



HENRY McMASTER
ATTORNEY GENERAL

October 16, 2006

David J. Mills, Esquire
County Attorney, Georgetown County
Post Office Box 421270
Georgetown, South Carolina 299440

Dear Mr. Mills:

We received your letter requesting an opinion of this Office on behalf Georgetown County. Your request concerns whether or not an individual may simultaneously serve on the Georgetown County Parks and Recreation Commission ("PRC") and the Waccamaw Equal Opportunity Council ("WEOC") without violating the dual office holding prohibition contained in article XVII, section 1A of the South Carolina Constitution. As explained below, we believe a position on the PRC is not an office for purposes of dual office holding. Thus, an individual's service in both positions would not violate the constitutional prohibition on 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).

Attached to your request letter, you provided us with a copy of the Georgetown County Ordinance creating the PRC. This ordinance provides the PRC shall consist of seven members appointed by the Georgetown County Council to serve four-year terms. Georgetown County, S.C., Ordinances § 13.9.54. Section 13.9-56 of the Georgetown County Ordinances explains the duties and responsibilities assigned to the PRC.

Request Letter

The parks and recreation commission shall be an advisory body only and shall have the following duties and responsibilities:

- (1) Elect board officers as determined by the board.
- (2) Regularly review all department procedures and policies recommending appropriate changes to the director.
- (3) Regularly evaluate programs and events for the purposes of improvement.
- (4) Serve as a liaison between citizens and the department director and county council.
- (5) Assist in reviewing the budget, developing long range plans, and providing input on facilities, capital, programs and operations.
- (6) Assist in developing a broad base of financial support by seeking grants, gifts, and sponsorships.
- (7) Maintain public relations with the community, promote the parks and recreation department and develop participation among citizens and visitors.
- (8) Meet monthly, publish an agenda and notify the public and news media of meetings.
- (9) County council may from time to time expand, modify, or release the responsibilities of the board.

Id. § 13.9-56. Furthermore, section 13.9-55 provides: "The parks and recreation commission, on behalf of the county, may accept funds for recreational and park purposes through donations, grants, or through other sources as it deems fit and proper. All are to be accepted in the name of Georgetown County Council." Id. § 13.9-55.

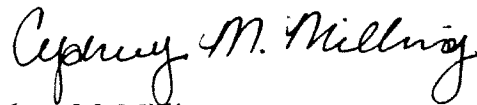
We acknowledge some of the indicators of an office are present. The Georgetown County Council created the PRC through legislative action. Via an ordinance, the Georgetown County Council proscribed a term and duties for the position. However, we note there does not appear to be an oath requirement or any provision for the compensation of its members. In addition, in our review of the duties proscribed to the PRC, we do not find such duties indicate the PRC's ability to exercise sovereign power of the State. Moreover, the provision explaining such duties states the

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PRC "shall be an advisory body only." Prior opinions of this Office concluded members of advisory bodies are not officers for dual office holding purposes because they are not deemed to exercise a portion of the sovereign power of the State. Ops. S.C. Atty. Gen., June 1, 2006 (Education and Economic Development Act Regional Education Center Advisory Board); February 24, 2004 (Beaufort County Solid Waste and Recycling Board); January 15, 2003 (Town of Hilton Head Accommodations Tax Advisory Committee); February 27, 2001 (legal advisory board for the Department of Natural Resources); December 1, 2000 (drought response committee); December 14, 1987 (Children's Foster Care Review Board). Accordingly, we do not find membership on the PRC constitutes an office for purposes of dual office holding.

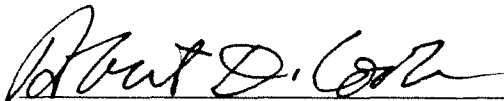
Because we find a position on the PRC not to be an office, regardless of whether a position on the WEOC is an office, an individual's service in both positions would not violate the dual office prohibition contained in article XVII, section 1A of the South Carolina Constitution. Thus, we need not address whether a position on the WEOC is an office.

Very truly yours,



Cydney M. Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Assistant Deputy Attorney General