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The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON  
ATTORNEY GENERAL

January 17, 2001

G. Edward Welmaker, Esquire  
Pickens County Attorney  
Post Office Box 899  
Pickens, South Carolina 29671

Dear Mr. Welmaker:

By your letter of January 5, 2001, you have asked whether a dual office holding situation would exist if an individual were to serve simultaneously as a member of the Pickens County Aeronautics Commission and as an elected city council member. For the reasons set forth below, it is my opinion that concurrent service in these positions would violate the South Carolina Constitution's prohibition against dual office holding.

Article XVII, Section 1A of the South Carolina 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, a member of a lawfully and regularly organized fire department, constable, or a notary public. As concluded by Attorney General Daniel McLeod in an opinion dated April 26, 1977, "[t]o determine whether a position is an office or not depends upon a number of circumstances and is not subject to any precise formula." The South Carolina Supreme Court, though, has held that 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). "One who is charged by law with duties involving an exercise of some part of the sovereign power, either small or great, in the performance of which the public is concerned, and which are continuing and not occasional or intermittent, is a public officer." Id., 78 S.C. at 174. Other relevant considerations, as identified by the Court, are whether statutes, or other authority, establish the position, prescribe its tenure, 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).

*Request Letter*

Mr. Welmaker  
January 17, 2001  
Page 2

This Office has advised on numerous occasions that a member of a city council would be considered an officer for dual office holding purposes. *See, Ops. Atty. Gen.* dated April 2, 1998; May 8, 1997; March 20, 1995; and many others. Accordingly, having determined that city council members are office holders within the meaning of Art. XVII, Sec. 1A, it is necessary, then, to address whether membership on the Pickens County Aeronautics Commission would likewise constitute an office. Once again, reference to this Office's earlier opinions are instructive. This Office has determined on at least four occasions that one who serves on a county airport commission would hold an office for dual office holding purposes. *See, Ops. Atty. Gen.* dated April 29, 1985; January 19, 1983; November 9, 1982; and August 22, 1975 (enclosed). Moreover, upon review of the legislation that created the Pickens County Aeronautics Commission, Act No. 184 of 1967, it appears that its members are vested with sufficient authority to exercise at least a portion of the State's sovereign power. Therefore, consistent with the reasoning and conclusions of these earlier rulings, it is my opinion that a member of the Pickens County Aeronautics Commission is an officer and could not simultaneously serve as a city council member without violating the dual office holding prohibitions of the State Constitution. Additionally, please note that the enclosed opinions also discuss how the law operates to cure a dual office holding situation.

Thank you for contacting Attorney General Condon's Office. I trust this information is responsive to your inquiry and that you will not hesitate to contact me if I can be of further assistance.

Sincerely yours,



Zeb C. Williams, III  
Deputy Attorney General

ZCW,III/an  
Enclosures