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The State of South Carolina



Office of the Attorney General

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January 25, 1994

The Honorable Hugh K. Leatherman, Sr.
Senator, District No. 31
Post Office Box 5506
Florence, South Carolina 29502

Dear Senator Leatherman:

You had asked whether members of the Florence County Visitor and Tourism Board and the Florence County Tax Appeal Board, both of which are appointed by Florence County Council, can also be appointed to the newly-created County Transportation Committee and retain their current position. We understand your concern to be dual office holding, which is prohibited by the state Constitution.

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 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 concluded, in an opinion issued July 28, 1993, that a member of a county transportation committee would hold an office for dual office holding purposes. A copy of the opinion is enclosed.

By Ordinance # 16-92/93, Florence County Council created the "Florence County Convention & Visitors Bureau" to be governed by a commission of five members. Members in seats 1, 2, and 3 are appointed by council upon recommendation of the

Respectfully,

The Honorable Hugh K. Leatherman, Sr.

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Florence Innkeepers Association, and the member in seat 5 is appointed at large by council.¹ Members are appointed for four year terms, with the ordinance establishing staggered terms for the initial members. The ordinance does not require an oath to be taken prior to assumption of duties, nor is compensation specified. Various duties are specified within the ordinance, including the promotion and advertising of tourist attractions in Florence County; acting as liaison between Florence County Council and the county's tourism industry, and potential visitors; expending funds from accommodations tax advertising and promotion funds (see S.C. Code Ann. § 6-4-10 et seq.); and other duties. While Florence County Council has retained control over certain aspects of operation (i.e., approving the annual budget, etc.), a great amount of latitude has been granted by council to this commission. Thus, we conclude that some exercise of sovereign power is occurring. We further conclude that commission members meet many of the criteria usually found in an office and therefore would be considered office holders for dual office holding purposes.

The Florence County Tax Appeal Board was created by Act No. 819 of 1964.² The powers and duties of the Florence County Board of Equalization were devolved upon the Tax Appeal Board. (By § 65-1871 of the 1962 Code of Laws, the Board of Equalization was authorized and empowered to hear appeals from local boards of equalization and to modify, reverse, or alter assessments by those local boards.) Terms of three years were specified in the act. No provision is made for taking an oath prior to assumption of duties. Board members are to be paid "on a per diem basis as provided for annually in the county appropriations act." Section 5 of Act No. 819 of 1964. Clearly, hearing matters and making decisions concerning assessments of property for tax purposes involves an exercise of a portion of the sovereign power of the State. See Op. Atty. Gen. dated October 21, 1985. Considering all of the foregoing, it is the opinion of this Office that one serving on the Florence County Tax Appeal Board would be considered an office holder for dual office holding purposes.

In conclusion and based on the foregoing, it is our opinion that if a member of the Florence County Tax Appeal Board or a member of the Florence County Convention &

¹ The member in seat 4 is the sitting Chairman of the Florence City-County Civic Center Commission. Because this appears to be an ex officio position, no comment is made herein as to whether the occupant of that seat holds an office.

² No ordinance has been presented for our consideration of this position. Thus, it is assumed that the act of the General Assembly is still in effect.

The Honorable Hugh K. Leatherman, Sr.

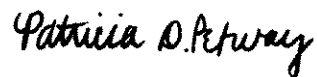
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Visitors Bureau were to be appointed to the County Transportation Committee, dual office holding situations would most probably result.

With kindest regards, I am

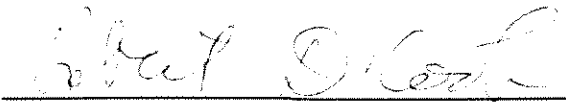
Sincerely,



Patricia D. Petway
Assistant Attorney General

PDP/an
Enclosure

REVIEWED AND APPROVED BY:



Robert D. Cook
Executive Assistant for Opinions