



ALAN WILSON
ATTORNEY GENERAL

October 18, 2017

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Dear Mr. Turner:

Attorney General Alan Wilson has referred your letter to the Opinions section. Your letter forwards an opinion request from a public charter school board chairperson which asks the following:

I am the Board Chairperson of a South Carolina public charter school. I respectfully request the guidance of the South Carolina Attorney General's Office regarding whether a board member of a South Carolina public charter school may also serve as a member on a "charter committee" as defined in S.C. Code Ann. § 59-40-40(7) for a separate proposed charter school, or if such an arrangement would constitute dual office holding as prohibited by the State Constitution.

Law/Analysis

It is this Office's opinion that a person who serves as a board member of a South Carolina public charter school and as a member on a "charter committee" as defined in S.C. Code Ann. § 59-40-40(7) for a separate proposed charter school does not violate the prohibition against holding dual offices contained in the South Carolina Constitution. Article XVII, § 1A of the South Carolina Constitution prohibits a person from holding "two offices of honor or profit at the same time," with certain exceptions which are inapplicable to this request. A person violates this provision if he holds two or more public offices which "involv[e] 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,..." Sanders v. Belue, 78 S.C. 171, 58 S.E. 762 (1907). In State v. Crenshaw, 274 S.C. 475, 478, 266 S.E.2d 61, 62 (1980), the South Carolina Supreme Court stated that relevant factors for determining whether a position would be considered a public office include whether statutes, or other such authority, establish the position, the qualifications for appointment, duties, tenure, require an oath for the position, or otherwise authorize the position to exercise a sovereign power of the State.¹ No single criterion

¹ See Op. S.C. Atty. Gen., 1996 WL 599391 (September 6, 1996) (sovereignty traditionally includes power to tax, power of eminent domain, and police power).

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is dispositive and it is not necessary that a position exhibits all the criteria to find that an individual is a public officer. Id.

For this Office to provide an opinion on whether an individual violates the prohibition against dual office holding, we must examine the positions to determine whether they are both public offices. In this Office's February 26, 2003 opinion, we opined that a board member of public charter school holds a public office within the meaning of Article XVII, § 1A of the South Carolina Constitution as follows:

Here, § 59-40-40(1) specifies that a charter school "is accountable to the board of trustees of that district, which grants it charter." Moreover, pursuant to § 59-40-40(2), the charter school "is considered a public school and part of the school district in which it is located for the purposes of state law and the state constitution." By virtue of § 59-40-50(B)(4), a charter school is considered a "school district for purposes of tort liability under South Carolina law" In view of these provisions and others contained in the Act, as well as the fact that board members of the charter school are exercising a portion of the sovereign authority of the State, it is our opinion that board members of a charter school are "public officers" for dual office holding purposes.

Op. S.C. Atty. Gen., 2003 WL 21040135 (February 26, 2003). This Office continues to be of the opinion that a board member of a public charter school holds a public office within the meaning of Article XVII, § 1A of the South Carolina Constitution. Consequently, a board member of a public charter school may not hold another office of honor or profit without violating the prohibition against holding dual offices.

It is this Office's opinion that a member of a "charter committee" does not hold a public office within the meaning of Article XVII, § 1A of the South Carolina Constitution. South Carolina law defines a charter committee as "the governing body of a charter school formed by the applicant to govern through the application process and until the election of a board of directors is held." S.C. Code Ann. § 59-40-40(7). Following the election of the board of directors, "the charter committee is dissolved." Id. During the application process, the charter committee is responsible for and has the power to do the following:

- (1) submit a letter of intent and an application to operate as a charter school, sign a charter school contract, and ensure compliance with all of the requirements for charter schools provided by law;
- (2) employ and contract with teachers and nonteaching employees, contract for services, and develop pay scales, performance criteria, and discharge policies for its employees. All teachers whether certified or noncertified must undergo the background checks and other investigations required for certified teachers, as provided by law, before they may teach in the charter school; and

(3) decide all other matters related to the operation of the charter school, including budgeting, curriculum, and operating procedures.

S.C. Code Ann. § 59-40-60(E). The listed powers are a delegation of authority by the General Assembly to charter committees, but they are only for a limited duration which ends with the State's approval for the school's charter. See Op. S.C. Atty. Gen., 2007 WL 4686609 (December 3, 2007) (opining that charter committees possess authority delegated from the General Assembly over the hiring and firing of charter school teachers and employees). However, this authority is not the sovereign authority of the State nor would a charter school function as the "alter ego" of the State prior to the State's approval. Cf. Op. S.C. Atty. Gen., 2003 WL 21040135 (February 26, 2003) ("In our opinion, as a 'public school,' the charter school and its governing board, which administers the school, function as the 'alter ego' of the State and should be so treated for dual office holding analysis."). Even if a court finds that a charter committee exercises "some part of the sovereign power" of the State, the members of such a charter committee do not hold a position which is "continuing, and not occasional or intermittent." Sanders v. Belue, supra. The further Crenshaw considerations, such as statutorily defined qualifications for appointment, tenure, and requiring an oath of office, are not present. Based on the intermittent nature of a position as a member of a charter committee and that the majority of the Crenshaw considerations are not present, it is this Office's opinion that a member of a charter committee does not hold a public office within the meaning of Article XVII, § 1A of the South Carolina Constitution.

Therefore, it is this Office's opinion that a court would likely find a person who serves both as a board member of a public charter school and as a member on a "charter committee" for a separate proposed charter school would not violate the prohibition against holding dual offices as set forth in the South Carolina Constitution.

Conclusion

It is this Office's opinion that a court would likely find a person who serves as both a board member of a public charter school and as a member on a "charter committee" for a separate proposed charter school would not violate the prohibition against holding dual offices contained in the South Carolina Constitution. Our opinion is based on our analysis of both positions under the factors established by the South Carolina Supreme Court in Sanders v. Belue, 78 S.C. 171, 58 S.E. 762 (1907), and State v. Crenshaw, 274 S.C. 475, 478, 266 S.E.2d 61, 62 (1980). This Office continues to be of the opinion that a board member of a public charter school holds a public office within the meaning of Article XVII, § 1A of the South Carolina Constitution. However, this Office does not believe that a member of a "charter committee" holds a public office due to the intermittent nature of the position. Therefore, because this Office believes that only one of the two positions constitutes an office for dual-office holding purposes,

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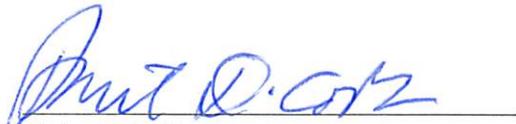
it is this Office's opinion that a person would not violate Article XVII, § 1A of the South Carolina Constitution as a result of holding both positions.

Sincerely,



Matthew Houck
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General