

The State of South Carolina

4339 Library



Office of the Attorney General

T. TRAVIS MEDLOCK  
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING  
POST OFFICE BOX 11549  
COLUMBIA, S.C. 29211  
TELEPHONE: 803-734-3970  
FACSIMILE: 803-253-6283

December 11, 1990

Edgar Dyer, Esquire  
Briarcliffe Acres Town Attorney  
118 Citadel Drive  
Conway, South Carolina 29526

Dear Mr. Dyer:

By your letter of November 27, 1990, you have requested the opinion of this Office as to whether concurrent service by an individual as an elected member of a town council and as an appointed member of a county board of assessment appeals would violate the dual office holding prohibitions of the State 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 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).

This Office has opined on numerous occasions that a member of a town or city council would hold an office for dual office holding purposes. See for examples, Ops. Atty. Gen. dated August 6, 1990 (copy enclosed); November 20, 1989; September 7, 1989; and many others.

The other position about which you inquire is membership on the Horry County Board of Assessment Appeals, created by ordinance of Horry County. You have kindly provided a copy of § 19-36 of the

Mr. Dyer  
Page 2  
December 11, 1990

codified county ordinances which provides detailed information about the board and which is necessary for consideration of dual office holding questions.

The county board of assessment appeals is to consist of seven members to be appointed by county council. Qualifications for two members are specified in § 19-36: at least one must be actively engaged in the business of marketing real estate and at least one member must be actively engaged in the construction industry. Terms of the members shall be for three years and until their successors are appointed and qualify. Compensation is to be provided on a per diem basis at a rate to be determined by county council; reimbursement for travel and other incidental expenses may also be provided.

As to duties of the board, § 19-36 states that "[t]he board shall consider all appeals as expeditiously as practicable." Reference to § 19-5 of the county's codified ordinances reveals the appeal procedures in the event of disagreement with the county tax assessor's valuation of a parcel of property. Appeal from the assessor's action taken pursuant to § 19-5(b) is to the board of assessment appeals. Section 19-5(c) then provides:

The owner or agent, if still aggrieved by the valuation and assessment, may appeal from such action to the board of assessment appeals by giving written notice of such appeal and the grounds thereof to the assessor within ten (10) days from the date of mailing of such notice. The county tax assessor shall promptly notify the county board of assessment appeals of such appeal, and the county board of assessment appeals shall hear and determine the appeal after notice to the owner or his agent of the time and place of such hearing, as expeditiously as practicable. At the hearing before the board of assessment appeals, the owner or his agent shall be entitled but not required to be represented by an attorney and shall be allowed to present evidence and witnesses and shall be allowed to cross-examine the county tax assessor, his employees or any witnesses presented. The board of assessment appeals shall render a decision in writing on the appeal as soon after the hearing as is practicable, giving notice of such decision to the owner or his agent and the county tax assessor. The decision of the county board of assessment appeals shall be final unless appealed from by the owner or his agent or the county tax assessor as provided by law.

Mr. Dyer  
Page 3  
December 11, 1990

The duties are clearly quasi-judicial in nature and undoubtedly involve an exercise of a portion of the sovereign power of the State.

Considering all of the foregoing factors, it is our opinion that one who would serve on the Horry County Board of Assessment Appeals would most probably hold an office for dual office holding purposes. See also Op. Atty. Gen. No. 85-121 (member of Lee County Tax Appeals Board would be an office holder). Therefore, one who would serve simultaneously on a town or city council and on the Horry County Board of Assessment Appeals would most probably contravene the dual office holding prohibition of the State Constitution.

With kindest regards, I am

Sincerely,

*Patricia D. Petway*

Patricia D. Petway  
Assistant Attorney General

PDP/an  
Enclosure

REVIEWED AND APPROVED BY:

*Robert D. Cook*

Robert D. Cook  
Executive Assistant for Opinions