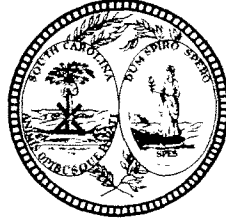


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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

January 29, 1997

The Honorable Glenn F. McConnell
Chairman, Joint Delegation
Charleston County Legislative Delegation
2 Courthouse Square, Room 307
Charleston, South Carolina 29401

Re: Informal Opinion

Dear Senator McConnell:

Your recent letter addressed to Attorney General Condon has been referred to me for reply. You have inquired whether an individual's service on both a local constituent school board and the Charleston County Park and Recreation Commission would constitute dual office holding.

Article XVII, Sec. 1A of the South Carolina Constitution provides that "... no person shall hold two offices of honor or profit at the same time." 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 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).

This Office has determined on numerous occasions that a member of a local constituent school board is an officer for dual office holding purposes. See, as examples, Ops. Atty. Gen. dated March 6, 1989; September 30, 1981; and January 16, 1976. Because service on a constituent school board would be an office, it must thus be determined whether membership on the Charleston County Park and Recreation Commission would likewise be considered an office.

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The present Charleston County Park and Recreation Commission was created pursuant to Act No. 1595 of the 1972 Statutes at Large, as amended by Act. No. 263 of 1985. Its members are empowered to do the following: acquire land whereupon to establish county parks and operate such facilities; acquire and operate equipment; fix rates and charges for the use of its facilities; make contracts for construction and other services; issue revenue bonds; and expend all funds received. These functions involve the exercise of the sovereign power of the State, and therefore, the members of the Charleston County Park and Recreation Commission appear to be officers for dual office holding purposes. See Op. Atty. Gen. dated June 24, 1983. Moreover, this Office has frequently concluded that members of other counties' recreation commissions would be considered officers. See, as examples, Ops. Atty. Gen. dated July 17, 1984; August 4, 1982; and October 21, 1980. There appears no reason to treat any differently a member of the Charleston County Park and Recreation Commission. Thus, I am of the opinion that a member of that body would also be considered an officer for dual office holding purposes.

Based on the foregoing, a court would most likely conclude that simultaneous membership on both a local constituent school board and the Charleston County Park and Recreation Commission contravenes the State Constitution's dual office holding prohibitions. I trust this letter is responsive to your inquiry; however, should you have further questions, please do not hesitate to contact me.

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.

Sincerely,



Zeb C. Williams, III
Deputy Attorney General

ZCW, III/ph