



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

June 12, 1997

The Honorable George C. McIntyre
Chairman, Marlboro County Council
P.O. Box 419
Bennettsville, South Carolina 29512

Re: Informal Opinion

Dear Mr. McIntyre:

Attorney General Condon has forwarded your recent opinion request to me for reply. You ask whether membership on the Marlboro County Economic Development Partnership would be considered an office for dual office holding purposes.

Article XVII, Section 1A of the State 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 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 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).

The Marlboro County Economic Development Partnership (hereinafter "the Partnership") will be established by ordinance of the Marlboro County Council. The Board is to consist of twenty members whose terms are determined by the ordinance. No oath is required by the ordinance. No salary is to be paid to the members, although members shall be reimbursed for necessary travel and other expenses incurred in the performance of their duties.

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The purpose of the Partnership is set forth in Section 1 of the ordinance. The Partnership is created for the purpose of advancing the general welfare of the residents of Marlboro County through programs and activities to develop Marlboro County's natural resources and economic opportunities pertaining to commerce, agriculture, forestry, transportation, travel and tourism; to cooperate and offer assistance to existing industries and businesses, to promote and encourage the establishing and location of new industries and businesses in Marlboro County; and other matters intended to foster and develop gainful employment and the pursuit of happiness of all who are now or may hereafter be residents of Marlboro County.

The duties and powers of the Partnership are set forth in Section 8 of the Ordinance. The Partnership has such powers as investigating and assembling information pertinent to the economic resources and industrial opportunities of the county; encouraging location of new industrial enterprises in the county and the expansion of present enterprises; encouraging development of recreational areas and tourism in the county and making the public aware of the county's historical background and progress; disseminating information in the interest of industrial development by publication, advertising and other means; ensuring that all economic development programs are properly focused and directed; developing and implementing both short and long-range economic development plans and strategies; setting and implementing an annual program of action; accepting gifts and grants of money from either private or public sources to be used to promote economic development; cooperating with any federal, state, local agency, board or commission in the furtherance of its purpose; and cooperating with any interested private concern, civic organization or subdivision thereof in furtherance of its purpose.

The question of determining whether these duties involve an exercise of a portion of the sovereign power of the State is extremely close. However, the Marlboro County Council and the Marlboro County Administrator are ultimately responsible for such activities as employing the Executive Director and enforcing personnel policies with respect to employees. The Partnership has not been given authority to enter into contracts on behalf of Marlboro County; presumably, that authority has been retained by the Marlboro County Council. The duties provided by the ordinance are largely advisory and promotional in nature. Thus, the doubt would most likely be resolved in determining that one who would serve on the Partnership would not hold an office for dual office holding purposes. See also, Ops. Atty. Gen. dated August 9, 1991 (Dillon County Development Board) and October 18, 1988 (Kershaw County Industrial Development Board). However, I caution that because this is a close question, this conclusion is not completely free from doubt. Further, if a court were to examine this issue, it would rely more heavily on the actual duties being performed rather than a description thereof.

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

Very truly yours,

A handwritten signature in dark ink, appearing to read "Paul M. Koch". The signature is written in a cursive, slightly stylized font.

Paul M. Koch
Assistant Attorney General