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The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON  
ATTORNEY GENERAL

September 20, 1999

The Honorable Jerry Robertson  
Mayor, City of Manning  
101 Old Georgetown Road  
Manning, SC 29102

The Honorable Hezekiah Gibson  
Mayor Pro-Tem, City of Manning  
101 Old Georgetown Road  
Manning, SC 29102

Dear Mayor Robertson and Mayor Pro-Tem Gibson:

By your letter of May 18, 1999, you have asked whether a dual office-holding situation would exist under Article XVII, § 1A of the state constitution if a member of the Manning City Council should simultaneously serve as a member of the Clarendon County District Two School Board.

Enclosed for your review are prior opinions of this Office dated October 25, 1984; September 30, 1981; July 31, 1967, April 8, 1965; and August 12, 1959. As you can see, the longstanding position of this Office is that simultaneous membership on a city council and a school district board of trustees constitutes a violation of our state constitution's prohibition against dual office-holding. Although an opinion dated July 31, 1992 states that, "membership on the Clarendon County District Two school board *does not appear to fall clearly within the scope of prior opinions as to school board members*" (emphasis added), I must respectfully conclude to the contrary. While an opinion of this Office is presumed to be correct until it has been shown to be clearly erroneous, my review of the pertinent acts convinces me that the better reading of the law is to treat Clarendon County District Two Trustees as office-holders for the purposes of Article XVII, § 1A of the state constitution. In addition to those powers enumerated in the 1992 opinion, *i.e.* submit annual budgets and

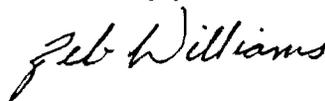
The Honorable Jerry Robertson  
The Honorable Hezekiah Gibson  
Page 2  
September 20, 1999

charge certain fees, District Two Trustees are authorized to borrow money, and their terms of office are set by law. Overwhelmingly, these criteria are indicative of an office. See, e.g., Ops. Atty. Gen. dated January 7, 1997; January 9, 1992; and October 19, 1990. Accordingly, I am constrained to conclude that simultaneous membership on Manning City Council and the Clarendon County District Two Board of Trustees would create a dual office holding problem.

When a dual office holding situation occurs, the law operates to automatically "cure" the problem. If an individual holds one office on the date he assumes a second office, assuming both offices fall within the purview of Article XVII, § 1A of the Constitution (or one of the other applicable constitutional prohibitions against dual office holding), he is deemed by law to have vacated the first office. However, the individual may continue to perform the duties of the previously held office as a de facto officer until a successor is duly selected to assume the duties or complete the term of office. Actions taken by a de facto officer in relation to the public or third parties will be considered as valid and effectual as those of a de jure officer unless or until a court would declare such acts void or remove the de facto officer from office. Ops. Atty. Gen. dated April 8, 1996 and July 13, 1995.

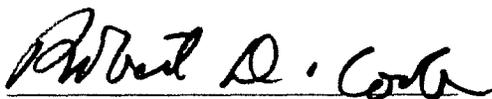
With kind regards, I am

Sincerely yours,



Zeb C. Williams, III  
Deputy Attorney General

**REVIEWED AND APPROVED:**



Robert D. Cook, Special Counsel

ZCW/an  
Enclosures