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HENRY McMASTER
ATTORNEY GENERAL

August 2, 2006

The Honorable Daniel T. Cooper
Member, House of Representatives
Post Office Box 11867
Columbia, South Carolina 29211

Dear Representative Cooper:

We received your letter informing us that “[t]he Anderson County Delegation’s appointee to the State Board of Education, Ron F. Wilson, circuit 10, has been elected to the County Council.” Thus, you request an opinion from this Office as to whether serving in both of these positions constitutes dual office holding.

Law/Analysis

Article XVII, section 1A of the South Carolina Constitution (Supp. 2005) prohibits a person from holding “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.” In order to contravene this provision, a person concurrently must hold two offices having duties that involve the exercise of some portion of the sovereign power of the State. Sanders v. Belue, 78 S.C. 171, 174, S.E. 762, 763 (1907). Furthermore, our courts recognize other relevant considerations in determining whether an individual holds an office, such as, whether a statute, or other such authority, establishes the position, proscribes the position’s duties or salary, or requires qualifications or an oath for the position. State v. Crenshaw, 274 S.C. 475, 477, 266 S.E.2d 61, 62 (1980).

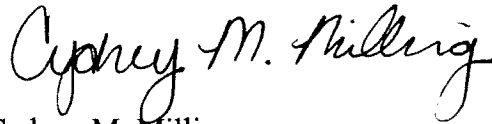
Several previous opinions of this Office concluded that a member of the State Board of Education is considered an office holder for dual office holding purposes. See Ops. S.C. Atty. Gen., January 17, 2000; October 23, 1995; January 31, 1994; October 5, 1993; November 27, 1985. Additionally, on numerous occasions we determined a member of a county council is an officer for

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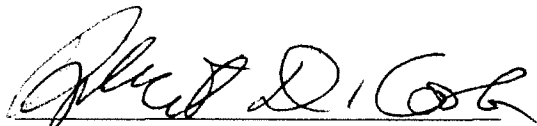
dual office holding purposes. See, e.g., Ops. S.C. Atty. Gen., May 31, 2006; November 2, 2005; June 7, 2004; July 26, 1999. Accordingly, holding these two positions at the same time violates the dual office holding prohibition provided in article XVII, section 1A of the South Carolina Constitution.

Very truly yours,



Cydney M. Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Assistant Deputy Attorney General