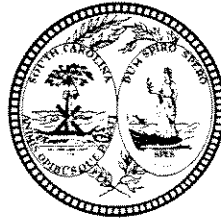


Reg. 4910



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

April 21, 1995

The Honorable John A. McAllister, Jr.
Member, The Citadel Board of Visitors
Post Office Box 369
Abbeville, South Carolina 29620-0369

RE: Informal Opinion

Dear Mr. McAllister:

By your letter of April 17, 1995, to Attorney General Condon, you have sought an opinion as to whether your membership on the Board of Visitors of The Citadel simultaneously with membership on the Abbeville County Historic Preservation Commission¹ would constitute dual office holding in violation of the South Carolina 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).

¹You have advised that your appointment to the Abbeville County Historic Preservation Commission is pending.

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By an opinion of this Office dated June 25, 1986, it was concluded that a member of the Board of Visitors of The Citadel would be considered an office holder. A copy of the opinion is enclosed herewith. Thus, it must be determined whether membership on the Abbeville County Historic Preservation Commission would constitute an office.

The Abbeville County Historic Preservation Commission was created by the General Assembly by Act No. 902 of 1964. The Commission is to be comprised of seven resident electors of Abbeville County to be appointed by the Governor upon the recommendation of a majority of the Abbeville County Legislative Delegation, which entity receives recommendations from the mayor and municipal councils of five municipalities in Abbeville County. The term of the members of the Commission is four years or until their successors are appointed and qualify. No member of the Commission is to receive compensation for services as a member of the Commission. No oath is required of members of the Commission. But see S.C. const. art. VI, § 5. Powers and duties to be exercised by members of the Commission are specified in section 4 of Act No. 902 of 1964 and include the power to sue and be sued; to enter into contracts in furtherance of the Commission's purpose; to make bylaws, rules, and regulations; to acquire, etc., buildings and structures of historic significance and the land upon which such stand, in Abbeville County; to appoint agents, servants, and employees; and other powers. These duties appear to involve an exercise of a portion of the sovereign power of the State.

It appears that a substantial number of the factors usually found in an office are present with respect to the members of the Abbeville County Historic Preservation Commission. In section 3 of the enabling legislation, however, is the following: "Membership on the Commission shall not be construed to be an office of honor or profit." It therefore appears that the General Assembly has determined that one who would serve on the Abbeville County Historic Preservation Commission would not be an office holder for dual office holding purposes. Cf., Ops. Att'y Gen. dated January 17, 1985, as to Marlboro County Historic Preservation Commission, the enabling legislation of which contains a similar provision.

Based on the foregoing, I am of the opinion that you may serve simultaneously on the Board of Visitors of The Citadel and as a member of the Abbeville County Historic Preservation Commission without violating the dual office holding prohibitions of the South Carolina Constitution.

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 specific questions asked. It has not, however, been personally scrutinized by the

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Attorney General nor officially published in the manner of a formal opinion. I trust that the foregoing 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,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

Enclosures