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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

July 23, 1996

Mr. Bob Artlip
246 Smithfield Circle
Elgin, South Carolina 29045

RE: Informal Opinion

Dear Mr. Artlip:

You had faxed to the Office of Attorney General Condon a copy of Kershaw County Council's ordinance creating the Kershaw County Water and Sewer Authority. Referencing the fact that you are on the Kershaw County Transportation Committee, you have asked whether you might also be able to serve on the Kershaw County Water and Sewer Authority without running afoul of the dual office holding prohibition 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 opined previously that one who would serve on a county transportation committee would hold an office for purposes of dual office holding, though the conclusion was not entirely free from doubt. Enclosed is a copy of that opinion, dated July 28, 1993, for your review.

Reverend Artlip

Mr. Bob Artlip
Page 2
July 23, 1996

The Kershaw County Water and Sewer Authority was created by an ordinance of Kershaw County Council; the document which I reviewed was dated April 15, 1992. Section 2 of that ordinance provides for the appointment of a commission for management and control of the Authority; section 2(a) provides in relevant part:

The management and control of the Authority shall be vested in a commission consisting of seven (7) members. The initial Authority members shall be recommended by the Organizational Group and appointed by County Council. Future replacements shall be recommended by the Authority and appointed by County Council. The selection process should give primary emphasis to qualified candidates with broad problem-solving skills including managerial, financial and technical areas. Consideration should also be given to appointing representatives from various geographical areas of the County. The initial Authority shall consist of seven (7) members, three (3) of whom shall be elected for three (3) years and two (2) of whom shall be elected for two (2) years and two (2) of whom shall be elected for one (1) year. All new or renewal appointments after the expiration of the initial terms of the initial Authority shall be for three (3) year terms. ...

As to compensation, section 2(d) of the ordinance provides:

No Authority member shall receive any compensation solely for the performance of duties as a member, but each Authority member may be paid per diem, mileage and subsistence expenses, as provided by law for Kershaw County boards, committees and commissions, incurred while engaged in the performance of such duties.

The duties of the Authority, as exercised by the Authority members, are specified in section 7 of the ordinance and include such activities as studying, developing, and recommending to County Council projects and other arrangements to establish, maintain, or improve water, wastewater, or solid waste services. The Authority may implement projects approved by County Council. An extensive list of powers relative to recommendations and approvals is reserved by Kershaw County Council. It appears that, due to the ultimate authority in County Council to approve such items as the Authority's budget, fees, rates, and regulations; to make contracts; to alienate property; to borrow money; to acquire and operate any water or wastewater treatment commission or any water distribution system, as stated in the ordinance; and the like that the actual, ultimate exercise of sovereign power in this instance is reposed in County Council rather than in the Authority.

Mr. Bob Artlip
Page 3
July 23, 1996

While a number of factors usually found in an office are present in this instance, the Authority members do not appear to actually exercise a portion of the sovereign power of the state. While the question is a close one, I would resolve doubt in favor of concluding that one who would serve as a member of the Kershaw County Water and Sewer Authority would probably not be considered an office holder for dual office holding purposes. Thus, a member of the County Transportation Committee of Kershaw County could most probably serve concurrently on the Kershaw County Water and Sewer Authority without running afoul of the dual office holding prohibitions of the South Carolina Constitution.

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 reviewed in the manner of a formal opinion.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Senior Assistant Attorney General

Enclosure