



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

October 16, 1995

H. Fulton Ross, Jr., Esquire
Gaffney City Attorney
Post Office Box 308
Gaffney, South Carolina 29342

RE: Informal Opinion

Dear Mr. Ross:

By your letter of October 2, 1995, on behalf of the Gaffney City Council, to Attorney General Condon, you have sought an opinion as to whether a person could simultaneously be a member of the Cherokee County Development Board and the City of Gaffney Planning and Zoning Commission without violating the prohibition against dual office holding of the State 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).

This Office has advised previously that an individual who would serve on the Cherokee County Development Board would be considered an office holder for dual office holding purposes. Enclosed is a copy of Op. Att'y Gen. dated September 30, 1983, so concluding. Because the opinion is based on a 1957 act of the General

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Assembly, I would point out footnote 1 of the opinion; if Cherokee County Council has adopted an ordinance since the 1957 act of the General Assembly was adopted, it may be necessary to re-examine the conclusion of the 1983 opinion. You may wish to inquire of Cherokee County Council as to what legislative act the Development Board is presently following.

I am not aware of how the City of Gaffney Planning and Zoning Commission has been established. If you will please advise me and forward a copy of the appropriate ordinance (assuming one has been adopted), I will be happy to look into the dual office holding question. To be of as much assistance in the interim, I am enclosing copies of Ops. Att'y Gen. dated April 24, 1979 (City of Anderson Planning and Zoning Commission is an office for dual office holding purposes); and April 5, 1990 and August 24, 1992 (both as to service on the City of Florence Planning Commission constituting an office, each one pointing out different aspects of consideration). If the City of Gaffney's Planning and Zoning Commission should be set up like either of these bodies, I am of the opinion that such service would most probably constitute an office for dual office holding purposes.

In conclusion, it is quite possible that the situation described above would constitute dual office holding. If the enclosed opinions do not resolve the matter, please advise and send me copies of the relevant documents and I will be happy to consider the matter further.

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.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Senior Assistant Attorney General

Enclosures