

The State of South Carolina



Office of the Attorney General

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April 5, 1990

Mr. John N. Hardee
1427 Fairfax Road
Florence, South Carolina 29501

Dear Mr. Hardee:

By your letter of March 23, 1990, you have advised that you are a member of the City of Florence Planning Commission and the Florence County Economic Development Commission. You have asked whether this would be dual office holding.

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 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).

Planning commissions for municipalities are established pursuant to either Section 5-23-410 et seq. of the South Carolina Code of Laws or Section 6-7-310 et seq. of the Code (applicable to both counties and municipalities). This Office has concluded previously that one who serves on a planning commission established under either statutory scheme would hold an office for dual office holding purposes. Ops. Atty. Gen. dated June 26, 1978 (Rock Hill Planning Commission); March 29, 1982 (Town of Lexington Planning Commission); January 31, 1984 (Florence County Planning Commission); and many others. Thus, we would conclude that one who serves as a member of the City of Florence Planning Commission would hold an office for dual office holding purposes.

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The Florence County Economic Development Commission was created originally by act of the General Assembly, as modified by ordinance of Florence County Council. See Act No. 153, 1973 Acts and Joint Resolutions; Ordinance #29 - 87/88; Ordinance #4 - 81/82; Ordinance #7 - 81/82 of Florence County Council; also Act No. 343 of 1973; and Act No. 27 of 1975. Because Florence County Council was given the authority by section 3 of the Home Rule Act, Act No. 283 of 1975, to modify local legislation after January 1, 1980, there may be other ordinances which exist as to this commission; however, only the three ordinances listed above have been provided to this Office.

Assuming that the powers and duties have remained the same as in Act No. 153 of 1973, this commission has perpetual succession; the right to sue and be sued; the powers to make bylaws for its management and regulation; to enter into contracts to promote and encourage industrial development in Florence County; to acquire and convey land or facilities (but not to sell, convey, mortgage, or place any encumbrances or liens on any property owned by it without first acquiring the written approval of Florence County Council and the county legislative delegation); and to obligate itself for the expenditure of such funds as may be appropriated to it by Florence County Council to carry out the purposes of the commission.

According to Ordinance #4 -81/82 and 29 - 87/88, it appears that members of the commission are to serve four-year terms. No oath is required to be taken by commission members. No compensation is specified for commission members, though Ordinance #4 -81/82 provides for payment of expenses and travel if provided for in the county operating budget. No real qualifications for membership on the commission are specified, though the at-large members are to represent various segments of industry. See Ordinance #29 - 87/88.

Analysis of the foregoing presents a close question as to membership on the Florence County Economic Development Commission constituting an office. Lack of requirement of an oath, payment of compensation, and specification of qualifications for membership on the commission, all important attributes of an office, is important. Some of the duties specified in section 3 of Act No. 153 of 1973 might appear to involve some exercise of sovereign power, but one of the most critical powers (selling, mortgaging, conveying property or putting encumbrances or liens thereon) to be exercised by the commission may be accomplished only with the approval of Florence County Council and the county legislative delegation. For this reason, the question will be resolved in favor of finding that the commission is not exercising sovereign power. Considering all of the foregoing, we conclude that one who would serve on the Florence County Economic

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Development Commission would most probably not be an officer for dual office holding purposes. See Ops. Atty. Gen. dated July 27, 1989 (Hampton County Industrial Development Commission) and October 18, 1988 (Kershaw County Industrial Development Board) as to similar conclusions.

Based on the foregoing, it is our opinion that your concurrent service on the City of Florence Planning Commission and the Florence County Economic Development Commission would most probably not constitute dual office holding.

With kindest regards, I am

Sincerely,

Patricia D. Petway

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Assistant Attorney General

PDP/nnw

REVIEWED AND APPROVED BY:

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