



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON
ATTORNEY GENERAL

March 16, 1999

The Honorable Liston D. Barfield
Chairman, Horry County Legislative Delegation
Post Office Box 1236
Conway, South Carolina 29528

RE: Informal Opinion

Dear Representative Barfield:

By your letter of March 1, 1999, you have asked whether a dual office holding situation would exist if a member of the City of North Myrtle Beach Board of Zoning Appeals were to simultaneously serve on the Horry County Higher Education Commission.

As you know, 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."

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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).

The Horry County Higher Education Commission (the "Commission") was created by Act No. 114, 1959 Acts and Joint Resolutions, as amended. The Commission was empowered to enter into contracts with institutions of higher learning to operate a school or schools of higher learning in Horry County. Powers and duties are specified in Section 3 of Act 131 of 1963 and include the powers to sue and be sued, to adopt and use a corporate seal, to adopt rules and regulations, to enter into contracts and leases, to acquire real and personal property, and so forth. Prior opinions of this Office have consistently held that powers such as these clearly involve an exercise of some portion of the State's sovereignty. *See, e.g., Ops. Atty. Gen.*, January 27, 1976; January 9, 1992; and December 14, 1995. Moreover, by an opinion of this Office dated May 28, 1959, "**[m]embers ... of the Horry County Higher Education Commission are officers and are, therefore, subject to the dual office holding provision of our State Constitution.**" (Emphasis added.) Thus, having concluded that the Horry County Higher Education Commission is an office within the meaning of Art. XVII, Sec. 1A, it is necessary, then, to address whether service on the North Myrtle Beach Zoning Appeals Board would likewise constitute an office.

Apparently, this Office has not previously considered whether membership on the North Myrtle Beach Zoning Appeals Board would constitute an office for dual office holding purposes. We have determined, however, that members of other Zoning Appeals Boards are officers. *See, e.g., Ops. Atty. Gen.*, January 27, 1976 (Georgetown County Zoning Appeals Board); and May 2, 1977 (City of Greenville Zoning Appeals Board). In these earlier opinions, we held that the power to hear and decide appeals made by citizens asking for special exceptions to certain zoning requirements involved an exercise of some part of the State's sovereign power. Therefore, in accord with our previous rulings, a member of the City of North Myrtle Beach Board of Zoning Appeals would hold an office for dual office holding purposes. Moreover, concurrent membership on the Horry County Higher Education Commission and the City of North Myrtle Beach Board of Zoning Appeals would violate the South Carolina Constitution's dual office holding provisions.

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

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With kind regards, I am

Sincerely yours,

A handwritten signature in cursive script that reads "Zeb Williams". The signature is written in black ink and is positioned above the printed name.

Zeb C. Williams, III
Deputy Attorney General

ZCW/an