



ALAN WILSON
ATTORNEY GENERAL

November 25, 2025

Tyra S. McBride
Deputy Legal Counsel
Director of Appointments
Office of the Governor
1100 Gervais Street
Columbia, SC 29201

Dear Ms. McBride:

You have requested an opinion from this office on whether a member of the state's Health Planning Committee holds an office and is therefore prohibited from serving on the Committee while holding another office. It is our understanding this information is needed to determine whether an individual is eligible for an appointment to the Committee by the Governor. It is our opinion that a member of the Health Planning Committee does not hold an office, and thus, membership on that Committee does not trigger a dual office holding violation.

Law/Analysis

Article VI, Section 3 of the South Carolina Constitution prohibits any person from simultaneously holding "two offices of honor or profit." The limitation does not apply to notaries, militia officers, constables, constitutional delegates, or members of lawfully and regularly organized fire departments. S.C. Const. art. VI, § 3. "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). A position is considered an office for purposes of dual office holding when " 'the 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.' " Segars-Andrews v. Jud. Merit Selection Comm'n, 387 S.C. 109, 124, 691 S.E. 2d 453, 461 (2010) (quoting Willis v. Aiken County, 203 S.C. 96, 103, 26 S.E.2d 313, 316 (1943)). When determining whether a position is an office under our constitution, relevant considerations 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; [and] 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.

The Health Planning Committee was created by South Carolina Code Section 44-7-180. The statute provides for the size of the committee and the process by which each member is appointed. Of the Committee's fourteen members, twelve are appointed by the Governor. S.C. Code Ann. § 44-7-180(A) (Rev. 2018). The statute specifies that the members appointed by the Governor must include at least one person from each congressional district and one person from each of five specified groups related to health care. Id. The members appointed by the Governor serve four-year terms and may only serve two consecutive terms. Id. All members of the Committee "are allowed the usual mileage and subsistence" provided to members of boards, commissions, and committees, but no salary is established. Id. There is no statutory requirement that members take the oath of office or post a bond. The Committee advises the Department of Public Health in the Department's preparation of the South Carolina Health Plan for use in the administration of the state's Certificate of Need program. § 44-7-180(B). Upon approval by the Committee, the plan must be submitted once every two years to the Department of Public Health's board for final revision and adoption. § 44-7-180(C). Once adopted, the plan may be later revised using the same planning and approval process.

The Health Planning Committee was created by statute. The statute provides that members appointed by the Governor serve for four-year terms and may not serve more than two consecutive terms. Although those factors weigh in favor of viewing a Governor-appointed member as an office holder, other factors run counter to that view. The statute provides for subsistence, but not a salary. Additionally, members are not required to take the oath of office or post a bond. Most significantly, the Health Planning Committee does not exercise any part of the power of the sovereign but rather it advises the Department of Public Health in the creation of and updates to the South Carolina Health Plan. This office has consistently opined that a member of a body that possesses purely advisory responsibilities is not an office holder. See Op. S.C. Att'y Gen., 2023 WL 6445003 (September 21, 2023) (Palmetto College Board of Visitors); Op. S.C. Att'y Gen., 2023 WL 2358257 (February 23, 2023) (Richland County Conservation Commission); Op. S.C. Att'y Gen., 2021 WL 303801 (January 14, 2021) (Respiratory Care Committee); Op. S.C. Att'y Gen., 2006 WL 1877113 (June 1, 2006) (Regional Education Center Advisory Board); Op. S.C. Att'y Gen., 2004 WL 439320 (February 24, 2004) (Beaufort County Solid Waste and Recycling Board); Op. S.C. Att'y Gen., 2003 WL 21040133 (January 15, 2003) (Town of Hilton Head's Accommodations Tax Advisory Committee); Op. S.C. Att'y Gen., 1977 WL 24461 (April 26, 1977) (Waccamaw Regional Planning and Development Council). Considering all of these factors, it is the opinion of this office that a member of the Health Planning Committee, including one appointed by the Governor, does not hold an office of honor or profit. Thus, assuming a person currently holds an office, the Governor's appointment of that person to the Health Planning Committee would not trigger a dual office holding violation.

Conclusion

Although the Health Planning Committee was created by our General Assembly and the members appointed by the Governor serve statutorily established terms, it is the opinion of this office that a member of the Committee serves an advisory role and does not hold an office.

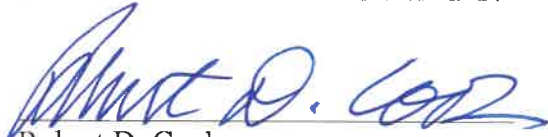
Tyra S. McBride, Esquire
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Sincerely,



Sabrina C. Todd
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General