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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

August 23, 2000

Jacqueline Brown, Chairperson
SC Commission for the Blind, Board
of Commissioners
Route 1, Box 62
Plum Branch, South Carolina 29845

Re: Informal Opinion

Dear Ms. Brown:

Thank you for your recent letter inquiring whether a dual office holding situation would exist if an individual were to serve simultaneously as both a member of the South Carolina Commission for the Blind's Board of Commissioners and as the President of the local chapter of the National Federation of the Blind. For the reasons discussed below, it is my opinion that concurrent service in these positions would not violate the State Constitution's prohibition against dual office holding.

As you know, Article XVII, Section 1A of the South Carolina Constitution, provides that "no person may hold two offices of honor or profit at the same time . . .," with exceptions specified for an officer in the militia, a member of a lawfully and regularly organized fire department, constable, or a notary public. As concluded by Attorney General Daniel McLeod in an opinion dated April 26, 1977, "[t]o determine whether a position is an office or not depends upon a number of circumstances and is not subject to any precise formula." The South Carolina Supreme Court, though, has held that for this provision to be contravened, a person concurrently must hold two offices which have duties involving an exercise of some portion of the sovereign power of the State. Sanders v. Belue, 78 S.C. 171, 58 S.E. 762 (1907). "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." Id., 78 S.C. at 174. Other relevant considerations, as identified by the Court, are whether statutes, or other authority, establish the position, prescribe its tenure, duties or salary, or require qualifications or an oath for the position. State v. Crenshaw, 274 S.C. 475, 266 S.E.2d 61 (1980).

Previous opinions of this Office have concluded that one who would serve on the governing body of the South Carolina Commission for the Blind would hold an office for dual office holding purposes. See, e.g., Ops. Atty. Gen. dated May 31, 1996 and April 15, 1974. Therefore, it must be

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determined whether serving as President of the local chapter of the National Federation of the Blind would likewise constitute an office.

According to my research, the National Federation of the Blind is a non-profit, private organization, not an entity created by the State of South Carolina. Thus, its local chapter officers do not exercise any portion of the sovereign power of the State. Therefore, it is my opinion that an individual may serve simultaneously as both a member of the South Carolina Commission for the Blind's Board of Commissioners and as the President of the local chapter of the National Federation of the Blind without violating the State Constitution's prohibition against dual office holding.

As to your second question involving a possible conflict of interest, resolving this issue would require an interpretation of the South Carolina Ethics, Government Accountability, and Campaign Reform Act of 1991 (Act). Pursuant to S.C. Code Ann. §8-13-320(11), the South Carolina General Assembly has given primary responsibility for interpreting the Act's provisions to the State Ethics Commission. Accordingly, this Office must defer to the Ethics Commission's authority over such matters. If you would like to request an opinion from the Commission, you may write to Mr. Herbert Hayden, Executive Director, State Ethics Commission; P.O. Box 11926; Columbia, SC 29211.

I trust this information is responsive to your inquiry and that you will not hesitate to contact me if I can be of additional assistance. This letter is an informal opinion only. It has been written by a designated Deputy Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kind regards, I am

Sincerely yours,



Zeb C. Williams, III
Deputy Attorney General

ZCW/an