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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON
ATTORNEY GENERAL

July 22, 1998

Mr. Cecil Bracken
Powdersville Water Company, Inc.
1719 Circle Road
Easley, South Carolina 29642

Re: Informal Opinion

Dear Mr. Bracken:

Your opinion request has been forwarded to me for reply. You have asked whether an individual may simultaneously serve as a member of the board of the Pickens County Water Authority and as a member of the board of the Powdersville Water Company without violating the dual office holding prohibitions of the South Carolina Constitution.

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).

This Office has previously concluded that service as a member of the board of the Pickens County Water Authority would be considered an office for dual office holding purposes. Op. Atty. Gen. dated August 2, 1971.

A review of the Articles of Incorporation of the Powdersville Water Company filed with the Secretary of State on May 23, 1968 reveals that the Water Company is a

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nonprofit organization financed in whole or in part by a loan made under the provisions of the Consolidated Farmers Home Administration Act of 1961, as amended. The purpose of the Water Company, as set forth in the Article of Incorporation, are as follows:

To associate its members together for their mutual benefit through cooperation, but not for pecuniary profit, in the sense of paying interest or dividends, and to that end to construct, maintain and operate a water system, or the supplying of water for domestic, commercial, agricultural, industrial and other purposes to its members, and for the sale of any surplus water remaining after the needs of its members have been satisfied, and to engage in any activity related thereto, including, but not limited to, the acquisition of water by appropriation, drilling, pumping, and/or purchase, laying, installation, operation, maintenance and repair of wells, pumping equipment, water mains, pipe lines, valves, meters, and all other equipment necessary for the construction, maintenance and operation of a water system.

This Office has never addressed the question of whether service on the board of the Powdersville Water Company would be considered an office for dual office holding purposes. However, we have addressed the question in regards to other water companies created in a like manner. In an opinion dated September 7, 1993, this Office was asked whether service on the board of directors of the Chesterfield County Rural Water Company, Inc. would be considered an office for dual office holding purposes. In researching the Chesterfield County Rural Water Company, this Office discovered that it was a nonprofit corporation formed in whole or in part by funds from the Farmers Home Administration. The rights, powers, and duties of which may be exercised by the corporation were set forth in Act No. 1030 of 1964. The referenced Act is presently codified as Chapter 35 of Title 33, relating to federally financed nonprofit corporations. The opinion further stated:

While the entity is created pursuant to general enabling legislation, no specific legislation created this specific entity. No legislation created the position of director or member of the governing body; specifies qualifications to be met by the holder of the position; requires an oath of the holder; or provides for his compensation. These matters are all provided for in the charter or bylaws. A review of the powers and duties to be exercised by directors or members of the governing body (as found in the charter and in chapter 35 of title 33) does not reveal any powers or duties which are indicative of an exercise of sovereign power (i.e., eminent domain, levying and collecting taxes, pledging the credit of the State or a political subdivision, among many others).

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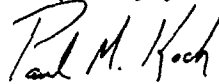
Considering all of the foregoing factors, we are of the opinion that one who would serve as a director or member of the governing body of the Chesterfield County Rural Water Co., Inc. would most probably not be considered an office holder for dual office holding purposes. Thus, you could serve in that capacity and on the Chesterfield County Board of Education without violating the dual office holding prohibitions of the state Constitution.

Since the Powdersville Water Company was created in a manner similar to the Chesterfield County Rural Water Company and exercises like powers, the conclusions reached in the aforementioned opinion would apply to the situation at hand. Therefore, in light of the previously mentioned factors, membership on the board of the Powdersville Water Company would most probably not be considered an office for dual office holding purposes. Accordingly, simultaneous service as a member of the board of the Pickens County Water Authority and as a member of the board of the Powdersville Water Company would not violate the dual office holding prohibitions of the State Constitution.

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,



Paul M. Koch

Assistant Attorney General