



ALAN WILSON
ATTORNEY GENERAL

May 1, 2023

The Honorable Stephen Goldfinch
Member
South Carolina Senate
P.O. Box 823
Murrells Inlet, South Carolina 29576

Dear Senator Goldfinch:

Attorney General Alan Wilson has referred your letter to the Opinions section. Your letter states the following:

My office has received an inquiry asking for clarification regarding whether a member of the Ride 4 Commission is considered an “office holder” by the South Carolina Constitution. I would appreciate the Attorney General's official opinion on this matter so that I may relay that to the appropriate parties.

Law/Analysis

It is this Office’s opinion that Ride 4 Commission (the “Commission”) members do not hold an office for dual office holding purposes as provided in the South Carolina State Constitution. Article XVII, § 1A of the South Carolina Constitution 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.” 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 ...” Sanders v. Belue, 78 S.C. 171, 58 S.E. 762 (1907); see also Op. S.C. Att’y Gen., 1996 WL 599391 (September 6, 1996) (sovereignty traditionally includes power to tax, power of eminent domain, and police power). In State v. Crenshaw, 274 S.C. 475, 478, 266 S.E.2d 61,62 (1980), the South Carolina Supreme Court stated that relevant considerations 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 authorizes the position to exercise a sovereign power of the state. No single criterion is dispositive, and it is not necessary that a position exhibits all the criteria to find that a position is an office. Id.

It is this Office's understanding that the Commission was formed under the Capital Project Sales Tax Act, S.C. Code §§ 4-10-300 to -390 (2021). Section 4-10-310 states a county governing body "may impose a one percent sales and use tax by ordinance, subject to a referendum, within the county area for a specific purpose or purposes and for a limited amount of time." If a county governing body chooses to use the provisions of the Act, section 4-10-320 authorizes the creation of a commission to "consider proposals for funding capital projects within the county area." S.C. Code § 4-10-320(C). Then, the commission "formulates the referendum question that is to appear on the ballot." Id.

Reading section 4-10-320(C) in isolation suggests there are no intervening legislative actions between the commission's formulation and submitting the referendum question to the voters. However, S.C. Code § 4-10-330(A) & (C), states that the county governing body adopts an ordinance containing the question as formulated by the commission and sends it to the county election commission.¹ This Office has previously opined that the Capital Project Sales Tax Act does not mandate that the county council pass the ordinance and can choose not to proceed.

Moreover, the code states that "the county governing body may impose a one percent sales and use tax by ordinance, subject to a referendum." S.C. Code § 4-10-310 (1976 Code, as amended) (emphasis added). The statute is clear that county council is under no obligation to impose a one percent sales and use tax and that implicitly if council chooses not to go forward with the tax, they are not required to proceed with a referendum. Id.

Op. S.C. Att'y Gen., 2014 WL 3886691, at 4 (July 28, 2014). Further, we opined that county council may remove commission members or dissolve the commission itself.² Because the Capital Project Sales Tax Act requires an intervening legislative act, the county council retains authority to approve or deny the ordinance, and, therefore, it also retains control before submitting the referendum question to the voters. Ultimately, the county council is the body that exercises sovereign power by both creating the commission and by electing to support or reject the Commission's formulation in the form of an ordinance sent onto the county election commission. See, e.g., Op. S.C. Att'y Gen., 2000 WL 33120657 (December 1, 2000) ("[I]t appears that the role of the local committee is largely advisory in nature and that the actual exercise of sovereign power, if any, is carried out by either the statewide committee or the Department of Natural Resources.").

Finally, you provided a prior opinion that concluded a Capital Project Sales Tax commission exercises sovereign power of the state and its members, therefore, hold an office. See

¹ See S.C. Code §§ 4-10-330(A) ("The sales and use tax authorized by this article is imposed by an enacting ordinance of the county governing body containing the ballot question formulated by the commission pursuant to Section 4-10-320(C), subject to referendum approval in the county."); 4-10-330(C)(1) ("Upon receipt of the ordinance, the county election commission must conduct a referendum on the question of imposing the sales and use tax in the area of the county that is to be subject to the tax.") (emphasis added).

² See id. at 5 ("[County Council] has the authority to remove any members of the Commission it appointed and even abolish the Commission itself and may also choose not to proceed in the process of implementing a Capital Project Sales Tax.").

Op. S.C. Att’y Gen., 2002 WL 134434 (May 28, 2002). We note that several sections of the Capital Project Sales Tax Act have been amended multiple times since that opinion was authored. Op. S.C. Att’y Gen., 2018 WL 7501573 (March 6, 2018) (“Traditionally, this Office does not overrule a prior opinion unless there has been a change in the law or where there is clear error.”). In light of these amendments and our 2014 opinion’s recognition that county governing bodies retain authority from the creation of these commissions to electing to send the formulated questions to the voters, it is appropriate for this Office to consider this issue anew. For the reasons discussed more fully above, it is this Office’s opinion that a court would hold Capital Project Sales Tax commission members do not hold an office for dual office holding purposes.

Conclusion

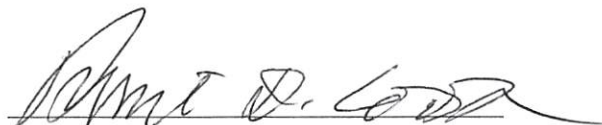
Based on the analysis discussed more fully above, it is this Office’s opinion that Ride 4 Commission (the “Commission”) members do not hold an office for dual office holding purposes as provided in the South Carolina State Constitution. Article XVII, § 1A of the South Carolina Constitution prohibits a person from holding “two offices of honor or profit at the same time.” It is this Office’s understanding that the Commission was formed under the Capital Project Sales Tax Act, S.C. Code §§ 4-10-300 to -390 (2021). While it is a close question, the county council is the body that ultimately exercises sovereign power by both creating the Commission and by electing to support or reject the Commission’s formulation in the form of an ordinance sent onto the county election commission. See Op. S.C. Att’y Gen., 2014 WL 3886691, at 5 (July 28, 2014) (“[County Council] has the authority to remove any members of the Commission it appointed and even abolish the Commission itself and may also choose not to proceed in the process of implementing a Capital Project Sales Tax.”). Because members of the Commission do not “exercise of some part of the sovereign power” of the State, a court would likely hold they do not hold an office. Sanders v. Belue, 78 S.C. 171, 58 S.E. 762 (1907).

Sincerely,



Matthew Houck
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General