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HENRY McMASTER  
ATTORNEY GENERAL

May 17, 2006

Ms. Laura T. Barrett  
Post Office Box 24  
Bluffton, South Carolina 29910

Dear Ms. Barrett:

In a letter to this office you indicated that you presently serve on both the Bluffton Historical Preservation Commission and the Southern Beaufort County Corridor Review Board. You have questioned whether your simultaneous serving on both entities constitutes dual office holding.

Article XVII, Section 1A of the South Carolina 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, a member of a lawfully and regularly organized fire department, a constable, or a 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).

At my request, information regarding both boards was forwarded to this office. Included in the materials regarding the Corridor Review Board was a resolution stating as follows:

**A RESOLUTION ADOPTING RULES OF PROCEDURE FOR THE BEAUFORT COUNTY CORRIDOR REVIEW BOARDS**

WHEREAS, county governments are authorized by S.C. Code Sec. 6-29-870 to establish a board of architectural review or a similar body to protect and provide for the unique, special, or desired character of a defined district, corridor, or development area; and

WHEREAS, the County Council adopted the Zoning and Development Standards Ordinance [the ZDSO] on April 26, 1999; and

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Ms. Barrett  
Page 2  
May 17, 2006

WHEREAS, Article II, Division 2, Subdivision VI of the ZDSO establishes a Southern Beaufort County Corridor Review Board and a Northern Beaufort County Corridor Review Board...

NOW THEREFORE, BE IT RESOLVED, the Beaufort County Council does adopt these Rules of Procedure for the Southern and Northern Beaufort County Corridor Review Boards.

Also forwarded was a copy of the Beaufort County Corridor Review Boards Rules of Procedure. In Section 1, it is stated that "[t]hese rules of procedure are adopted pursuant to South Carolina Code 6-29-870 for the Northern and Southern Corridor Review Boards (CRB)." According to these rules, each CRB consists of seven members appointed for four year terms of office. Among the duties of each CRB are to "...review and take action on development applications..." It is also specifically stated that "[t]he primary objectives of reviewing projects lying within Beaufort County's Corridor Overlay (CO) is to establish continuity of each development within the overall corridor systems." Reference is also made to "design review responsibility".

As set forth in the referenced Resolution, the Southern Corridor Review Board of which you are a member was established pursuant to the provisions of S.C. Code Ann. § 6-29-870 which authorizes the appointment of a board of architectural review or a "similar body". An opinion of this office dated April 9, 2004 referenced that this office in an opinion dated May 13, 2002 had previously determined that a member of a local architectural review board appointed pursuant to Section 6-29-870 held an office for dual office holding purposes. The May, 2002 opinion stated in part that

Subsection (D) of Section 6-29-870 authorizes the chairman of an architectural review board to administer oaths "and compel the attendance of witnesses by subpoena." Decisions are appealed to the board "where there is an alleged error in any order, requirement, determination or decision." Section 6-29-880. In other words, it appears that the architectural review board is quasi-judicial. In my opinion, a member of such board would be an officer for dual office holding purposes.

The 2004 opinion concluded that the Town of Dillon Board of Architectural Review "...serves a quasi-judicial function and that a member of the Board is likely an officer for dual office holding purposes." Reference was also made to the establishment of the Dillon Board by Section 6-29-870. Consistent with these prior opinions, it is my opinion that as a member of the Southern Beaufort County Corridor Review Board, a board also authorized pursuant to Section 6-29-870, you hold an office for dual office holding purposes of this State's Constitution. I would note additionally that included in Section 6-29-870(C) is a provision which states that "[n]one of the members may hold any other public office or position in the municipality or county."

Ms. Barrett  
Page 3  
May 17, 2006

As to your serving on the Bluffton Historical Preservation Commission, included in the materials relating to the Commission which were forwarded to this office was a copy of the Town of Bluffton Zoning Ordinance. Section 5.16 of such ordinance provides for the Historic Preservation Overlay District (the HPOD). Pursuant to Section 1.16.2 of Section 5.16, "[t]he HPOD for the Town of Bluffton has authority under South Carolina Code of Laws, Title 6, Chapter 29, Section 870 and 940." It appears that Section 870 of Title 6 of Chapter 29 is the same Section 6-29-870 referenced above. It is indicated by Section 1.16.6 that the "Historic Preservation Commission (HPC) is "[t]he appointed board that recommends the designation of and regulates changes to the Bluffton HPOD and structures." As to the duties of the Bluffton Historical Preservation Commission, reference is made in Section 1.16.6(E) to the issuance by the Commission of a "certificate of appropriateness" "...certifying that the proposed actions by an Applicant are found to be acceptable in terms of design criteria relating to the individual property or the HPODs."

Also forwarded to this office was a document entitled "Historic Preservation". According to such document, under a section entitled "Rules", "[t]hese rules of procedure are adopted pursuant to S.C. Code § 6-29-870 for the Town of Bluffton Historic Preservation Commission (hereinafter referred to as "HPC"), which consists of seven (7) members appointed by Town Council." Again, Section 6-29-870 authorizes the appointment of "a board of architectural review or similar body." Other provisions of this document refer to the terms served by the members of the Commission and their method of organization. As to the functions of the Commission, it is provided that the Commission shall "...review properties for inclusion in the Historic Preservation Overlay District and recommend appropriate zoning changes to the Town Council for those properties considered qualified for inclusion." Based upon my review of the Commission, its duties and organization, and consistent with the opinions referenced previously which determined that boards authorized pursuant to Section 8-29-870 constitute offices for dual office holding purposes, it is similarly my conclusion that a member of the Bluffton Historical Preservation Commission would also be an officer for dual office holding purposes.

Inasmuch as it is my opinion that a member of the Bluffton Historical Preservation Commission and the Southern Beaufort County Corridor Review Board would both be officers for dual office holding purposes, the simultaneous holding of the two positions by you would constitute dual office holding in violation of the dual office holding provisions of the State Constitution. I would additionally note that, as previously referenced, it is specifically provided by Section 8-29-870(C) that "[n]one of the members may hold any other public office or position in the municipality or county." Therefore, that provision also prohibits your holding both positions.

While your holding both provisions constitutes dual office holding, as to how such issue is considered, I would refer you to another opinion of this office dated April 9, 2004 which comments on such a situation. That opinion notes that

[w]hen a dual office holding situation occurs, the law operates automatically to "cure" the problem. If an individual holds one office on the date he assumes a second

Ms. Barrett  
Page 4  
May 17, 2006

office, assuming both offices fall within the purview of Article XVII, Section 1A of the Constitution (or one of the other applicable constitutional prohibitions against dual office holding), he is deemed by law to have vacated the first office held. Thus, the law automatically creates a vacancy in that first office. However, the individual may continue to perform the duties of the previously held office as a de facto officer, rather than de jure, until a successor is duly selected to complete his term of office (or to assume his duties if the term of service is indefinite). See Walker v. Harris, 170 S.C. 242 (1933); Dove v. Kirkland, 92 S.C. 313 (1912); State v. Coleman, 54 S.C. 282 (1898); State v. Buttz, 9 S.C. 156 (1877). Furthermore, actions taken by a de facto officer in relation to the public or third parties will be as valid and effectual as those of a de jure officer unless or until a court should declare such acts void or remove the individual from office. See, for examples, State ex rel. McLeod v. Court of Probate of Colleton County, 266 S.C. 279, 223 S.E.2d 166 (1976); State ex rel. McLeod v. West, 249 S.C. 243, 153 S.E.2d 892 (1967); Kittman v. Ayer, 3 Stob. 92 (S.C. 1848).

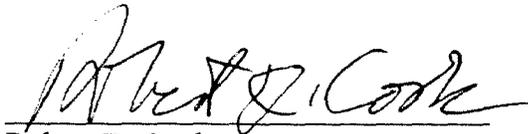
With kind regards, I am,

Sincerely,



Charles H. Richardson  
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Assistant Deputy Attorney General