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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

November 21, 1996

The Honorable James Furtick, Jr.
Commissioner, SC Commission for Minority Affairs
1349 Edisto Drive, SW
Orangeburg, South Carolina 29115-7123

Re: Informal Opinion

Dear Commissioner Furtick:

By your letter of November 7, 1996, you have inquired whether the South Carolina Constitution's prohibition against dual office holding precludes you from serving simultaneously on the State Commission on Minority Affairs and as a member of the South Carolina State University Board of Trustees.

Article XVII, Sec. 1A of the South Carolina Constitution provides that "... no person shall hold two offices of honor or profit at the same time." 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). Moreover, where a person holding one office of trust or profit is elected or appointed to another such office, and qualifies in the latter capacity, he thereby vacates the first office, and qualifies in the latter capacity, he thereby vacates the first office to which he was elected or appointed, and lawfully holds the second office. Walker v. Harris, 170 S.C. 242, 170 S.E. 270 (1933).

This Office has previously stated that one who would serve on the Board of Trustees of South Carolina State University would be regarded as occupying an office for the purposes of Article XVII, Sec. 1A of the State Constitution. See enclosed copy of Op.

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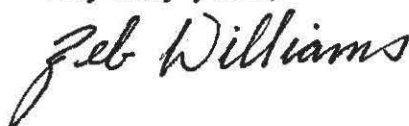
Atty. Gen. 86-43 (March 25, 1986). Accordingly, we must also examine whether a member of the State Commission on Minority Affairs would be considered an office holder for dual office holding purposes.

The State Commission for Minority Affairs was established by Act of the General Assembly, now codified at S.C. Code Ann., § 1-31-10 et seq. (1995 Cum. Supp.). Section 1-31-10 provides for a term of four years and until a member's successor has been appointed and qualifies. No specific provisions are made for board members to take an oath, and there is no provision for compensation of members. The duties to be exercised pursuant to § 1-31-40 are chiefly informative: to "provide the minority community with a single point of contact for statistical and technical assistance ... [to] provide for publication of a statewide statistical abstract on minority affairs ... [to] provide the minority community with assistance and information on Voting Rights Act submissions in the State, as well as other related areas of concern to the minority community" These duties are consultive in nature and lack an exercise of sovereign power. Thus, because many of the indicia of an office are lacking with respect to this position, it is my opinion that membership on the Minority Affairs Commission is most probably not an office.

Based on the foregoing, one who serves on the State Minority Affairs Commission could also serve on the South Carolina State University Board of Trustees. Should any questions arise concerning ethics or conflicts of interest, you may wish to consult with the State Ethics Commission since that agency has primary responsibility for interpreting and enforcing the requirements of the State Ethics Act.

This letter is an informal opinion only. It has been written by a designated Deputy 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.

Very truly yours,

A handwritten signature in cursive script that reads "Zeb Williams".

Zeb C. Williams, III
Deputy Attorney General

ZCW,III/an
Enclosure