



ALAN WILSON
ATTORNEY GENERAL

December 21, 2020

Jesica Johnson Mackey
10120 Two Notch Road, Unit 184
Columbia, SC 29223

Dear Ms. Mackey:

You have requested an opinion from this Office regarding whether it would constitute dual office holding for you to serve as both a Richland County Councilmember and as a board member for South Carolina First Steps (First Steps to School Readiness Board of Trustees).

LAW/ANALYSIS

Dual office holding is prohibited by 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 26 S.E.2d 313, 316 (1943). “The powers conferred and the duties to be discharged

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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 advised that a county council member holds an office for dual office holding purposes. See Op. S.C. Atty. Gen., 2017 WL 1180535 (Mar. 20, 2017) (“This Office has issued several opinions stating that the position of county council member is an office within the meaning of Article XVII, § 1A of the South Carolina Constitution.”)¹ We also determined in a June 21, 2000 opinion that a person serving on a County First Steps Partnership Board did not hold an office:

[C]ounty First Steps Partnership Boards are established under S.C. Code Ann. § 59-152-10 et seq. Pursuant to Section 59-152-70(E), these boards must be private nonprofit corporations organized under Section 501(c)(3) of the Internal Revenue Code. This Office has previously concluded that while a close question, members of a board of directors of a private nonprofit corporation do not hold an office for dual office holding purposes. Ops. Atty. Gen. dated March 17, 1995, October 18, 1988, and November 10, 1983 . . .

Op. S.C. Atty. Gen., 2000 WL 1205945 (June 21, 2000).

However, you are asking about membership on the South Carolina First Steps to School Readiness Board of Trustees, which is provided for in S.C. Code Ann. § 63-11-1710 et seq. Section 63-11-1710 provides:

There is established the South Carolina First Steps to School Readiness Board of Trustees, an eleemosynary corporation, which shall oversee the South Carolina First Steps to School Readiness

¹ The South Carolina Code also prohibits county council members from holding any other office of honor or profit during their elected terms. S.C. Code Ann. § 4-9-100 (1976 Code, as amended).

initiative, a broad range of innovative early childhood development and education, family support, health services, and prevention efforts to meet critical needs of South Carolina's children through the awarding of grants to partnerships at the county level as provided for in Section 59-152-90 . . .

S.C. Code Ann. § 63-11-1710 (1976 Code, as amended) (emphasis added). According to the South Carolina Secretary of State's website, it is registered as a nonprofit corporation. See <https://businessfilings.sc.gov/BusinessFiling/Entity/Profile/d9e2f9cb-4ffd-4acd-81f6-c477e5daa489>. We therefore believe, similarly to our June 21, 2000 opinion, that because the South Carolina First Steps to School Readiness Board of Trustees is a nonprofit corporation, a member of its board of directors does not hold an office for dual office holding purposes.

CONCLUSION

Based on our prior opinions, we believe that serving as both a member of the Richland County Council and on the South Carolina First Steps to School Readiness Board of Trustees would not violate the constitutional prohibition against dual office holding. However, you may wish to contact the State Ethics Commission to confirm that there are not any conflicts of interest.

Sincerely,



Elinor V. Lister
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General