



HENRY McMASTER
ATTORNEY GENERAL

June 5, 2009

C. Heath Ruffner, Esquire
Chesterfield County Attorney
Harris, McLeod & Ruffner
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Cheraw, South Carolina 29520

Dear Mr. Ruffner:

We understand you are the Chesterfield County Attorney and would like to request an opinion on behalf of Chesterfield County (the "County") concerning "the issue of dual office holding by a member of McBee Town Council and the Chesterfield County Economic Development Board."

Law/Analysis

Article VI, section 3 of the South Carolina Constitution (2009) provides: "No person may hold two offices of honor or profit at the same time. This limitation does not apply to officers in the militia, notaries public, members of lawfully and regularly organized fire departments, constables, or delegates to a constitutional convention." In addition, article XVII, section 1A of the South Carolina Constitution (2009) prohibits a person from holding "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." To contravene these provisions, a person concurrently must hold two offices having duties that involve the exercise of some portion of the sovereign power of the State. Sanders v. Belue, 78 S.C. 171, 174, S.E. 762, 763 (1907). Furthermore, our courts recognize other relevant considerations in determining whether an individual holds an office, such as, whether a statute, or other such authority, establishes the position, proscribes the position's duties or salary, or requires qualifications or an oath for the position. State v. Crenshaw, 274 S.C. 475, 477, 266 S.E.2d 61, 62 (1980).

As for the position on the McBee Town Council ("Town Council"), numerous opinions of this Office conclude that a member of a city or town council is considered an office holder for

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purposes of dual office holding. Ops. S.C. Atty. Gen., March 4, 2009; February 26, 2007; May 9, 2006; April 29, 2004. Accordingly, we must determine whether a position on the Chesterfield County Economic Development Board (the "Board") also constitutes an office.

Along with your letter, you included a copy of the 1987 ordinance creating the Board and an ordinance amending the 1987 ordinance with regard to the composition of the Board. As amended, the Board consists of thirteen members, nine of which are appointed by the Chesterfield County Council, one member of each Chamber of Commerce, and the President of Northeastern Technical College. Chesterfield County, S.C., Ordinance No. 07-08-17. Each member of the Board shall serve a two-year term of office and shall receive a per diem for each monthly meeting attended. Chesterfield County, S.C., Ordinance No. 86-87-06. The ordinance states the purpose of the Board "is to foster and promote the economic development of Chesterfield County" and allows the Board to receive funds from the Chesterfield County Council "and other sources . . ." Id. The ordinance states that the Board "is authorized to adopt policies, procedures, goals, and objectives to carry out the purposes of this Ordinance." Id.

As explained above, an ordinance establishes the Board and sets forth qualifications for its members. The Board's members serve a term of office and receive a per diem. However, we do not believe membership on the Board constitutes an office as we do not believe the Board exercises a portion of the sovereign power of the State. Like we determined in prior opinions issued by this Office considering other local economic development boards, the Board's principal function is promote and encourage economic development. Ops. S.C. Atty. Gen., June 1, 2005; November 7, 2003; March 19, 2003. In those opinions, as well as several others, we concluded that membership on other economic development boards with similar composition and authority did not amount to an office for purposes of dual office holding. Ops. S.C. Atty. Gen., June 1, 2005 (Bamberg City Economic Development Board); May 21, 2004 (Barnwell County Economic Development Board); November 7, 2003 (Allendale County Development Board); March 19, 2003 (Hampton County Economic Development Board); February 24, 2000 (Bamberg County Development Board); May 6, 1992 (Dorchester County Economic Development Board); January 31, 1985 (Marlboro County Development Board). Accordingly, we do not believe a position on the Board constitutes an office.

Conclusion

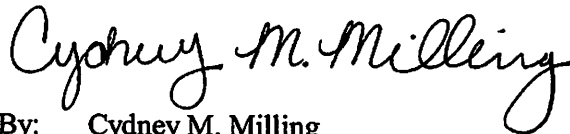
Although we believe serving on Town Council constitutes an office for purposes of dual office holding, we do not believe a position on the Board is an office. As such, we opine that

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simultaneous service in both of these positions does not violate the constitutional prohibitions on dual office holding.

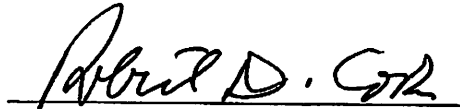
Very truly yours,

Henry McMaster
Attorney General



By: Cydney M. Milling
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REVIEWED AND APPROVED BY:



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