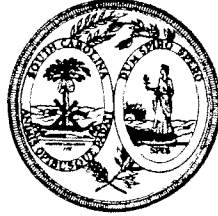


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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

February 27, 2001

Lee S. Bowers, Esquire
Post Office Box 191
Bluffton, South Carolina 29910

RE: Informal Opinion

Dear Mr. Bowers:

By your letter of February 20, 2001, you have requested an opinion of this Office concerning dual office holding. Specifically you ask if you may serve simultaneously as the Chairman of the Hampton County Council and on a legal advisory board for the Department of Natural Resources.

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 exceptions specified for an officer in the militia, member of a lawfully and regularly organized fire department, constable, or notary public. 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 or an oath for the position. State v. Crenshaw, 274 S.C. 475, 266 S.E.2d 61 (1980).

This Office has advised on numerous occasions that a member of a county council would hold an office for dual office holding purposes. See OPS. ATTY. GEN. July 26, 1999; June 27, 1997; December 7, 1994; August 20, 1985; June 26, 1984. Thus, it must be determined whether a member of a legal advisory board for the Department of Natural Resources would also hold an office.

Three legal advisory boards were created by Executive Order of the Governor, No. 89-09. The boards consist of ten members, six appointed by the Governor and four appointed by the Wildlife and Marine Resources Commission. The terms of the members are for four years. The members take no oath of office, nor are paid, but are compensated for per diem expenses. Finally, the purpose of the boards is to "serve as liaison between the wildlife and marine resources commission and the representative of both the public at large and the business and industry interests involved." EXECUTIVE ORDER No. 89-09. The boards also "assist the Commission as requested in

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determining appropriate commission policies relating to their respective areas of concern and to the Commission overall." Id. The boards appear to have no other duties and powers than those purely advisory in nature.

Many of the attributes usually found in an office, most notably the exercise of sovereign power, are absent as to members of the advisory boards. Although the members serve for a specified term, the order authorizes no salary, oath, or qualifications for service. This Office has concluded on numerous occasions that members of advisory commissions would not be considered office holders. See OPS. ATTY. GEN. December 3, 1991 (Recreation Committee); May 9, 1989 (Indigent Care Advisory Board); May 15, 1989 (Work Support Advisory Council); and others. Consistent with these prior opinions, we also conclude that a member of one of the legal advisory boards established by Executive Order No. 89-09 would not be an officer for dual office holding purposes. Thus, service on both a legal advisory board for the Department of Natural Resources and the Hampton County Council would not contravene the dual office holding prohibitions in the State Constitution.

This letter is an informal opinion only. It has been written by a designated Assistant 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 nor officially published in the manner of a formal opinion.

With kind regards, I remain

Very truly yours,



Susannah Cole
Assistant Attorney General