



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

July 17, 1996

The Honorable C. Tyrone Courtney
Senator, District No. 13
Post Office Box 2229
Spartanburg, South Carolina 29304

RE: Informal Opinion

Dear Senator Courtney:

Referencing a letter from the Office of the Governor to one of your constituents, you requested that this Office research the issue of whether an individual may serve simultaneously on the Spartanburg County Commission for Technical Education and on the City of Spartanburg Construction Appeals Board without running afoul of 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 previously determined that one who would serve on the Spartanburg County Technical Education Commission would be considered an office holder for dual office holding purposes. Enclosed is a copy of an opinion dated April 5, 1994, so concluding. Thus, it must be determined whether membership on the

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Construction Appeals Board of the City of Spartanburg would also be considered an office.

Chapter 5, Buildings and Building Regulations, of the Spartanburg City Code, provides in Article II for the Construction Board of Adjustment and Appeals. Section 5-22 provides for the establishment of the Board, which is to consist of seven members and two alternate members, who are to be appointed by Spartanburg City Council. Part 2.0 of Section 5-22 provides for membership and terms; it is suggested that appointees include "individuals with knowledge and experience in the technical codes, such as design professionals, contractors or building industry representatives." Two alternate members are suggested to be appointed, one to be from the building industry and one from the public at large. Part 2.2 provides for the "terms of office of the board members," (emphasis added) such terms to be for three-year periods. No provision is made for compensation (within these provisions of the City Code) or for an oath of office to be taken prior to assumption of duties. Part 3.0 provides as to powers to be exercised by the Board: "The construction board of adjustment and appeals shall have the power as further defined in 4.0 to hear appeals of decisions and interpretations of the building official and consider variances of the technical codes." The Board hears appeals from decisions of the building officials of the City of Spartanburg and may grant variances as provided in the City Code. Part 5.2 provides that "[e]very decision of the board shall be final, subject however to such remedy as any aggrieved party might have at law or in equity." The exercise of these duties involves an exercise of a portion of the sovereign power of the state, without question.

Considering all of the foregoing in light of the factors specified in the judicial decisions discussed above, I am of the opinion that one who would serve on the City of Spartanburg Construction Appeals Board would most probably be considered an office holder for dual office holding purposes. That individual would thus contravene the dual office holding prohibitions of the South Carolina Constitution if he were to hold that office and serve at the same time on the Spartanburg County Technical Education 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 Attorney General nor officially published in the manner of a formal opinion.

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With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Senior Assistant Attorney General

Enclosure