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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON
ATTORNEY GENERAL

July 26, 2002

W. Brantley Harvey, Jr., Esquire
Harvey & Battey, PA
P. O. Box 1107
Beaufort, South Carolina 29902

Dear Mr. Harvey:

You note that you are presently serving on the Beaufort County Transportation Committee by appointment of the legislative delegation pursuant to S.C. Code Ann. Sec. 12-28-2740 (B). Additionally, you state that you have agreed to serve on the State Board for Technical and Comprehensive Education from the Second Congressional District. Your question is whether the simultaneous holding of both positions would constitute dual office holding in contravention of the South Carolina Constitution.

Law / Analysis

Article XVII, Section 1A of the State Constitution provides that "no person may hold two offices of honor or profit at the same time...." with certain exceptions. For this provision to be contravened, a person concurrently must hold two public 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). Other relevant considerations are whether statutes, or other such authority; establish the position, prescribe its duties or salary, or require qualifications for an oath for the position. State v. Crenshaw, 274 S.C. 475, 266 S.E.2d 61 (1980).

This Office has previously concluded that the position of member of the State Board for Technical and Comprehensive Education constitutes an office for dual office holding purposes. See, Op. Atty. Gen., May 8, 2001 and March 22, 1995. In those opinions, we noted that the State Board for Technical and Comprehensive Education was created by S.C. Code Sec. 59-53-10 et seq. Pursuant to § 59-53-10, board members are appointed by the Governor for terms of six years and until their successors are appointed and qualify. Section 59-53-10 also authorizes the Board to enter into contracts and promulgate regulations. Pursuant to § 59-53-20, the Board is given jurisdiction over "all state-supported technical institutions and their programs that are presently operating and created in the future." Section 59-53-50 specifies additional powers of the Board, including: the development, implementation, coordination and operation of adequate post-high school vocational, technical and occupational diploma and associate degree courses; the establishment of criteria for approval and awarding of diplomas and degrees; the acceptance and administration of the donation of funds, grants and real property from individuals, corporations, foundations and governmental

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bodies; the employment of an executive director and such other personnel necessary to fulfill its duties and responsibilities. Based upon the foregoing powers and duties, there can be little doubt that membership on the Board for Technical and Comprehensive Education constitutes an office for dual office holding purposes.

Likewise, it is our opinion that membership on a county transportation committee is an office of honor or profit. We have consistently so concluded. See, Op. Atty. Gen., April 2, 1998; June 19, 1997; July 23, 1996; May 16, 1995; December 7, 1994; December 20, 1993; May 15, 1989.

By way of background, the South Carolina Supreme Court's decision in Tucker v. S.C. Dept. of Highways and Public Transportation, 309 S.C. 395, 424 S.E.2d 468 (1998) (Tucker I) declared that the provisions of S.C. Code Ann. Sec. 12-27-400 are unconstitutional in that such provisions require the county legislative delegation to approve the expenditure of "C" funds. Tucker concluded that it was constitutionally inappropriate under the doctrine of separation of powers to permit members of the Legislature to perform executive functions. In response to Tucker I, the Legislature placed the responsibility for "C" fund approval upon a county transportation committee. Section 12-27-400 was amended to require the county legislative delegation to appoint the county transportation committee to perform this function. The constitutionality of § 12-27-400, as modified, was upheld by the Supreme Court in Tucker v. S.C. Dept. of Highways and Transportation, 314 S.C. 131, 442 S.E.2d 171 (1994) (Tucker II). Thereafter, § 12-27-400 was recodified as § 12-28-2740.

Among the duties of the county transportation committee are adoption of a county-wide transportation plan; the approval and use of funds in furtherance of such plan; the adoption of specifications for local road projects, and so forth. Thus, we reiterate our earlier conclusion that these powers and duties "are indicative of an exercise of a portion of the sovereign power of the State." Op. Atty. Gen., July 28, 1993.

Accordingly, it is our opinion that the simultaneous occupation of the positions of member of the Beaufort County Transportation Committee and member of the State Board for Technical and Comprehensive Education would constitute dual office holding under the South Carolina Constitution.

This letter is an informal opinion only. It has been written by a designated Assistant Deputy Attorney General and represents the position of the undersigned attorney as to the specific question asked. It has not, however, been personally scrutinized by the Attorney General and not officially published in the manner of a formal opinion.

Sincerely,



Robert D. Cook
Assistant Deputy Attorney General