



ALAN WILSON
ATTORNEY GENERAL

September 18, 2019

Mr. John Kemp
319 Shearwater Drive
Bluffton, SC 29909

Dear Mr. Kemp:

You have requested an opinion from this Office regarding whether it would constitute dual office holding for an individual to serve on the board of both the Jasper County Election Board and the Lowcountry Regional Transportation Authority a/k/a Palmetto Breeze. You inform us that Lowcountry Regional Transportation Authority ("LRTA") was formerly known as the Beaufort-Jasper Regional Transportation Authority and that it has been legally designated by the State as a Regional Transportation Authority under section 58-25-10 of the South Carolina Code of Laws. In your letter, you included a job description of the position, which you stated came from the "By-Laws." The job description included "Board Obligations," such as supporting the vision, mission, and values of LRTA; establishing policy; hiring, supervising, and evaluating the Executive Director; leading the strategic planning initiative; monitoring finances and ensuring adequate funding; and updating long range plans.

LAW/ANALYSIS:

Dual office holding is provided for in the South Carolina Constitution, which states:

[n]o person may hold two offices of honor or profit at the same time, but any person holding another office may at the same time be an officer in the militia, member of a lawfully and regularly organized fire department, constable, or a notary public ... The limitation above set forth does not prohibit any officeholder from being a delegate to a constitutional convention.

S.C. Const, art. XVII § 1 A.

The South Carolina Supreme Court explains that an "office" for dual office holding purposes is:

"One who is charged by law with duties involving an exercise of some part of the sovereign power, either small or great, in the performance of which the public is concerned, and which are continuing, and not occasional or intermittent, is a public officer." Sanders v. Belue, 78 S.C. 171, 174, 58 S.E. 762, 763 (1907), "In considering whether a particular position is an office in the constitutional sense, it must be demonstrated that "[t]he power of appointment comes from the state, the authority is

derived from the law, and the duties are exercised for the benefit of the public.” Willis v. Aiken County, 203 S.C. 96, 103 S.E.2d 313, 316 (1943). “The powers conferred and the duties to be discharged with regard to a public office must be defined, directly or impliedly, by the legislature or through legislative authority ...” 63C Am Jur.2d Public Officers and Employees § 5 (2009).

Segars-Andrews v. Judicial Merit Selection Commission, 387 S.C. 109, 691 S.E.2d 453 (2010). Other relevant considerations for an office are:

whether the position was created by the legislature; whether the qualifications for appointment are established; whether the duties, tenure, salary, bond, and oath are prescribed or required; whether the one occupying the position is a representative of the sovereign; among others.

Op. S.C. Atty. Gen., 2013 WL 3243063 (June 17, 2013) (quoting State v. Crenshaw, 274 S.C. 475, 478, 266 S.E.2d 61, 62 (1980)).

Our Office has previously opined that a member of the Jasper County Board of Elections and Voter Registration¹ was an officer for dual office holding purposes. See Op. S.C. Atty. Gen., 2006 WL 3522437 (Nov. 8, 2006). We will now consider whether an individual serving on the Lowcountry Regional Transportation Authority would hold an office. In a December 3, 1980 opinion, we stated that the Beaufort-Jasper Regional Transportation Authority, LRTA’s predecessor, was created pursuant to the Regional Transportation Authority Law, S.C. Code Ann. § 58-25-10 et seq. (1976 Code, as amended).² Based upon that opinion as well as your letter, this opinion is issued with the understanding that LRTA is a regional transportation authority pursuant to the Regional Transportation Authority Law.

We have determined that generally, an individual serving on the governing board of a regional transportation authority created pursuant to the Regional Transportation Authority Law holds an office for dual office holding purposes. Op. S.C. Atty. Gen., 1987 WL 245509, Op. No. 87-01 (Dec. 14, 1987). Our reasoning was as follows:

Members of the board would be appointed by the governing bodies of the member cities and counties.³ A term of three years is specified. Members may be reimbursed for expenses incurred in their service on the authority, but no salary or other compensation is to be paid. In case extensive services have been rendered, however, a per diem may be paid

¹ The Jasper County Elections Board is referred to as the Board of Elections and Voter Registration in 2014 Act No. 132 (H.4521), § 1, eff July 1, 2014 and as the Board of Voter Registration and Elections in S.C. Code Ann. § 7-7-330 (1976 Code, as amended).

² Op. S.C. Atty. Gen., 1980 WL 120987 (Dec. 3, 1980).

³ See S.C. Code Ann. § 58-25-40 (1976 Code, as amended).

by a two-thirds vote of the authority. No qualifications are specified by statute, nor is an oath required by statute.

Powers and duties are specified by Section 58-25-50 in both the 1976 Code and the 1986 Cumulative Supplement. In either instance, the authority through its governing body is authorized to provide transportation services, exercise eminent domain, enter into contracts, sue and be sued, establish rates, borrow money, issue negotiable bonds and notes, promulgate rules and regulations, and exercise many other powers and duties.

Based on the foregoing, it is the opinion of this Office that one who would serve on the governing body of a regional transportation authority would most probably be an officer for dual office holding purposes . . .

Id. Accordingly, we believe that an individual serving on the governing board of LRTA is an officer.

As a result of the aforesaid, it is our opinion that simultaneous service on the governing boards of the Jasper County Board of Elections and Voter Registration and the LRTA would violate the Constitutional prohibition against dual office holding.

CONCLUSION:

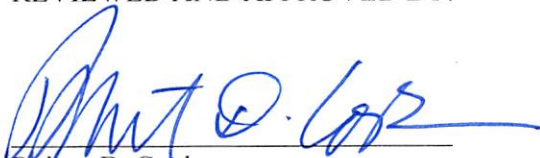
For the reasons set forth above, this Office believes that it would be a violation of the dual office holding prohibition of the South Carolina Constitution for an individual to serve simultaneously as a board member of the Jasper County Board of Elections and Voter Registration and the Lowcountry Regional Transportation Authority.

Sincerely,



Elinor V. Lister
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General