



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

June 7, 2004

Eugene R. Baten, Executive Director
Sumter County Commission on Alcohol and Drug Abuse
Post Office Box 3193
Sumter, South Carolina 29150

Dear Mr. Baten:

You have requested an advisory opinion from this Office concerning dual office holding. You have indicated that you are currently the Executive Director of the Sumter County Commission on Alcohol and Drug Abuse (SCCADA) and a candidate for Sumter County Council. You have inquired whether, if elected to serve on county council, you may continue on as Executive Director without violating the state Constitution's prohibition on dual office holding. You have indicated that staff members of the non-profit SCCADA are not considered state or county employees but are members of the state retirement and health plans. SCCADA contracts with the South Carolina Department of Alcohol and Other Drug Abuse Services for federal and state funds to provide services to the citizens of Sumter County. You have further indicated that the Executive Director is appointed and governed by the Board of Commissioners for the SCCADA. The Board of Commissioners is a nine-member body which is appointed by a committee of the Sumter County Council.

Law/Analysis

Article XVII, Section 1A of the State Constitution provides that "no person may hold two offices of honor or profit at the same time ..." with exceptions specified for an officer in the militia, member of a lawfully and regularly organized fire department, constable, or notary public. For this provision to be contravened, a person concurrently must hold two 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 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). Furthermore, "[O]ne who merely performs the duties required of him under an express contract or otherwise, though such persons themselves be public officers, and though the employment be in or about a public work or business, is a mere employee." 78 S.C. at 174.

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This Office has advised on numerous occasions that a member of a county council would be considered an officer for dual office holding purposes. See, as representative of those numerous opinions, Ops. S.C. Atty. Gen. dated March 18, 2004; July 26, 1999; July 27, 1997; December 7, 1994; and August 20, 1985. Therefore, the question is whether the position of executive director for a county commission on alcohol and drug abuse would likewise be considered an office.

This Office has consistently opined that a board members for county commissions on alcohol and drug abuse are officers for purposes of dual office holding. Ops. S.C. Atty. Gen. dated May 6, 1992 (Dorchester); January 17, 1985 (Marlboro-Chesterfield); February 13, 1984 (Cherokee); March 6, 1989 (Charleston); and December 10, 1991 (Lexington-Richland). However, in the January 17, 1985 opinion, we distinguished for dual office holding purpose the Executive Director for the Commission on Alcohol and Drug Abuse in Marlboro and Chesterfield Counties as one of employment, rather than office holding. Moreover, this Office has long held that the position of executive director for a commission or governing board generally does not constitute an office. Ops. S.C. Atty. Gen. dated January 27, 2004; July 24, 2001; November 24, 1997; May 15, 1989; June 11, 1985; March 19, 1975. We stressed in the July 24, 2001 opinion "the fact that the executive director served at the pleasure of the governing board or authority." In short, in virtually every previous instance in which the question has arisen, we have concluded that an executive director of a governing board or commission would be characterized as an employee rather than an officer.

Based upon the forgoing authorities, it is our opinion that as the Executive Director for the Sumter County Commission on Alcohol and Drug Abuse (SCCADA) is not an office for dual office holding purposes. Accordingly, we advise that you may continue in the position of Executive Director if you are elected to serve on the Sumter County Council without violating the constitutional provisions on dual office holding.

Notwithstanding the fact that are no constitutional problems raised by your situation, you should be aware of potential conflicts of interest which might arise in the course of such concurrent service. The foremost of the potential ethical conflicts would be the master-servant conflict. Conflicts of interest inherent in the master-servant relationship have been summarized by this Office as follows:

[A] conflict of interest exists where one office is subordinate to the other, and subject in some degree to the supervisory power of its incumbent, or where the incumbent of one of the offices has the power of appointment as to the other office, or has the power to remove the incumbent of the other or to punish the other. Furthermore, a conflict of interest may be demonstrated by the power to regulate the compensation of the other, or to audit his accounts.

Op. S.C. Atty. Gen. dated January 19, 1994. In McMahan v. Jones, 94 S.C. 362, 77 S.E. 1022 (1913), our Supreme Court stated that "[n]o man in the public service should be permitted to occupy the dual position of master and servant; for, as master, he would be under the temptation of exacting

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too little of himself, as servant; and as servant, he would be inclined to demand too much of himself, as master ... [t]here would be constant conflict between self-interest and integrity." When such a master-servant conflict exists, a public official cannot continue to fill both roles. Op. S.C. Atty. Gen. dated April 3, 2003.

Since the executive director is not a county employee and is under the direct supervisory authority of the Board of Commissioners for the SCCADA, which receives its funding primarily from federal and state sources, there would not appear to be any of the direct master-servant conflicts described above. However, the fact that members of the Board of Commissioners for the SCCADA are appointed by the Sumter County Council may evince a degree of indirect authority which county council has over the executive director for the county commission on drug and alcohol abuse. Accordingly, while it is our opinion that there are no apparent master-servant conflicts inherent in the situation about which you have inquired, the question is not beyond dispute. Certainly, one should be mindful of the indirect correlation between County Council and the Executive Director in this instance.

We would also note the relevance of Section 8-13-700 of the State Ethics Act to your situation. Sections 8-13-700(B)(1) and (5) establish the procedure by which a public member must recuse himself from any official action on matters potentially affecting his personal economic interest. We therefore advise that the requirements of Section 8-13-700 must be complied with should any action be taken by Sumter County Council which would present an actual conflict with your position as Executive Director of SCCADA.

Very truly yours,



Robert D. Cook
Assistant Deputy Attorney General