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## The State of South Carolina



## Office of the Attorney General

T. TRAVIS MEDLOCK

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July 27, 1989

Ms. Virginia L. Sinclair Hampton County Administrator 201 Jackson Street, West Hampton, South Carolina 29924

Dear Ms. Sinclair:

By your letter of July 14, 1989, you have asked whether a member of the Hampton County Industrial Development Commission may also serve as a trustee of the Medical University of South Carolina without violating 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 Sanders v. Belue, 78 S.C. 171, 58 S.E. 762 (1907). State. Other relevant considerations are whether statutes, or other such authoriestablish the position, prescribe its tenure, duties or salary, ty, or require qualifications or an oath for the position. State v. Crenshaw, 274 S.C. 475, 266 S.E.2d 61 (1980).

In an opinion of this Office dated June 28, 1984 (copy enclosed), this Office determined that a trustee of the Medical University of South Carolina would hold an office for dual office holding purposes.

The Hampton County Industrial Development Commission was created to be an agency or department of Hampton County, presumably pursuant to Section 4-9-30(6) of the Code of Laws of South Carolina.

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While no ordinance exists as to the Commission, the entity has formulated bylaws which have been approved by Hampton County Council. According to the bylaws, the Commission is to consist of nine members plus several ex officio members. Terms of service are for three years or until successors are appointed. No member is to receive compensation for service on the Commission. No oath of office is required of members, and no qualifications for membership are prescribed in a statute, ordinance, or bylaws.

Duties and responsibilities of the Commission are found only in the bylaws. In Article II, the Commission is to encourage the expansion of existing industry and promote the location of new industry. The Commission is to work with municipalities, chambers of commerce, and various regional, state, and federal agencies with respect to economic development in Hampton County. Article XV authorizes the Commission to accept gifts and grants of money from a variety of sources and to purchase, sell, and lease property (though county property may not be alienated by the Commission). Subject to the approval of Hampton County Council, the Commission may select an executive director and staff, prescribe their duties, and provide for their compensation.

In an opinion dated October 18, 1988 (copy enclosed), this Office opined that membership on the Kershaw County Industrial Development Board would probably not constitute an office for dual office holding purposes, though the question was extremely close and not free from doubt. Many of the attributes not found in the Kershaw County entity are also lacking in the Hampton County entity. Due to the similarities in the two entities, the same conclusion reached as to the Kershaw County Industrial Development Board would be applicable to the Hampton County Industrial Development Commission. It is therefore concluded that one who would serve on the Hampton County Industrial Development Commission would probably not hold an office for dual office holding purposes; it must be noted, again, that the question is an extremely close one and therefore is not completely free from doubt.

## Conclusion

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Based on the foregoing, it is the opinion of this Office that one may most probably serve on the Board of Trustees of the Medical University of South Carolina and on the Hampton County Industrial Development Board without running afoul of the dual office holding prohibitions of the State Constitution. Ms. Sinclair Page 3 July 27, 1989

With kindest regards, I am

Sincerely,

Patricia D Peturay Patricia D. Petway Assistant Attorney General

PDP/an

Enclosures

REVIEWED AND APPROVED BY:

Robert D. Cook Executive Assistant for Opinions