



The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON  
ATTORNEY GENERAL

February 9, 2001

The Honorable James S. Klauber  
Member, House of Representatives  
518-A Blatt Building  
Columbia, South Carolina 29211

RE: Informal Opinion

Dear Representative Klauber:

By your letter of January 26, 2001, you have requested an opinion as to whether you may serve simultaneously as a member of the South Carolina House of Representatives and as a member of the South Carolina Economic Education Council. For the reasons set forth below, it is my opinion that concurrent service in these positions would 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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One who serves as a member of the South Carolina House of Representatives unquestionably holds an office for dual office holding purposes. *See, Ops. Att'y. Gen.* dated September 13, 1990; June 11, 1992; September 4, 1992; and many others. It must therefore be determined whether service on the South Carolina Economic Education Council would likewise be considered an office.

The Director of the Economic Education Council informs me that the Council is chartered as a nonprofit corporation. Thus, the Council's duties and responsibilities are not defined in the general statutory laws of this State. Moreover, its main duty -- to educate South Carolina students on the free enterprise system-- does not appear to involve an exercise of the state's sovereign power. Accordingly, it is my opinion that one who serves on the South Carolina Economic Education Council does not hold an office within the meaning of S.C. Const. Article XVII, Section 1A and that your concurrent service in the South Carolina House of Representatives would not constitute a violation of the Constitution's prohibition against dual office holding.

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, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion. I trust that it has satisfactorily responded to your inquiry and that you will advise if clarification or additional assistance should be necessary.

With kindest regards, I am

Sincerely,

A handwritten signature in black ink, appearing to read "Zeb Williams", with a stylized flourish at the end.

Zeb C. Williams, III  
Deputy Attorney General

ZCW/an