

The State of South Carolina



Office of the Attorney General

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July 22, 1986

Walter H. Parham, Esquire
Greenville County Attorney
100 Courthouse Annex
Greenville, South Carolina 29601

Dear Mr. Parham:

By your letter of July 17, 1986, you have asked whether an individual may serve concurrently as a member of Greenville County Council and as a member of the Greenville Central Area Partnership, Inc. without contravening the dual office holding prohibitions of the State Constitution and statutes. You have concluded, in your well-reasoned memorandum, that the individual may serve in both capacities; we concur with your conclusion.

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). In addition, Section 4-9-100, Code of Laws of South Carolina, prohibits council members from holding "any other office of honor or profit in government ... during his elected term." (Emphasis added.)

This Office has repeatedly advised that a member of a county council would hold an office for dual office holding purposes. See, for examples, Ops. Atty. Gen. No. 83-98, dated December 20, 1983; No. 83-90, dated November 15, 1983; and July 9, 1986, copies of which are enclosed.

According to information enclosed with your memorandum, the Greenville Central Area Partnership, Inc., is a nonprofit

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charitable organization incorporated in this State and operating within Section 501(c)(3) of the Internal Revenue Code. No legislative act of the General Assembly or Greenville City or County Councils was involved in the creation of the Partnership. Membership on the Board of Directors is governed by Article IV of the By-Laws; a member of County Council is specified to be a member of the Partnership, to be selected annually by the full Board of Directors of the corporation. Activities of the Partnership include projects and studies to revitalize downtown Greenville; it does not appear that these activities, as outlined in Article I of the By-Laws, involve an exercise of sovereign power. Due to the lack of the usual indicia of office-holding, it must be concluded that one who serves on the board of the Partnership would not hold an office for dual office holding purposes.

It is therefore the opinion of this Office that one who would serve as a member of the Greenville County Council and on the board of the Greenville Central Area Partnership, Inc., would not contravene the dual office holding provisions of either the State Constitution or Section 4-9-100 of the Code.

You have advised that the Partnership receives some funding from public sources. In the event that Greenville County Council is one of those public sources, we would caution the member of County Council to be aware of and follow the State Ethics Act, Section 8-13-410 et seq. of the Code, particularly as the Act relates to actions to be taken when a public official may have an interest in a matter within his jurisdiction. The State Ethics Commission can advise you further if the individual should have specific questions.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/an
Enclosures

REVIEWED AND APPROVED BY:

Robert D. Cook

Robert D. Cook
Executive Assistant for Opinions