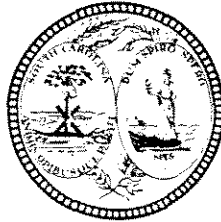


Reg. 5142



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

December 13, 1995

Mr. Gene Beckman
Boards and Commissions
Office of the Governor
Post Office Box 11369
Columbia, South Carolina 29211

RE: Informal Opinion

Dear Mr. Beckman:

By your letter of December 1, 1995, to Attorney General Condon, you had sought an opinion as to whether an individual might serve simultaneously on the Piedmont Technical Education Commission and on the Savannah Lakes Village Commission without violating the dual office holding prohibitions of the South Carolina 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).

The Piedmont Technical Education and Training District was established pursuant to S.C. Code Ann. §59-53-1210 (1976, revised 1990). The governing body of the District is known as the Piedmont Technical Education Commission. Id. The members of the Commission are appointed pursuant to §59-53-1220: one member each from the counties of Edgefield, McCormick, Newberry, and Saluda; two members each from the counties

Mr. Gene Beckman
Page 2
December 13, 1995

of Abbeville and Laurens; and four members from Greenwood County, each member to be appointed by the Governor upon the recommendation of a majority of the resident members of the legislative delegation of his county. Commission members serve terms of four years and until their successors are appointed and qualified; mention is made in that statute of "terms of office." Powers and duties of the Commission are outlined specifically in statutes such as §59-53-1230 and 59-53-1240 and generally in statutes such as §§59-53-51, 59-53-52, 59-53-53; 59-53-155, and others. The Commission is to

provide for the creation, maintenance and operation of a technical education center to be located within the district, and there shall be developed and carried out at such center a program of adult pre-employment, adult extension, and high school pre-employment training for residents of the district and such other persons as the commission shall designate, upon such terms as the commission shall require, all in conjunction and coordination with the State program for technical education.

§59-53-1230. In addition, §59-53-1240 vests the Commission with authority to employ personnel; accept and administer funds or equipment from various sources; enter into contracts; and acquire, own, and sell real and personal property. The Commission also exercises the same general powers and duties as the other area technical education commission would exercise pursuant to the general law applicable to such commissions.

This Office has advised on several occasions that members of the various technical education commission would be considered office holders for dual office holding purposes. See Op. Att'y Gen. dated April 5, 1994 (Spartanburg County Commission for Technical Education); January 22, 1993 (Richland-Lexington Counties Commission for Technical Education); February 1, 1985 (Horry-Georgetown Commission for Technical Education); January 31, 1985 (Chesterfield-Marlboro Area Technical Education Center Commission); and June 24, 1983 (Sumter Area Technical Education Commission). There does not appear to be any reason to treat differently a member of the Piedmont Technical Education Commission. Thus, I am of the opinion that a member of the Piedmont Technical Education Commission would be considered an office holder for dual office holding purposes.

The Savannah Lakes Village Commission was established pursuant to Ordinance 91-21 of McCormick County Council, which ordinance provided for a referendum relative to creating a special tax district in McCormick County for the purposes of providing fire protection, police protection, and emergency medical services in Savannah Lakes Village. The referendum held thereunder was favorable; the tax district was created; and the Commission was established. Section V of the ordinance provides as follows:

Mr. Gene Beckman

Page 3

December 13, 1995

(a) Should the special tax district be created by a majority vote, there shall be a commission composed of five (5) members who shall be appointed by McCormick County Council and who shall hold office for a term of four (4) years, on a staggered basis, until their successors have been appointed and qualified. Council shall designate two (2) commissioners to serve an initial term of (2) [sic] years and three (3) commissioners to serve an initial four (4) year term. Thereafter, all commissioners shall serve for four (4) years.

(b) Of the five (5) commissioners, at least three (3) shall reside within the boundaries of the district, one (1) commissioner shall be a representative of Cooper Communities, and one (1) commissioner shall be a representative of Savannah Lakes Village Club.

The Commission shall be known as the "Savannah Lakes Village Commission". The members shall select their chairman, who shall hold office for a term of one (1) year or until a successor has been selected.

(c) The Commission shall have the powers to negotiate all lawful contracts concerning the providing of fire protection, police protection, and emergency medical services for the district and shall generally look after the business affairs of the district relating to such services.

If requested by McCormick County Council at any time, the Commission shall make a prompt, full accounting of its actions to County Council. [Emphasis added.]

An analysis of section V of the ordinance shows that the Commission was created by an ordinance, a legislative act of McCormick County Council. Qualifications must be met by those who would serve on the Commission. A term of four years is provided for; the ordinance speaks in terms of commissioners "who shall hold office," which is some indication that McCormick County Council deemed the position of commissioner to be an office. Powers of the Commission are provided in the ordinance, which powers appear to involve an exercise of a portion of the sovereign power of the State in negotiating contracts for the stated services and otherwise looking after the business affairs of the District.

Considering all of the foregoing, I am of the opinion that one who would serve as a member of the Savannah Lakes Village Commission would be considered an office holder for dual office holding purposes. That being the case, one who would serve

Mr. Gene Beckman
Page 4
December 13, 1995

simultaneously on the Savannah Lakes Village Commission and as a member of the Piedmont Technical Education Commission would most probably contravene the dual office holding prohibitions of the South Carolina Constitution.

This letter is an informal opinion only. It has been written by a designated Senior 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 Attorney General nor officially published in the manner of a formal opinion. I trust that it has been responsive to your inquiry and that you will advise if clarification or additional assistance should be needed.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Senior Assistant Attorney General