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The State of South Carolina



Office of the Attorney General

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December 11, 1985

The Honorable Derial L. Ogburn
Member, House of Representatives
Post Office Box 311
Jefferson, South Carolina 29718

Dear Representative Ogburn:

By your letter of December 9, 1985, you have asked whether you may serve simultaneously as a member of the House of Representatives and as a member of the Park Committee of the Town of Jefferson without violating the dual office holding prohibitions of the State Constitution.

Article III, Section 24 of the South Carolina Constitution provides that "[n]o person shall be eligible to a seat in the General Assembly while he holds any office or position of profit or trust under this State... ." For this provision to be contravened, a member of the General Assembly would hold another public office, the duties of which would involve 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). It must thus be determined whether service on the Park Committee of Jefferson would constitute an "office or position of profit or trust."

The committee was not established by statute or ordinance but is rather an ad hoc committee set up by Jefferson's Town Council. There are no provisions for an oath, for compensation of committee members, or specific qualifications or duties of committee members. According to minutes of the Town Council dated February 12, 1985, members are to serve a one-year term. You have advised that the committee recommends to council how money should be spent but otherwise has no authority over the

Continuation Sheet Number 2
TO: The Honorable Derial L. Ogburn
December 11, 1985

actual expenditure of money; thus, it appears that sovereign power is not being exercised in this instance.

Because the Park Committee membership lacks virtually all of the criteria usually found in an "office or position of trust or profit," we would advise, based on information provided to this Office, that Article III, Section 24 would not appear to be violated by your serving on the Park Committee. Final authority for determining this question would remain, by virtue of Article III, Section 11 of the Constitution, with the House of Representatives. See Ops. Atty. Gen. dated December 10, 1984 and November 26, 1984; Culbertson v. Blatt, 194 S.C. 105, 9 S.E.2d 218 (1940).

We trust that the foregoing satisfactorily responds to your inquiry. If you need clarification or additional information, please let us know.

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP:hcs

REVIEWED AND APPROVED BY:

Robert D. Cook

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Executive Assistant for Opinions