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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

September 14, 2001

John L. Weaver, Esquire
P.O. Box 1236
Conway, South Carolina 29526

RE: Informal Opinion

Dear Mr. Weaver,

By your letter of August 1, 2001, you have requested an opinion of this Office concerning a member of the Horry County Accommodations Tax Committee. You inform us that he serves as the Chairman of the Accommodations Tax Committee and his four year term expires on June 30, 2003. This individual was also recently appointed to the state's newly created Tourism Expenditure Review Committee. You now ask if his simultaneous service on both of these committees would violate the South Carolina Constitution's prohibition against dual office holding.

Article XVII, Section 1A of the South Carolina Constitution states 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. The South Carolina Supreme Court 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).

A municipality or county receiving a certain amount of revenue from an accommodations tax must appoint an advisory committee to make recommendations on the expenditure of revenue generated from the accommodations tax. See S.C. Code Ann. § 6-4-25. The advisory committee consists of seven members with a majority of the committee members being selected from the hospitality industry of the municipality or county receiving the revenue.

Respectfully

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Applying the standards from Sanders and Crenshaw, a member of such an advisory committee would not appear to hold an office. The members are authorized only to make recommendations as to expenditure of revenues; they are not charged with the exercise of a portion of the sovereign power of the State. A statute does establish the position of committee member and does specify a qualification for some members, in that a majority must be from the hospitality industry of the county or municipality; thus, for some members, no qualifications are specified. Neither tenure nor salary is provided for, and no oath of office is required. Thus, the position would not be an office. This opinion concerning the advisory committee is consistent with previous opinions of this Office holding that members of advisory bodies do not hold an office for dual office holding purposes. See OPS. ATTY. GEN. Apr. 26, 1977; Mar. 11, 1982; and Mar.1, 1983.

For future reference, it is our opinion that service on the Tourism Expenditure Review Committee would constitute office holding. In contrast to the position on the advisory Accommodations Tax Committee, a member of the Tourism Expenditure Review Committee does exercise some sovereign power of the state. Act No. 74 of the 2001 Acts and Joint Resolutions states that the Committee "shall serve as the oversight authority on all questionable tourism-related expenditures and to that end, all reports filed pursuant to Section 26 6-4-25(D)(3) must be forwarded to the committee for review to determine if they are in compliance with this chapter." Furthermore, if the committee deems a local expenditure of accommodations tax revenue improper, "it shall certify the noncompliance to the State Treasurer, who shall withhold the amount of the expenditure found in noncompliance from subsequent distributions in accommodations tax revenue otherwise due the municipality or county." In other words, the Committee has the authority to direct the State Treasurer to withhold funds from a local government. This authority, as well as other indicia in Act 74, such as the prescribed four-year term of office, compels me to conclude that a member of the Tourism Expenditure Review Committee would hold an office for dual office holding purposes. However, for the reasons I stated above, one who is a member of the Tourism Expenditure Review Committee could serve on an advisory committee without contravening the dual office holding provisions of the Constitution.

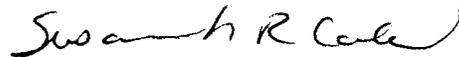
Although there appears to be no dual office holding considerations for a person serving in both of these positions, because the County Accommodations Tax Committee makes recommendations to the county on expenditures that are ultimately reviewed by the Tourism Expenditure Review Committee, arguably a conflict of interest exists. Ascertaining whether such dual service creates a conflict of interest requires an interpretation of the Ethics, Government Accountability, and Campaign Reform Act of 1991, specifically S.C. Code Ann. § 8-13-700(B). Pursuant to S.C. Code Ann. §8-13-320(11), the South Carolina General Assembly has delegated primary responsibility for interpreting the Act's provisions to the South Carolina State Ethics Commission. Accordingly, this Office must defer to the State Ethics Commission in regard to this particular issue. You may contact the Commission by writing to Mr. Herbert Hayden, Executive Director, State Ethics Commission, 5000 Thurmond Mall, Suite 250, Columbia, SC 29201.

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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 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,



Susannah Cole
Assistant Attorney General