



ALAN WILSON
ATTORNEY GENERAL

July 16, 2024

Mr. Fred W. Castles, III PE
Executive Director
P.O. Box 550
Chester, South Carolina 29706

Dear Mr. Castles:

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

I wish to request an opinion from your office regarding dual-office holding. I am employed as the Executive Director of the Chester Metropolitan District (CMD), the public water provider in Chester County. CMD is a special purpose district created by Act 379 of the Act and Joint Resolution of the General Assembly of South Carolina of 1959. I wish to serve as a commissioner with the Chester Soil and Water Conservation District here in Chester County. I want to be sure that I am eligible to serve and hold a position with the Chester Soil and Water Conservation District. I am employed "at-will" by the CMD Board of Commissioner's.

Law/Analysis

It is this Office's opinion that a person would not violate the dual office prohibition in the South Carolina State Constitution by serving as both Executive Director of the Chester Metropolitan District and as a commissioner with the Chester Soil and Water Conservation District. 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 the 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, qualifications for appointment, duties, tenure, require an oath for the position, or otherwise authorize 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.

To address whether an individual violates the prohibition against dual office holding, we must examine both positions to determine whether they are offices of honor or profit. A prior opinion found that members of the Chester Soil and Water Conservation District hold an office for dual office holding purposes. See Op. S.C. Att’y Gen., 1986 WL 289838 (September 18, 1986). In contrast, this Office has issued several opinions finding, generally, executive directors of commissions are not considered office holders.

[T]his Office has long held that the position of executive director for a commission or governing board generally does not constitute an office. Ops. S.C. Att’y Gen. dated January 27, 2004; July 24, 2001; November 24, 1997; May 15, 1989; June 11, 1985; March 19, 1975. We stressed in the July 24, 2001 opinion “the fact that the executive director served at the pleasure of the governing board or authority.” In short, in virtually every previous instance in which the question has arisen, we have concluded that an executive director of a governing board or commission would be characterized as an employee rather than an officer.

Op. S.C. Att’y Gen., 2004 WL 1297822 (June 7, 2004). This Office is unaware of any unique characteristics of the Executive Director of the Chester Metropolitan District that suggests it would be considered an office. In a March 10, 1986, opinion issued to Representative Paul E. Short, Jr., we were asked if the Chester Metropolitan District had the authority to hire and fire an executive director and other necessary personnel. See 1986 S.C. Op. Att’y Gen. 105 (March 10, 1986). Therein, we concluded that the district “has specifically been authorized to employ personnel”¹ such

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The commission shall employ a manager who shall be superintendent-in-charge of the entire operation of the district. The manager shall be employed at such salary as may be determined by the commission. The commission shall have the right at will to remove or discharge a person holding the position of manager. The manager shall be the administrative officer of the district and shall administer the affairs of the commission. He shall carry out the policies defined by the commission. ... The manager shall employ all employees of the district subject to the approval of the commission

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as an executive director ('manager')." Id. (emphasis added). Because the opinion classified the Executive Director of the Chester Metropolitan District as "personnel," we continue to be of the opinion that the position is better characterized as an employee and not as an office holder. As a result, a court is likely to find only one of the two positions described is an office and there would be no violation of Article XVII, § 1A of the South Carolina Constitution.

Sincerely,

A handwritten signature in blue ink, appearing to read "Matthew Houck", with a long horizontal flourish extending to the right.

Matthew Houck
Assistant Attorney General

REVIEWED AND APPROVED BY:

A handwritten signature in blue ink, appearing to read "Robert D. Cook", with a long horizontal flourish extending to the right.

Robert D. Cook
Solicitor General