



ALAN WILSON
ATTORNEY GENERAL

February 13, 2025

The Honorable Matt Leber
504 Gressette Bldg.
Columbia, SC 29201

Dear Senator Leber:

We received your letter requesting an opinion as to whether members of the Charleston County Library Board of Trustees are required to take an oath of office, specifically an oath to our Constitution. We conclude that the trustees hold public office and thus must take the Constitutionally required oath of office.

Law/Analysis

Article VI, Section 4 of the South Carolina Constitution provides that the Governor, Lieutenant Governor, and all other officers of the State and its political subdivisions “shall take and subscribe” the following oath of office, prescribed in Article VI, Section 5:

I do solemnly swear (or affirm) that I am duly qualified, according to the Constitution of this State, to exercise the duties of the office to which I have been elected, (or appointed), and that I will, to the best of my ability, discharge the duties thereof, and preserve, protect, and defend the Constitution of this State and of the United States. So help me God.

Most decisions evaluating whether a particular position constitutes a public office arise from questions about whether an individual can hold two positions concurrently without running afoul of the dual office holding prohibition contained in Article VI, Section 3 of the South Carolina Constitution. “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). The power of a public office comes from the state, its authority is derived from the law, and its duties are exercised for the public’s benefit. *Segars-Andrews v. Judicial Merit Selection Comm’n*, 387 S.C. 109, 124, 691 S.E. 2d 453, 461 (2010). Our Supreme Court has determined criteria to be used in distinguishing between an officer and an employee include “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.” *State v. Crenshaw*, 274 S.C. 475, 478, 266 S.E.2d 61, 62 (1980). No single characteristic is conclusive, and it is not necessary that all criteria be met. Id.

In 1978, our Legislature required each county council to establish by ordinance a county public library system consistent with the statute and controlled and managed by a board of trustees. S.C. Code Ann. § 4-9-35 (2021). The statute provided for the terms of service for the trustees as well as requirements for meetings and leadership roles. *Id.* Each board of trustees was to be authorized to “exercise powers as to the policies” of the library system (§ 4-9-36) and to adopt regulations necessary to insure the effective operation, maintenance and security of library system property (§ 4-9-37(b)). Each board was to be empowered to engage in a wide range of activities to develop and operate its respective county library system. S.C. Code Ann. § 4-9-36 (outlining powers and duties of library boards of trustees); § 4-9-37 (providing additional duties of library boards of trustees).

In accordance with this direction, the Charleston County Council created the Charleston County Library system and the Charleston County Library Board of Trustees as the library system’s controlling and managing body. Charleston County Code § 12-1 (creating library system); § 12-21 (creating board of trustees). The composition of the board, the terms of the trustees, rules regarding meetings and leadership roles established in Charleston County Code Section 12-21 all fall within the parameters provided by the Legislature in Section 4-9-35. Council delineated the powers and duties of the board which substantively mirror those outlined in the statute, including employing a chief librarian; engaging in real and personal property transactions for the library system; acquiring and making available books and library materials; accepting and using donations; commemorating donations; entering into contracts; receiving and using funds and resources from public and private sources; submitting an annual budget to county council; submitting an annual report, and adopting library regulations. Charleston County Code §§ 12-24, 12-25 (mirroring S.C. Code §§ 4-9-36, 4-9-37). These duties and powers are an exercise of a portion of the sovereign power derived from the state, established pursuant to state statute, and exercised for the public benefit. Thus, members of the Charleston County Board of Trustees are public officials.

This conclusion is consistent with repeated opinions of this office advising that members of county library boards of trustees established pursuant to Section 4-9-35 hold public office. Ops. S.C. Att’y Gen., 2014 WL 4382449 (August 22, 2014) (Beaufort County); 2005 WL 1983354 (July 8, 2005) (Georgetown County); 2002 WL 31958834 (December 10, 2002) (Spartanburg County); 2002 WL 1340430 (May 13, 2002) (Marlboro County); 1995 WL 805869 (November 28, 1995) (Charleston County); 1981 WL 158144 (February 11, 1981) (Allendale County); 1980 WL 120788 (July 24, 1980) (Greenville County). Because they are public officers, members of the Charleston County Library Board of Trustees are required to take the oath of office as directed in Article VI, section 4 and prescribed by Article VI, section 5 of the South Carolina Constitution.

The Honorable Matt Leber
Page 3
February 13, 2025

Conclusion

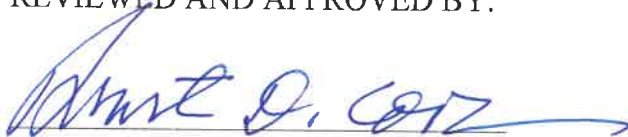
Members of the Charleston County Public Library Board of Trustees are officers within the meaning of Article VI, Section 4 of the South Carolina Constitution. They are therefore required to take the oath of office prescribed in Article VI, Section 5 of the South Carolina Constitution.

Sincerely,



Sabrina C. Todd
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General