

June 14, 2007

John J. Fantry, Jr., Esquire
Fantry Law
Post Office Box 993
Winnsboro, South Carolina 29180

Dear Mr. Fantry:

We understand you request an opinion concerning dual office holding on behalf of the Board of Directors for the Gilbert-Summit Rural Water District. You informed us that the name one of the members of the Board of Directors was submitted to the Governor for appointment on the South Carolina Environmental Certification Board. Thus, you seek on opinion on whether “serving on the Gilbert-Summit Rural Water District’s Board as a Director and serving as a member of the South Carolina Environmental Certification Board contravene the dual office holding prohibition of Article XVII, Section 1A of the South Carolina Constitution?”

Law/Analysis

As you point out, article XVII, section 1A of the South Carolina Constitution (Supp. 2006) 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).

As you mentioned in your letter, the Gilbert-Summit Rural Water District (the “District”) and its Board of Directors (the “Board”) were established pursuant to chapter 13 of title 6 of the South Carolina Code governing rural community water districts. In an opinion issued in 1983, we considered whether a position on a board of directors for a rural community water district established under this statutory authority constitutes an office for purposes of dual office holding. Op. S.C. Atty. Gen., September 15, 1983. In that opinion, we examined the power and authority given to members of the governing boards for the districts, which we found included “the power of eminent domain, the authority to issue negotiable bonds, and to prescribe rates and regulations under which water

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shall be sold.” Id. Based on these powers, we concluded “members are authorized to exercise a portion of the sovereign power of the State and would, therefore, be considered office holders under the South Carolina Constitution.” Id.

We are in accord with our previous finding that the power and authority given to the Board pursuant to chapter 13 of title 6 of the South Carolina Code constitutes the exercise of the sovereign power of the State. Thus, we believe a position on the Board constitutes an office for purposes of dual office holding. Furthermore, we find this conclusion is consistent not only with our 1983 opinion, but with numerous other opinions of this Office finding membership on the board of a local water district to be an office. Ops. S.C. Atty. Gen., September 26, 2005 (Hammond Water District); November 19, 2002 (Greenwood Metropolitan District); January 29, 1991 (Lugoff Water District).

The Legislature established the South Carolina Environmental Certification Board (the “Certification Board”) pursuant to chapter 23 of title 40 of the South Carolina Code. Section 40-23-10 of the South Carolina Code (Supp. 2006), in particular, governs the creation of the Certification Board, which is composed of nine members appointed by the Governor. This provision also specifies:

Of the nine members, one must be a licensed public water treatment operator and one must be a licensed public water distribution system operator; two must be licensed wastewater operators, one of whom must be certified in the physical chemical specialty; one must be a licensed well driller; one must be a member of the public at large; one must be a representative from the Land, Water, and Conservation Division of the Department of Natural Resources; one must be a member of the Department of Health and Environmental Control, designated by the Commissioner of the Department of Health and Environmental Control; and one must be a representative from a technical education or other higher education institution actively involved in operator training.

S.C. Code Ann. § 40-23-10(A). Further, this provision allows the Water Environmental Association of South Carolina to recommend two licensed wastewater treatment operators, the South Carolina Section of the American Water Works Association to recommend one licensed public water treatment operator, the South Carolina Ground Water Association to recommend a licensed well driller, and the South Carolina Rural Water Association to recommend one licensed public water distribution system operator. Id. Each member of the Certification Board shall serve a four-year term. Id.

Section 40-23-40 of the South Carolina Code (Supp. 2006) explains the purpose of the Certification Board is “to protect the general public through the regulation of persons engaged in occupations appointed by the legislature for regulation by the board.” The Legislature gives the Certification Board the authority to promulgate regulations and adopt standards with regard to the oversight of environmental systems operators. S.C. Code Ann. § 40-23-60 (Supp. 2006). The

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provisions under chapter 23 of title 40 specifically give members of the Certification Board the authority to issue and renew licenses for environmental systems operators; investigate complaints and potential violations of State law and regulations governing environmental systems operators; conduct hearings; revoke, suspend, or restrict a licensee's ability to practice as an environmental systems operator; and issue sanctions and impose other disciplinary action on environmental systems operator. See S.C. Code Ann. §§ 40-23-230; 40-23-60; 40-23-70; 20-23-80; 40-23-90; 40-23-95; 40-23-100; 40-23-110; 40-23-120 (Supp. 2006).

Based on the above, we believe membership on the Certification Board is an office. The Legislature created the Certification Board by statute, setting forth the terms and qualifications for its members. While the provisions contained in chapter 23 of title 40 do not require members of the Certification Board take an oath of office or provide such members with compensation, we believe based on the authority given to the Certification Board, it maintains quasi-judicial and quasi-legislative authority. Thus, it is our opinion that the Certification Board exercises a portion of the sovereign power of the State. Accordingly, we believe membership on the Certification Board constitutes an office. Furthermore, this finding is consistent with numerous opinions of this Office concluding members of state professional and occupational licensing boards are officers for purposes of dual office holding. See Ops. S.C. Atty. Gen., October 8, 2003 (State Board of Law Examiners); July 26, 1999 (Board of Nursing); December 7, 1994 (South Carolina Real Estate Appraisers Board); April 12, 1993 (State Board of Examiners in Opticianry and State Board of Physical Therapy Examiners); June 25, 1986 (State Board of Cosmetology); June 13, 1980 (Board of Funeral Services).

We find both a position on the Board and a position on the Certification Board to be offices for purposes of dual office holding. Thus, pursuant to article XVII, section 1A of the South Carolina Constitution, an individual is prohibited from simultaneously serving in both positions.

Very truly yours,

Henry McMaster
Attorney General

By: Cydney M. Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Assistant Deputy Attorney General