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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

December 1, 2000

Sara S. Quinn, Assistant Chief Counsel
SC Department of Natural Resources
Post Office Box 167
Columbia, South Carolina 29202

Dear Ms. Quinn:

By your letter of November 21, 2000, you have asked whether a dual office holding situation would exist if an individual were to serve simultaneously as a soil and water conservation commissioner and as a member of a local drought response committee. For the reasons set forth below, it is my opinion that concurrent service in these positions does not violate the South Carolina Constitution's prohibition against dual office holding.

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).

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This Office has advised on numerous occasions that one who serves as a soil and water conservation commissioner would hold an office for dual office holding purposes. *See, Ops. Atty. Gen.* dated October 8, 1996; November 1, 1991 and December 17, 1990. Therefore, having determined that a soil and water conservation commissioner is an office holder within the meaning of Art. XVII, Sec. 1A, it is necessary, then, to address whether membership on a local drought response committee would likewise constitute an office.

As noted in your letter, S.C. Code Ann. § 49-23-60 provides that local drought response committees shall consist of gubernatorial appointees upon the recommendation of the legislative delegation. The only duties specified in the statute involve consulting with the statewide drought response committee to coordinate planning and response within the affected area. Thus, it appears that the role of the local committee is largely advisory in nature and that the actual exercise of sovereign power, if any, is carried out by either the statewide committee or the Department of Natural Resources. This Office has concluded on numerous occasions that members of advisory bodies are not considered office holders. *See, e.g., Ops. Atty. Gen.* dated May 9, 1989 (Indigent Care Advisory Board); May 15, 1989 (Work Support Advisory Council); and February 6, 1985 (Wateree District Advisory Board of Health). Therefore, based upon the reasoning and conclusions of these earlier opinions, a member of a local drought response committee does not appear to be an office holder for dual office holding purposes. Accordingly, it is my opinion that a soil and water conservation commissioner may simultaneously serve on a local drought response committee without contravening the dual office holding prohibitions of the State Constitution.

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.

Sincerely yours,



Zeb C. Williams, III
Deputy Attorney General

ZCW/an