



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
 ATTORNEY GENERAL

May 24, 1995

The Honorable William D. Boan
 Member, House of Representatives
 310-D Blatt Building
 Columbia, South Carolina 29211

RE: Informal Opinion

Dear Representative Boan:

By your letter of May 15, 1995, to Attorney General Condon's office, you have sought an opinion as to whether you may serve concurrently as a member of the South Carolina House of Representatives and as the interim Economic Developer/Director of the Lancaster County Economic Development Corporation. Your particular concern is whether such simultaneous service would constitute dual office holding as prohibited by the South Carolina Constitution.

Article III, Section 24 of the South Carolina Constitution provides that "[n]o person is eligible to a seat in the General Assembly while he holds any office or position of profit or trust under this State, the United States of America, or any of them or under any other power... " with exceptions specified for an officer in the militia, members of lawfully and regularly organized fire department, constables, or notaries 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).

One who serves as a member of the South Carolina House of Representatives unquestionably holds an office for dual office holding purposes. Ops. Att'y Gen. dated

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September 13, 1990; June 11, 1992; September 4, 1992; and many others. It must therefore be determined whether the position of interim Economic Developer/Director of the Lancaster County Economic Development Corporation would be considered an office.

I have been advised by the Office of the Secretary of State that the Lancaster County Economic Development Corporation is chartered as an eleemosynary corporation. It was not created by any governmental action such as an act of the General Assembly or an ordinance of Lancaster County Council. Instead, the entity was created by a group of businesses in Lancaster County to promote economic development.¹ The position of interim Economic Developer/Director would be a salaried position paid for by the Corporation. No oath is required to assume the position. No statute or ordinance provides for qualifications to be met, a specific term of years for the incumbent to serve, or the powers and duties to be exercised by the incumbent. The powers and duties which you would be expected to perform include the development and implementation of programs to stimulate economic activity and develop the industrial potential of Lancaster County; coordination of organization and use of resources available from among corporate, public, and private memberships; and performance of other duties relative to the objectives and policies of the Lancaster County Economic Development Corporation. These powers and duties do not appear to involve an exercise of a portion of the sovereign power of the State.

Based on the foregoing, I am of the opinion that you may serve concurrently as a member of the South Carolina House of Representatives and as the interim Economic Developer/Director of the Lancaster County Economic Development Corporation without contravening the dual office holding prohibition of Article III, Section 24 of the South Carolina Constitution. In so concluding, I would point out the issue of separation of powers since you are a member of the legislative branch of government. See Article I, Section 8 of the South Carolina Constitution. Article III, Section 11 of the Constitution states that "[e]ach house shall judge of the ... qualifications of its own members," I would respectfully defer to the House of Representatives to finally determine that you would not be in violation of Article III, Section 24 if you were to serve in the proposed capacity while you are also a member of the House of Representatives.

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

¹You have advised that the Corporation raises its funds through dues contributed by the county government, municipal governments, private companies, and individuals in Lancaster County.

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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 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