



ALAN WILSON  
ATTORNEY GENERAL

April 22, 2022

Dr. Akil E. Ross, Sr.  
Superintendent  
Lexington-Richland School District Five  
1020 Dutch Fork Road  
Irmo, South Carolina 29063

Dear Dr. Ross:

We received your letter requesting an opinion of this Office regarding dual office holding. Specifically, you inquire as to whether you may simultaneously serve as a commissioner for the Irmo-Chapin Recreation Commission and as superintendent of Lexington-Richland School District Five without violating the prohibition against dual office holding in section 1A of article XVII of the South Carolina Constitution.

#### Law/Analysis

Section 1A of article XVII of the South Carolina Constitution (2009) states: "No 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." To contravene section 1A of article XVII, 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).

In several prior opinions, this Office concluded members of the Irmo-Chapin Recreation Commission are officers for purposes of dual office holding. We first made this determination in 1969, finding members of the Irmo-Chapin Recreation Commission exercise some part of the state's sovereign power. Op. Att'y Gen., 1969 WL 10714 (S.C.A.G. Aug. 13, 1969). A 2014 opinion reiterated this finding, which is in keeping with numerous other opinions of this Office similarly concluding that members of other recreation commissions are officers for purposes of dual office holding. Op. Att'y Gen., 2014 WL 7210768 (S.C.A.G. Dec. 1, 2014) ("There is little doubt that members of the Irmo-Chapin Recreation Commission are officers for dual office holding purposes."); Ops. Att'y Gen., 1997 WL 87948 (S.C.A.G. Jan. 29, 1997) (finding members of the Charleston County Park and Recreation Commission are officers and stating "this Office has frequently concluded that members of other counties' recreation commissions would be

Dr. Akil E. Ross, Sr.  
Page 2  
April 22, 2022


considered officers.”); 1984 WL 249932 (S.C.A.G. July 17, 1984) (“This Office has concluded on numerous occasions that members of county recreation commissions hold an office for dual office holding purposes.”). Therefore, we must consider whether your position as superintendent of Lexington-Richland School District Five is also an office.

We reviewed Lexington-Richland School District Five’s enabling legislation and found no reference to the superintendent’s position. Therefore, we do not believe the superintendent’s position was created by statute. We also did not find a requirement that the superintendent take an oath of office, be commissioned, or meet certain qualifications. We are of the understanding that the superintendent serves at the pleasure of the Lexington-Richland School District Five Board of Trustees, the terms of which, including his or her salary, are determined via a contract between the superintendent and the board. According to the South Carolina Supreme Court, “one who merely performs the duties required of him by persons employing him under an express contract or otherwise, though such persons be themselves public officers, and though the employment be in or about a public work or business, is a mere employé.” Sanders, 78 S.C. at 174, 58 S.E. at 763. Accordingly, we believe the superintendent’s position is ministerial as an employee of Lexington-Richland School District Five and not an office for purposes of dual office holding. Thus, we are of the opinion that your service as both a member of the Irmo-Chapin Recreation Commission and as superintendent of Lexington-Richland School District Five does not violate section 1A of article XVII of the South Carolina Constitution.

### Conclusion

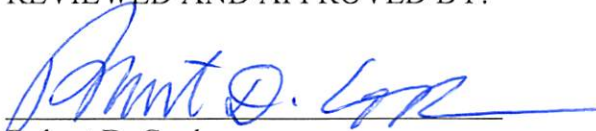
Although we find your position as a member of the Irmo-Chapin Recreation Commission is likely an office for purposes of dual office holding, we do not believe your service as the superintendent for Lexington-Richland School District Five constitutes an office. As such, we are of the opinion that you may serve in both positions without violating the prohibition on dual office holding contained in section 1A of article XVII of the South Carolina Constitution.

Sincerely,



Cydney Milling  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Solicitor General