



ALAN WILSON
ATTORNEY GENERAL

June 21, 2016

The Honorable Sean M. Bennett, Member
South Carolina Senate
121 S. Cedar Street
Summerville, SC 29483

Dear Senator Bennett:

We have received your opinion request regarding dual office holding. Specifically, you ask whether serving on both the Dorchester County Water Authority and the Department of Transportation Commission would constitute dual office holding.

LAW/ANALYSIS:

Dual office holding is defined by the South Carolina Constitution, which provides that “[n]o person may hold two offices of honor or profit at the same time, but any person holding another office may at the same time be an officer in the militia, member of a lawfully and regularly organized fire department, constable, or a notary public. . . The limitation above set forth does not prohibit any officeholder from being a delegate to a constitutional convention.” S.C. Const. art. XVII § 1A.

The South Carolina Supreme Court explains that an “office” for dual office holding purposes is:

“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.” *Sanders v. Belue*, 78 S.C. 171, 174, 58 S.E. 762, 763 (1907). “In considering whether a particular position is an office in the constitutional sense, it must be demonstrated that “[t]he power of appointment comes from the state, the authority is derived from the law, and the duties are exercised for the benefit of the public.” *Willis v. Aiken County*, 203 S.C. 96, 103 26 S.E.2d 313, 316 (1943). “The powers conferred and the duties to be discharged with regard to a public office must be defined, directly or impliedly, by the legislature or through legislative authority...” 63C Am Jur.2d Public Officers and Employees § 5 (2009).

Segars-Andrews v. Judicial Merit Selection Commission, 387 S.C. 109, 691 S.E.2d 453 (2010). “Other relevant considerations [as to whether a position is a public office] include: ‘whether the position was created by the legislature; whether the qualifications for appointment are established; whether the duties, tenure, salary, bond, and oath are prescribed or required; whether the one occupying the position is a

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representative of the sovereign; among others.”” See Op. S.C. Atty. Gen., June 17, 2013 (2013 WL 3243063) (quoting State v. Crenshaw, 274 S.C. 475, 478, 266 S.E.2d 61,62 (1980)).

A member of the Department of Transportation Commission is a public officer. In a prior opinion, we determined:

[o]ne who would serve as a Commissioner of the Department of Transportation would be considered an office holder for dual office holding purposes. See Ops. Atty. Gen. dated May 4, 1993, February 21, 1990 and March 27, 1984.

Op. S.C. Atty. Gen., December 5, 1997 (1997 WL 811910).

The issue is whether a member of the Dorchester County Water Authority is an officer. The Dorchester County Water Authority (“Authority”) was created by 1965 S.C. Acts 588. The Act provides for the Authority having five members. The members must be resident electors of Dorchester County and are appointed by the Governor, upon the recommendation of a majority of the members of the Dorchester County Legislative Delegation, for terms of six years. The members do not receive compensation, but they can be reimbursed for expenses incurred in connection with the business of the Authority.

In order to acquire, construct, operate, maintain, improve and extend facilities which would enable it to obtain fresh water in large volume and to distribute it, the Authority is granted certain powers, such as: to sue and be sued; to build, construct, maintain, and operate canals, aqueducts, ditches, tunnels, culverts, flumes, conduits, mains, pipes, dikes, dams, and water reservoirs; to build, construct, maintain, and operate water distribution systems and to enlarge and extend such systems; to sell water for industrial or domestic use; to prescribe rates and regulations under which water will be sold; to enter into contracts; to acquire by purchase, gift or through the exercise of eminent domain, all land, easements, and rights of way necessary to discharge all functions committed to it; to exercise the power of eminent domain for any corporate function; to borrow money and to make and issue negotiable bonds and notes payable from all or any part of the revenues derived from the operation of its facilities; and to do all other acts and things necessary or convenient to carry out any function or power granted to the Authority.

Furthermore, the rates charged by the Authority are not subject to supervision or regulation by the State or its agencies.

Our opinion is that members of the Authority are public officers. The Legislature created the Authority and its members and provided for the appointment of the members, their qualifications, their terms of office; their payment of expenses, and their duties. With the duties granted, the members appear to be exercising the sovereign power of the State. This supplements our June 26, 1980 opinion, in which we determined that:

[i]n response to your request for an opinion from this Office as to whether or not an individual who is the chairman of the Dorchester County Water Authority and also a director of the Old Fort Fire District is in violation of the constitutional prohibition against dual officeholding,

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my opinion is that he is. I am enclosing a copy of an earlier opinion concluding that membership on the governing body of a statutorily-created special purpose district constitutes office-holding.

Op. S.C. Atty. Gen., June 26, 1980 (1980 WL 120752).

CONCLUSION:

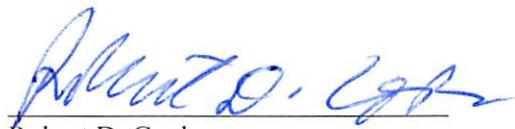
In conclusion, this Office believes that a Court would determine that service on both the Dorchester County Water Authority and the Department of Transportation Commission would constitute dual office holding.

Sincerely,



Elinor V. Lister
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General