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HENRY McMASTER  
ATTORNEY GENERAL

June 19, 2006

Linda Hammett, City Clerk  
City of Sumter  
Post Office Box 1448  
Sumter, South Carolina 29151

Dear Ms. Hammett:

We issue this opinion in response to your letter regarding dual office holding. You state: "A member of the City of Sumter's Community Development Housing Board . . . was recently appointed to serve as a member of the Sumter County Election Commission. We are seeking an opinion to determine whether this appointment to the County Election Commission would affect membership on the City of Sumter's Community Development Housing Board."

#### 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).

This Office, on numerous occasions, advised that an individual serving on a local election commission or voter registration board is an officer for dual office holding purposes. Op. S.C. Atty. Gen., May 18, 2006; July 8, 2005; December 15, 2004; February 24, 2000; April 21, 1998. Thus, whether or not the dual office holding provision of the South Carolina Constitution applies in the

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situation you described depends upon whether a member of the Sumter Community Development Housing Board (the "Board") is an office holder.

Per our conversations with your office, the Sumter City Council created the Board. However, you do not believe it did so through the adoption of an ordinance. The Board's director stated she believes the City Council created the Board approximately ten years ago for the purpose of satisfying a requirement by the Department of Housing and Urban Development (HUD). The Board's director informed us that HUD requires an independent board to review and approve or reject requests for federal funds by individuals seeking to use the funds for the repair or purchase of affordable housing. You attached a description of the Board, which states it was established "to review and approve applications from very low and low-moderate-income citizens for housing repair and new affordable housing." In addition, the description states after a citizen submits an application and the staff make a recommendation on the application, it is considered by the Board, who can approve, deny or amend the staff recommendation.

The Board's description also states the Board is composed of five members appointed by City Council for a term of five years, which may be renewed for an additional five-year term. The description does not include qualifications for Board members, but states they "come from a broad spectrum of the community: Business owner/operator, realtor, pastor/business owner, pastor/Chaplin, and attorney-at-law."

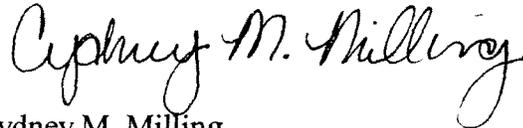
To your knowledge, neither statute nor local law established the Board. Although the description you provided includes information about the duties and the term a member serves on the Board, you believe these specifications are not provided for by law. Furthermore, in speaking with you and the current director of the Board, we were informed there are no qualifications or oath requirement for Board members. Thus, based on the information available to us, it is our opinion that a member of the Board is not an officer for dual office holding purposes.

Furthermore, an opinion issued by this Office issued in 2003 appears to support our conclusion. Op. S.C. Atty. Gen., March 19, 2003. In that opinion, we considered whether a member of the Lowcountry Workforce Investment Board is an office holder for dual office holding purposes. Id. We noted "[t]he Lowcountry Workforce Investment Board is created pursuant to federal law." Id. Quoting an Delaware Attorney General's opinion describing the federal law, we stated it requires the establishment of local boards whose powers and responsibilities come from the federal law. Id. In addition, we discovered no statute or local ordinance dealing with the Lowcountry Workforce Investment Board and presumed it was created via executive order of the Governor. Relying on prior opinions finding positions required by or established under federal law are not considered offices for purposes of dual office holding, we concluded a member of the Lowcountry Workforce Investment Board is not an officer for dual office holding purposes.

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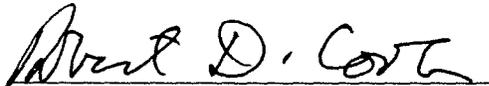
Based on the information provided by you and the director of the Board, we understand the Board's establishment is required by HUD pursuant to federal law. Thus, in keeping with prior opinions of this Office and considering our findings above, we believe a position on the Board would not be an office for purposes of dual office holding. Therefore, the appointment of a member of the Board to the Sumter County Election Commission would not violate the prohibition on dual office holding pursuant to the 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