



ALAN WILSON  
ATTORNEY GENERAL

July 30, 2020

Dolly Garfield, Esq.  
General Counsel  
South Carolina Education Lottery  
PO Box 11949  
Columbia, SC 29211-1949

Dear Ms. Garfield:

You have requested a formal opinion of this Office regarding dual office holding. Specifically, you are asking if service on both the South Carolina Lottery Commission and the City of Spartanburg Hospitality Tax Grants Committee would violate the constitutional prohibition against dual office holding.

#### LAW/ANALYSIS

Dual office holding is provided for in the South Carolina Constitution, which states:

[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 § 1 A.

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

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“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 for an office are:

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 representative of the sovereign; among others.

Op. S.C. Atty. Gen., 2013 WL 3243063 (June 17, 2013) (quoting State v. Crenshaw, 274 S.C. 475, 478, 266 S.E.2d 61, 62 (1980)).

The General Assembly has declared that members of the South Carolina Lottery Commission are public officers. See S.C. Code Ann. § 1-3-240(C)(1) (1976 Code, as amended) (emphasis added) (“Persons appointed to the following offices of the State may be removed by the Governor for malfeasance, misfeasance, incompetency, absenteeism, conflicts of interest, misconduct, persistent neglect of duty in office, or incapacity: . . . . South Carolina Lottery Commission . . .”).

The issue is whether members of the City of Spartanburg Hospitality Tax Grants Committee (“Committee”) are also officers. The City of Spartanburg established the Committee by resolution. The Committee is composed of seven members. The Mayor appoints two rotating members of City Council to one year terms on the Committee and the City Council approves the appointment of five City of Spartanburg residents to serve three year terms.

The Committee is “charged with reviewing grant applications and annually presenting a recommended slate of grant allocations to the City Council, if any such allocations are

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considered.” The Committee can “adopt additional rules, policies and procedures to assist the body in its function, provided such additional rules do not conflict with this Resolution, state law, federal law or any Ordinance of the City.” The resolution does not provide for the qualifications of the position or a salary. It also does not require a bond or oath.

Although the position, its duties, and its term are created by a legislative resolution, we do not believe that a member of the Committee would be a public officer. This Office has consistently opined that “members of advisory bodies do not hold an office for dual office holding purposes.” OP. S.C. Atty. Gen., 2002 WL 399636 (Jan. 23, 2002). The Committee reviews grant applications and recommends a slate of grant allocations to the Spartanburg City Council. It acts in a purely advisory capacity and does not exercise a portion of the sovereign power of the State. Therefore, we believe that it would not be a violation of the constitutional prohibition against dual office holding for an individual to serve on both the South Carolina Lottery Commission and on the City of Spartanburg Hospitality Tax Grants Committee. Our conclusion is supported by other opinions of this Office, in which we determined that members of accommodations tax committees are not public officers. See Ops. S.C. Atty. Gen., 1984 WL 249932 (July 17, 1984); 2001 WL 1215465 (Sept. 14, 2001).

You may wish, however, to contact the State Ethics Commission to confirm that there are not any conflicts of interest. Our Office defers to the Ethics Commission on ethical issues since it was given authority by the Legislature to interpret and issue opinions pertaining to the Ethics Act. See S.C. Code Ann. § 8-13-320(11) (1976 Code, as amended).

### CONCLUSION

In our opinion, it would not be a violation of the constitutional prohibition against dual office holding for an individual to serve on both the South Carolina Lottery Commission and on the City of Spartanburg Hospitality Tax Grants Committee. You may wish, however, to contact the State Ethics Commission to confirm that there are not any conflicts of interest.

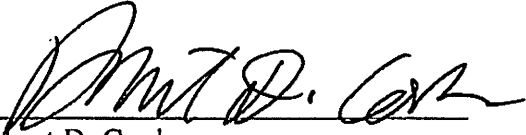
Sincerely,



Elinor V. Lister  
Assistant Attorney General

Dolly Garfield, Esq.  
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REVIEWED AND APPROVED BY:

A handwritten signature in black ink, appearing to read "R. D. Cook", written over a horizontal line.

Robert D. Cook  
Solicitor General