



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

January 6, 1998

Peter P. Nomikos, Code Enforcement Administrator
County of Greenville
County Square
301 University Ridge, Suite 4100
Greenville, South Carolina 29601-3665

Re: Informal Opinion

Dear Mr. Nomikos:

Attorney General Condon has forwarded your opinion request to me for reply. You have informed this Office that you are presently employed by the Greenville County Council as the Code Enforcement Administrator. You have filed an application with the Greenville County Council to be considered for membership on the Board of Directors of the Greenville County Redevelopment Authority (hereinafter the "Authority"). You have asked whether there would be a conflict of interest and/or violation of the State Ethics Act if you were to simultaneously serve in both positions.

State law does not authorize this Office to issue an opinion upon any matter which is within the jurisdiction of the State Ethics Commission. Therefore, I would recommend contacting the Commission for an answer to your question.

While this Office is not authorized to render an opinion on your State Ethics Act question, it appears the State Constitutional prohibitions against dual office holding may apply to the facts presented. 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.

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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 previously concluded that a county code enforcement officer would be considered an office holder for dual office holding purposes. Op. Atty. Gen. dated April 9, 1997. While this opinion did not specifically address the position of Code Enforcement Administrator, your position appears to exercise many of the same powers as a code enforcement officer. Specifically, you state that your duties consists of interpreting, administering and enforcing the Greenville County Zoning Ordinance, Standard Housing Code, Environmental Ordinance, Sign Ordinance, Billboard Ordinance, Junkyard Ordinance, Bingo Ordinance, Fireworks Ordinance, and Adult Entertainment Ordinance. Further, you state that you have the authority to represent the county in court and issue a summons to cite a violation of a county ordinance.

Based on the foregoing, it is apparent that in your position, you exercise one of the traditional sovereign powers of the State: police power. Accordingly, the position of Greenville County Code Enforcement Administrator would be considered an office for dual office holding purposes.

In regards to a member of the Board of Directors of the Authority, this body was created by Act No. 516 of 1969. The Authority consists of five commissioners appointed by a majority of the county council. Among other things, the Authority has the power to purchase, obtain options upon, and acquire by gift, grant, bequest, devise or otherwise, any personal or real property. In addition, the Authority has the powers to contract, expend money and sue and be sued.

As evidenced by the previously stated powers of the Authority, members of its Board of Directors appear to exercise some of the sovereign powers of the State. Therefore, a member of the Board of Directors of the Authority would likely be considered an office holder for dual office holding purposes.

In conclusion, since the positions of Greenville County Code Enforcement Administrator and member of the Board of Directors of the Authority are both considered offices for dual office holding purposes, if an individual simultaneously serves as both, Article XVII, Section 1A of the State Constitution would be violated.

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

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specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kindest regards, I remain

Very truly yours,



Paul M. Koch
Assistant Attorney General