

6955
Leahy



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

December 3, 2002

Ms. Barbara B. League
P. O. Box 3626
Greenville, South Carolina 29608-3626

Dear Ms. League:

You have asked for an opinion as to whether your "accepting a seat on South Carolina's newly formed Conservation Voters of South Carolina volunteer board" while also serving on the South Carolina Consumer Affairs Commission would constitute dual office holding in contravention of the South Carolina Constitution. The State Ethics Commission, which has already provided you with guidance regarding the Ethics Act, suggested that you seek an opinion from this Office concerning dual office holding.

Law / Analysis

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).

One who serves as a member of the South Carolina Consumer Affairs Commission holds an office for dual office holding purposes. See Op. Atty. Gen., July 15, 1986; Op. Atty. Gen., June 22, 1982. Thus, the issue is whether a position on the Conservation Voters of South Carolina board would be an office for purposes of dual office holding. It is our opinion that it would not.

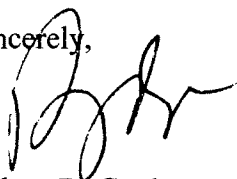
Ms. League
Page 2
December 3, 2002

The Conservation Voters of South Carolina (CVSC) will have as its purpose "to make environmental protection a top priority for South Carolina's elected officials, political candidates, and voters." It is my understanding that "the Conservation Voters of South Carolina will be incorporated as a 501(c)(4) organization for IRS purposes which means that the group is non-profit and tax exempt but not tax deductible." CVSC "will be a member of the Federation of State Leagues of Conservation Voters, joining 31 other similar groups from Alabama to Wyoming." A governing board will consist initially of 12-15 members. Board members will perform fundraising, decide on endorsements and contributions, attend board meetings, perform committee duties, etc. See materials describing CVSC, provided by you at my request. Essentially, the group's purpose as well as that of the Board will be education and awareness regarding environmental issues.

As a non-profit organization, it appears the powers and duties of the Board are non-governmental in nature, not involving an exercise of the State's sovereign powers. In the past, this Office has often concluded that "members of boards of eleemosynary corporations would not be considered office holders." See, Op. Atty. Gen., September 20, 2002; Op. Atty Gen., Op. No. 93-24 (April 12, 1993); Op. Atty Gen., October 18, 1988; Op. Atty Gen., September 8, 1987, and others.

Accordingly, it is our opinion that the simultaneous holding of positions as a member of the South Carolina Consumer Affairs Commission and a member of the Conservation Voters of South Carolina's governing board would not constitute dual office holding for the purposes of the South Carolina Constitution.

Sincerely,



Robert D. Cook
Assistant Deputy Attorney General

RDC/an