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OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON  
ATTORNEY GENERAL

September 28, 1998

The Honorable Larry Grooms  
Senator, District No. 37  
P.O. Box 355  
Bonneau, South Carolina 29431

Dear Senator Grooms:

Your opinion request has been forwarded to me for reply. You have asked the following question:

Does serving on the Walterboro/Colleton Airport Commission violate the dual office holding prohibition when the commission is composed of the following five members: Walterboro Mayor, Walterboro City Council member, Colleton County Council member, Colleton County Auditor, Colleton County Treasurer serving ex officio?

The Walterboro-Colleton County Airport Commission was created by Act No. 584 of 1946. The composition of the Commission was set forth in Section 1 of the Act. By Act No. 206 of 1993, the General Assembly amended Section 1 to change the composition of the commission. The amendment provides in pertinent part as follows:

The commission shall consist of five members who are the mayor of Walterboro, the chairman of the county council of Colleton County, the treasurer of Colleton County, and the auditor of Colleton County, the membership on the commission being held ex officio by the above-mentioned officers. The remaining member must be a member of the Walterboro City Council to be elected by the council.

Article XVII, Section 1A of the State Constitution provides that "no person may hold two offices of honor or profit at the same time ...," with exceptions specified for an

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officer in the militia, member of a lawfully and regularly organized fire department, constable, or notary public. For this provision to be contravened, a person concurrently must hold two public 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). Other relevant considerations are whether statutes, or other such authority, establish the position, prescribe its 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).

While the constitution prohibits dual office holding, such prohibition does not generally apply when one of the offices is held ex officio. The phrase ex officio is defined as "[f]rom office; by virtue of the office" or "[f]rom office; by virtue of office; officially. A term applied to an authority derived from official character merely, not expressly conferred upon the individual, but rather annexed to the official position." Lobrano v. Police Jury of Parish of Plaquemines, 150 La. 14, 90 So. 423 (1921). In Ashmore v. Greater Greenville Sewer District, 211 S.C. 77, 44 S.E.2d 88 (1947), the South Carolina Supreme Court commented extensively on ex officio memberships :

The rule here enforced with respect to double or dual office holding in violation of the constitution is not applicable to those officers upon whom other duties relating to their respective offices are placed by law. A common example is ex officio membership upon a board or commission of the unit of government which the officer serves in his official capacity, and the functions of the board or commission are related to the duties of the office. Ex officio means "by virtue of his office." ... Similar observation may be made with respect to ex officio membership upon a governing board, commission or the like of an agency or institution in which the unit of government of the office has only a part or joint ownership or management. In mind as an example is an airport operated by two or more units of government. A governing board of it might be properly created by appointment ex officio of officers of the separate governmental units whose duties of their respective officers have reasonable relation to their functions ex officio. ...

Ashmore, 211 S.C. at 92.

As you can see, Act No. 206 of 1993 specifically provides that the mayor of Walterboro, the chairman of the county council of Colleton County, the treasurer of Colleton County and the auditor of Colleton County all hold their membership on the Airport Commission ex officio. The Act does not specifically accord the fifth member of the Airport Commission, a member of the Walterboro City Council to be elected by

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the council, with the ex officio designation. However, as previously stated, ex officio means "by virtue of his office." Here, the member of the Walterboro City Council would serve on the Airport Commission by virtue of his position on City Council. Therefore, such an individual would serve on the Airport Commission ex officio.

Based on the foregoing, the dual office holding prohibitions of the State Constitution would not be violated if the mayor of Walterboro, the chairman of the county council of Colleton County, the treasurer of Colleton County, the auditor of Colleton County, and a member of the Walterboro City Council to be elected by the council simultaneously serve on the Airport Commission. The reason for such a conclusion is that these individuals serve on the Airport Commission by virtue of their other offices or ex officio. As stated in Ashmore, supra: "[t]he rule here enforced with respect to double or dual office holding in violation of the constitution is not applicable to those officers upon whom other duties relating to their respective offices are placed by law."

With kindest regards, I remain

Very truly yours,



Paul M. Koch

Assistant Attorney General

REVIEWED AND APPROVED BY:



Zeb C. Williams, III

Deputy Attorney General