

The State of South Carolina



Office of the Attorney General

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June 16, 1992

Kay D. Clamp, Manager of Public Affairs
South Carolina State Development Board
Post Office Box 927
Columbia, South Carolina 29202

Dear Ms. Clamp:

You have asked whether individuals serving on the Recycling Market Development Council hold an office for purposes of the dual office holding prohibition. It is the opinion of this Office that, while the question is a close one, we believe that a member of the Recycling Market Development Council would most probably not be considered an office holder for such purposes.

Pursuant to Article XVII Section 1A of the South Carolina Constitution, "...no person may hold two Offices of honor or profit at the same time ... (except) an officer in the militia, member of a lawfully and regularly organized fire department, constable or a notary public." A public officer has been defined as

one who is charged by law with duties involving an exercise of some part of the sovereign power, either small or great, in the performance of which the public is concerned, and which are continuing, and not occasional or intermittent ...

Sanders v. Belue, 78 S.C. 171, 58 S.E. 762, 763 (1907). Other relevant indicia include whether statutes or other authority establish the position, prescribe its duties,

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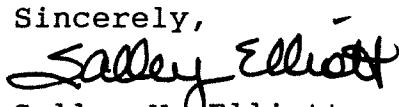
tenure, salary, and bond or require oath or qualifications. State v. Crenshaw, 274 S.C. 475, 266 S.E.2d 61 (1980).

The Recycling Market Development Council was established by the General Assembly pursuant to S.C. Code Ann. Section 44-96-70. The Council members are appointed by the Governor for two year terms, serve until a successor is appointed and qualified, and serve at the pleasure of the appointing authority. The qualifications specified for membership require that the members represent particular segments of industry and local government as well as a research institution. The members are compensated with "the usual mileage, per diem, and subsistence provided by law for members of boards, committees, and commissions." There is no express requirement that members take an oath, although it is possible one may be taken as part of the Governor's appointment process. The Council is empowered to make specific analyses, recommendations, and studies for an initial report which it must present to the Governor and the General Assembly. The Council is also empowered to promulgate regulations concerning meeting attendance and must make annual reports to the Governor and General Assembly. The annual reports shall include revisions to the initial report, a description and analysis of the amounts and types of solid waste materials recovered or recycled, and recommendations regarding materials to be added to or deleted from the programs as well as tax incentive recommendations or other methods to facilitate market development.

The Council is established by statute which prescribes the duties, tenure, qualifications and compensation of the members. However, the Council is empowered only to conduct analyses and make recommendations by way of reports to the Governor and General Assembly. While many of the criteria for an office are met, it appears that the functions which the Council may perform are advisory only and may not entail sufficient exercise of sovereign power to constitute an office. As the question is a close one, I believe it should be resolved in favor of finding that a membership on the Council does not constitute an office. See Ops. Atty. Gen. dated February 21, 1990 (Anderson County Courthouse Building Authority) and October 18, 1988 (Children's Trust Fund Board). Therefore, a member of the Recycling Market Development Council would most probably not be considered to be an office holder for the purposes of the dual office holding prohibitions of the State Constitution.

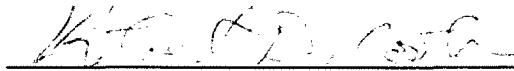
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If more information is required, please advise.

Sincerely,

Salley W. Elliott
Assistant Attorney General

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REVIEWED AND APPROVED BY:



Robert D. Cook
Executive Assistant for Opinions