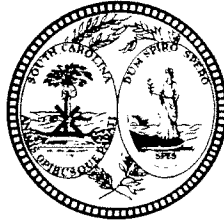


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The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON  
ATTORNEY GENERAL

May 8, 1997

VIA U.S. MAIL AND FAX (803) 662-1779

James W. Peterson, Jr., Esquire  
Office of the City Attorney  
City-County Complex AA  
180 N. Irby Street  
Florence, South Carolina 29501-3456

Re: Informal Opinion

Dear Jim:

By your letter of May 6, 1997, you have inquired whether a member of Florence City Council could simultaneously serve as a member of the Micro-Loan Program Advisory Committee without violating the prohibition against dual office holding of the State Constitution.

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, member of a lawfully and regularly organized fire department, constable, or a 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 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 advised previously that a member of a city council would be considered an officer for dual office holding purposes. See Ops. Atty. Gen. dated July 13, 1995; February 4, 1994; July 23, 1993; September 7, 1989; and many others. Thus, the only remaining issue is whether membership on the Micro-Loan Program Advisory

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Committee would constitute an office for the purposes of Article XVII, Section 1A of the South Carolina Constitution.

Based on the information you provided, the five member Micro-Loan Program Advisory Committee was established by an eleemosynary organization formed in compliance with the requirements of § 501(c)(3) of the Internal Revenue Code. Thus, the advisory committee's duties and responsibilities are not defined in the general statutory laws of this State. Moreover, the advisory committee's main duty -- to make loan eligibility determinations -- does not appear to involve an exercise of the state's sovereign power. Accordingly, the Office is of the opinion that membership on the Micro-Loan Advisory Committee does not constitute an office within the meaning of the South Carolina Constitution's prohibition against dual office holding, and the same individual can be both a member of this Committee and a member of Florence City Council.

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 yours,



Zeb C. Williams, III  
Deputy Attorney General

ZCW,III/an