



Office of the Attorney General

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November 21, 1990

Mr. J. Marc Hehn
117 Dorchester Avenue
Summerville, South Carolina 29483

Dear Mr. Hehn:

By your letter of October 23, 1990, you have advised that you are considering seeking an appointment to a state board. In that regard, you have asked whether your employment as Director of the Berkeley County Water and Sewer Authority would be considered an office, so as to preclude your holding a second office which would be proscribed by the dual office 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).

The Berkeley County Water and Sewer Authority is a department of Berkeley County which provides water and sewer services within the county. The Berkeley County Council is responsible for supervision of the water and sewer system and is the body which enacts ordinances pertaining to water and wastewater matters. Council prepares and adopts an annual budget for the system, and establishes rates and charges for use of the system. All activities of the Authority are subject to the control and direction of Berkeley County Council.

Mr. Hehn
Page 2
November 21, 1990

As Director of the Authority, you conduct the day-to-day operations of the system as well as the planning and development of construction projects. You are also responsible for maintaining accounting records and preparing annual financial statements. You advise that you, as Director, are authorized to spend up to \$2,000.00 without the co-signature of the Berkeley County Supervisor. You serve at the pleasure of County Council in an unclassified position. The County Supervisor and County Council set your compensation during the county's annual budget process. You did not subscribe to or take an oath prior to assuming your position.

Your position is not specifically created by an ordinance, though it is referred to in several places in Chapter 7 of the Berkeley County Code. No ordinance specifies qualifications to be met by the Director. In the Berkeley County Code, in Sec. 7-2(2), the rate to be charged for commercial and business establishments' sewer connection is to be determined by "the director of the water and sewer authority" based upon estimates of domestic wastewater discharge by the establishment per day; the fees upon which the charge will be determined are specified and little is left to the Director's discretion, apparently. Similarly, in Sec. 7-2(3), the rate to be charged for sewer connections by industries is to be determined by the Director; again, the fees are specified, however.

Finally, Sec. 7-26 specifies the powers and duties of the authority. The director is specifically mentioned in Section 7-26(5) and is charged with the enforcement of "all federal, state and local laws and regulations concerning water and waste water health standards." Mechanisms for enforcement are then specified; we understand that the county attorney's office, working with the appropriate magistrate, actually enforces the applicable laws.

Considering all of the foregoing, it is apparent that the position of Executive Director possesses very few of the attributes usually found in a public office. The duties suggest that perhaps an exercise of some portion of the sovereign power of the state might be exercised in Sec. 7-26 of the County Code, but the actual practice described by you seems to indicate otherwise. While the question is a close one, due to the duties detailed in Sec. 7-26, we resolve the issue in favor of finding that the position would be one of public employment rather than a public office. Therefore, it is our opinion that you would most probably not be precluded from holding a public office concurrently with your employment as Director of the Berkeley County Water and Sewer Authority, within the context of dual office holding.

Mr. Hehn
Page 3
November 21, 1990

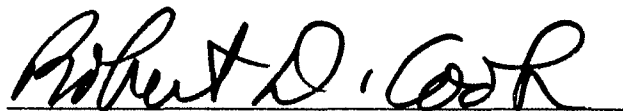
With kindest regards, I am

Sincerely,

Patricia D. Petway
Patricia D. Petway
Assistant Attorney General

PDP/an

REVIEWED AND APPROVED BY:



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