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# The State of South Carolina



## Office of the Attorney General

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February 3, 1995

Mr. Daniel R. McAvoy  
13 Crooked Pond Drive  
Hilton Head Island, South Carolina 29926

Re: Informal Opinion

Dear Mr. McAvoy:

By your letter of January 20, 1995, to Attorney General Condon, you have inquired of this Office as to the possibility of dual office holding occurring if you, presently a member of the Library Board of Beaufort County, should be appointed to the governing body of Hilton Head No. 1 Public Service District.

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).

Hilton Head No. 1 Public Service District was created by Act No. 596, 1969 Acts and Joint Resolutions, as amended by Act No. 686 of 1971 and Act No. 1738 of 1972 (neither of which are relevant here). The District is to be governed by a five-member commission to be appointed by the Governor upon the recommendation of a majority of the Beaufort County Legislative Delegation, including the senators of the District. Members are to serve terms of three years and until their successors qualify. No oath is required by the 1969 act. But see Article VI, Section 5 of the South Carolina Constitu-

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tion. Members of the commission must be qualified electors of the District. No provision is made within the 1969 act for compensation. Powers of the commissioners are detailed in section 4 of the 1969 act and include such powers as prescribing regulations with respect to use of property or facilities owned by the District; building or acquiring facilities; imposing rates; exercising eminent domain; employing personnel; entering into contracts; incurring indebtedness; levying taxes; and the like. Clearly these duties involve an exercise of a portion of the sovereign power of the state.

It is also observed that within section 3 of the 1969 act, reference is made to "persons holding office," "to hold office," "termination of the term of office," and vacancy occurring "in the office of commissioner." Use of these terms or phrases would seem to indicate a legislative intent that membership on the commission would constitute an office.

Considering all of the foregoing, it is my opinion that service on the governing body or commission of Hilton Head No. 1 Public Service District would constitute an office for purposes of dual office holding.

Apparently the Office of the Attorney General has not previously considered whether a member of the Beaufort County Library Board would be considered an officer for purposes of dual office holding. From the enclosures with your letter, it appears that the Library Board was created pursuant to a template ordinance of Beaufort County Council, Ordinance No. 90/1, which ordinance succeeded Ordinance No. 89/9. Beaufort County Council has also issued a charter to the Library Board, which document further provides for the powers and duties to be exercised by the Board.

Analysis of the referenced documents of Beaufort County Council shows that the Library Board is a creation of Beaufort County Council. See also S. C. Code Ann. §4-9-35 et seq. By the template ordinance, a member of the Library Board is to serve a term of four years and until his successor is appointed and qualified. No qualifications appear to be required, though Part III.D. sets forth various matters for County Council to consider in making appointments to the various county boards. No oath is required to be taken. No compensation is provided for, though reimbursement for expenses incurred in the discharge of their duties is authorized. Duties of county boards are generally provided for in Part IV of the template ordinance and in the charter.

The charter of the Library Board empowers the Board to hire the Chief Librarian, establish policies for borrowing books, accept donations, develop library services, adopt regulations, and the like. The Board is to review and recommend the library budget and make recommendations as to facilities. From Part IV of the template ordinance it would appear that the powers and duties exercised by the Library Board are largely recommenda-

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tory in nature, in that County Council has the final approval on many of the powers and duties being exercised by the Library Board. A conversation with the Beaufort County Attorney confirmed this fact.

It appears that the members of the Beaufort County Library Board meet some of the criteria usually found in an office, though not all of the criteria. The most important criterion, that of an exercise of a portion of the sovereign power of the state, appears to be lacking, as Beaufort County Council seems to be exercising that power with recommendations from the Library Board. It is therefore my opinion that one who would serve on the Beaufort County Library Board would probably not hold an office for dual office holding purposes.

Consistent with the foregoing, it is my opinion that a member of the Beaufort County Library Board could also serve on the governing board of Hilton Head No. 1 Public Service District without running afoul of the dual office holding prohibitions of the South Carolina Constitution.

I trust that the foregoing satisfactorily responds to your inquiry. If clarification or a formal opinion should be needed, please advise.

Sincerely,

*Patricia D. Petway*

Patricia D. Petway  
Assistant Attorney General

CC: Ladson F. Howell, Esquire  
Beaufort County Attorney