

The State of South Carolina



Office of the Attorney General

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November 6, 1987

The Honorable A. Wayne Crick
Mayor, City of Mauldin
Post Office Box 675
Mauldin, South Carolina 29662

Dear Mayor Crick:

By your letter of November 4, 1987, you have advised that you are presently serving as Mayor of the City of Mauldin. You will take your oath of office as a commissioner of the South Carolina Alcoholic Beverage Control Commission on Monday, November 9, 1987. You have inquired as to the occurrence of dual office holding in your situation. Based on the facts and law to be discussed below, it is the opinion of this Office that you will not hold dual offices in violation of the State Constitution.

Applicable law

Article XVII, § 1A of the South Carolina Constitution provides that "... no person shall hold two offices of honor or profit at the same time." 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 mayor of a municipality has been deemed to hold a public office. Op. Atty. Gen. dated January 17, 1983 (copy enclosed).

A review of previously-issued opinions of this Office reveals that this Office has apparently not previously considered the issue of a commissioner of the South Carolina Alcoholic Beverage Control Commission (ABC Commission) as a public officer. The ABC Commission was created pursuant to Section 61-1-10 et seq. of the Code of Laws of South Carolina (1976). Each

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member is to be appointed by the Governor for a term of six years. Various qualifications are found in statutes such as Sections 61-1-20, 61-3-210, and others. An oath of office is required. Commissioners are compensated for their services. See Act No. 170 of 1987, Part I, § 87. Duties and powers are specified throughout Title 61 of the Code and include activities such as promulgating rules and regulations, Section 61-1-70; imposing monetary penalties, Section 61-1-80; holding hearings, issuing subpoenas and taking oaths, Section 61-3-110; issuance and revocation of licenses relative to alcoholic beverages, Section 61-3-410; and so forth. These duties would clearly involve an exercise of a portion of the sovereign power of the State.

The commissioners of the ABC Commission appear to meet all of the criteria usually considered in determining whether a position would actually be a public office; therefore, it must be concluded that a commissioner of the ABC Commission would hold a public office. If a commissioner were to serve concurrently as a mayor, then most probably the dual office holding prohibitions of the State Constitution would be contravened. To determine whether you would hold both offices concurrently, the circumstances surrounding both offices must be considered further.

Additional factors

You have advised that your term of office as Mayor of the City of Mauldin will expire on December 31, 1987.

You have further advised that Governor Campbell appointed you to serve on the ABC Commission on April 15, 1987. The Senate Journal for May 27, 1987 (at page 2411) reported that your appointment to the ABC Commission was confirmed by the Senate on that date, replacing Ms. Sallie J. Scott, with term to commence on January 1, 1988 and expire on June 21, 1993.^{1/} A letter to you from the Honorable John T. Campbell dated June 3, 1987 indicates that your commission as a member of the ABC Commission will commence on January 1, 1988 and will expire June 1, 1993. Thus, your term as a member of the ABC Commission will not com-

^{1/} Members of the ABC Commission ordinarily serve six-year terms, pursuant to Section 61-1-10 of the Code. Because your predecessor has been holding over by virtue of Governor Campbell's appointment, her holding over has shortened the time remaining on your six-year term. See Op. Atty. Gen. dated March 5, 1987 (copy enclosed) and law discussed therein.

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mence until the day after the expiration of your term of office as Mayor of the City of Mauldin; you will not be holding the two offices concurrently.

Finally, you have advised that you will take your oath of office as a member of the ABC Commission on Monday, November 9, 1987. We must advise that merely taking the oath of office does not per se make one an officer. 63A Am.Jur.2d Public Officers and Employees § 131. For the sake of convenience, it may be necessary for a public official to take his oath prior to the date of commencement of his term of office. As noted in the Senate Journal and the letter of Secretary of State Campbell, there appears to be no intention that your term as a member of the ABC Commission begin earlier than January 1, 1988.

Conclusion

Based on the foregoing, it is the opinion of this Office that because your term of office as Mayor of the City of Mauldin ends before your term of office as a member of the South Carolina Alcoholic Beverage Control Commission begins, you will not be holding dual offices in violation of the State Constitution.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/rhm

Enclosures

REVIEWED AND APPROVED BY:

Robert D. Cook

Robert D. Cook
Executive Assistant for Opinions