



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

July 19, 1995

The Honorable Vardry D. Ramseur, III
Commissioner, Greenville Water System
14 Aldridge Drive
Greenville, South Carolina 29607

RE: Informal Opinion

Dear Mr. Ramseur:

By your letter of July 7, 1995, to the Office of Attorney General Condon, you have sought an opinion as to whether you may serve simultaneously as a Commissioner of the Greenville Water System and as Executive Director of the Donaldson Development Commission in Greenville without contravening 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).

This Office has advised on previous occasions that a member of a commission of public works would be considered an office holder for dual office holding purposes. See Ops. Att'y Gen. dated April 12, 1993 (Combined Utility System of Easley); September 24, 1990 (Commission of Public Works of McCormick); and May 2, 1974 (unspecified commission of public works, most probably Town of Whitmire). There appears to be no

The Honorable Vardry D. Ramseur, III

Page 2

July 19, 1995

reason to treat the commissioners of the Greenville Water System differently from other commissioners of public works; therefore, I am of the opinion that a Commissioner of the Greenville Water System would be considered an office holder for dual office holding purposes. Thus, the position of Executive Director of the Donaldson Development Commission must be examined, to determine whether that would be considered an office.

The Donaldson Development Commission was established in 1976 by the joint action of the City and County of Greenville to control the development of the Donaldson Center. See Joint Resolution, City Council of Greenville and County Council of Greenville County dated January 13, 1976, and April 20, 1976. A review of the Joint Resolution reveals that the Donaldson Development Commission, as appointed by the City and County Councils, has been given the authority to employ "a staff to operate, maintain, protect, develop, and plan the development of the Center." The Joint Resolution does not specifically create the position of Executive Director, provide for qualifications to be met by the incumbent, specify powers and duties to be exercised by the incumbent, require an oath, or the like. You have advised that, if employed as Executive Director, you would receive compensation. Your tenure would be "at will," as opposed to for a specific term of years. You have advised that your responsibilities would include administration of the Donaldson Center, negotiating leases, overseeing staff, and day to day running of the Center. It does not appear that as Executive Director you would be exercising a portion of the sovereign power of the State.

Based on the foregoing, I am of the opinion that, as Executive Director of the Donaldson Development Commission, you would not be considered an office holder; I am of the opinion that you would be considered an employee of the Donaldson Development Commission. Therefore, you could serve simultaneously as a Commissioner of the Greenville Water System without contravening the dual office holding prohibitions of the South Carolina Constitution.

You further advised in your letter that in no case during your years of service on the Greenville Water System has a vote arisen concerning the Donaldson Center. You suggested that if and when such a matter might arise, you could abstain from voting. This would not be a dual office holding issue, but one arising under the Ethics, Government Accountability, and Campaign Reform Act of 1991, S.C. Code Ann. §8-13-100 et seq. If a question should arise about that Act, you may wish to consult the State Ethics Commission.

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

The Honorable Vardry D. Ramseur, III
Page 3
July 19, 1995

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 needed.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Senior Assistant Attorney General