general welfare, and convenience of the county. *These officers are vested with all the powers and duties conferred by law upon*

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constables in addition to duties imposed upon them by the governing body of the county.
However, no code enforcement officer commissioned under this section may perform a custodial arrest. . . .

(Emphasis added). This statute confers upon code enforcement officers the same powers and duties of constables, in addition to any duties determined by the counties. The dual office holding provisions of the State Constitution, Article III, Section 24, Article VI, Section 3 and Article XVII, Section 1A, make exceptions, in part, for officers in the militia, members of lawfully and regularly organized fire departments, constables, and notaries public. Because constables are exempted from the dual office holding provision and code enforcement officers have the same powers and duties as constables, you argue that code enforcement officers must also be exempt from dual office holding. Although you certainly present an interesting argument, we believe a court would ultimately conclude that a code enforcement officer holds an office for purposes of the Constitution's prohibition, consistent with earlier opinions of our Office.

First, in 1989 Article III, Section 24, Article VI, Section 3 and Article XVII, Section 1A were amended to provide that the prohibition is not applicable to "constables" who hold another office. This Office has interpreted such provision as being applicable only to individuals appointed by the Governor pursuant to Section 23-1-60 of the Code as state constables. See Ops. Atty. Gen. May 2, 1989; January 31, 1989. In accordance with these prior opinions, an individual appointed to constable pursuant to other provisions of the Code would remain an officer for dual office holding purpose. Thus, in our opinion, not all constables are exempt from the dual office holding provision. Section 4-9-145 confers the powers and duties of "constables" on code enforcement officers, but makes no mention of which constables the General Assembly intends. Given the uncertainty of Section 4-9-145 and the limited application of the constable exception in the Constitution, this Office would not equate the status of all code enforcement officers to the status of all constables.

Second, before the amendment to the State Constitution in 1989, constables by their powers and duties clearly would have been considered officers for dual office holding purposes. See Ops. Atty. Gen. Feb. 29, 1960; July 12, 1976. The Constitution was amended specifically to add constables and members of regularly organized fire departments to the list of exceptions to the dual office holding prohibition. A cardinal rule of statutory construction is "expressio unius est exclusio alterius" or "the enumeration of particular things excludes the idea of something else not mentioned." See Pennsylvania National Mutual Casualty Insurance Co. v. Parker, 282 S.C. 546, 320 S.E.2d 458 (1984). Under this rule of construction, the fact that a code enforcement officer is not listed as an exception, when other officers so clearly are, indicates that the position should not be viewed as an exception.

For all of the foregoing, it continues to remain the opinion of this Office that code enforcement offices would hold an office for purposes of the Constitution's dual office holding prohibitions. This letter is an informal opinion only. It has been written by a designated Deputy

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Attorney General and represents the position of the undersigned attorney as to the specific question asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kind regards, I remain

Very truly yours,

A handwritten signature in cursive script that reads "Zeb Williams".

Zeb C. Williams, III
Deputy Attorney General