



HENRY McMASTER  
ATTORNEY GENERAL

June 16, 2006

The Honorable Patsy McCutcheon  
Board Member, Florence School District Three  
Post Office Box 443  
Olanta, South Carolina 29114

Dear Ms. McCutcheon:

We issue this opinion in response to your letter requesting an opinion regarding dual office holding. From your letter, we understand you currently serve as a board member on the Florence School District Three Board of Trustees and are considering seeking a position as a town judge. Thus, you inquire as to whether you "can hold the school board position and be appointed to the town judge position?"

#### 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 a 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).

This Office, on numerous occasions, determined a member of a county school board or board of trustees is an officer for dual office holding purposes. Op. S.C. Atty. Gen., April 20, 2006; December 20, 2005; May 27, 2004; April 20, 2004; January 17, 1985; July 8, 1983. Similarly, this Office determined on many occasions that an individual serving as a magistrate or municipal judge holds an office for dual office holding purposes. Op. S.C. Atty. Gen., January 25, 2006; December 15, 2003; September 11, 2003; February 1, 1984. Thus, an individual is prohibited by the South Carolina Constitution's dual office holding provision from serving both as a member of a school

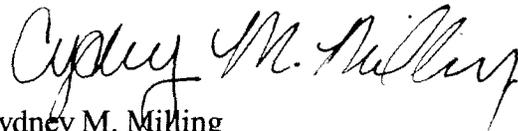
The Honorable Patsy McCutcheon

Page 2

June 16, 2006

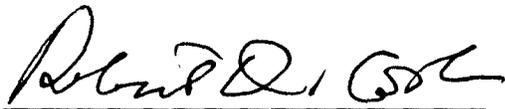
board and as a municipal judge. However, we note, "the constitutional prohibition on dual office holding does not prevent an individual from running for office." Op. S.C. Atty. Gen., April 21, 2006. Rather, this provision acts to create a vacancy in the first office upon the assumption of the second office. Id.

Very truly yours,



Cydney M. Milling  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Assistant Deputy Attorney General