



HENRY MCMASTER
ATTORNEY GENERAL

March 18, 2010

Ms. Lorrie King
Director of Boards and Commissions
Office of Governor
P. O. Box 12267
Columbia, South Carolina 29211

Dear Ms. King:

We received your letter requesting an opinion of this Office concerning the Commission on Women and dual-office holding. You asked whether "a position on the Commission on Women, S.C. Code Ann. 1-15-10, [would] qualify as an office for the purposes of dual-office holding." Several prior opinions of this Office have addressed the question of dual-office holding. This opinion will address those prior opinions and relevant statutes.

Law/Analysis

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, 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." For this provision to be contravened, a person concurrently must hold two public 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). "One who is charged by law with duties involving an exercise of some part of the sovereign power, either small or great, in the performance of which the public is concerned, and which are continuing, and not occasional or intermittent, is a public officer." Id., 58 S.E. 762, 763. Other relevant considerations are whether statutes, or other such authority, establish the position, prescribe its tenure, 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).

The South Carolina Commission on Women is established and governed by Sections 1-15-10 to 1-15-50 of the Code of Law of South Carolina, 1976. These sections provide for the appointment, qualifications, and terms of its members; calculate per diem, mileage, and subsistence; set forth the manner in which the Commission should be organized and select officers; and prescribe the duties of the Commission. The duties include studying the status of women and making reports to the Governor on the following issues: education needs; the affect of insurance and tax laws; the success

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of labor laws in accomplishing their intended purpose; differences in legal treatment of men and women; the success of new and expanded services for women as wives, mothers, and workers; and employment policies that may discriminate on the basis of sex. Considering the factors mentioned above, membership on the Commission would not constitute a public office within the meaning of Article XVII, Section 1A.

In a prior opinion of this Office dated May 5, 1981, we found that the Commission on Aging does constitute a public office within the meaning of Article XVII, Section 1A. However, the duties of the Commission on Aging and the Commission on Women can be distinguished. The Commission on Aging exercises a portion of sovereign power of the state; it is charged with accepting and disbursing funds, executing programs to meet needs of aging citizens, and receiving State grants and gifts from other sources. See S.C. Code Ann. 43-21-10 to 43-21-120. The duties of the Commission on Women are to study and evaluate various issues and report the findings and conclusions to the Governor. Membership on the Commission should be considered an advisory position.

In a prior opinion of this Office dated December 18, 2008, we found that the Foster Care Review Board does not constitute an office for the purposes of dual-office holding. We stated as follows:

[A]lthough members of such boards have a term of office and receive a per diem, the powers and duties afforded to such boards are advisory in nature. See Op. S.C. Atty. Gen., December 14, 1987.

In numerous opinions of this Office, we determined members of advisory bodies are not office holders for purposes of dual office holding. See Op. S.C. Atty. Gen., December 14, 1987; March 28, 2007; December 18, 2008.

Conclusion

It is the opinion of this Office that simultaneously holding a position on the Commission on Women and being considered an officer in another position would not constitute dual office holding.¹

While we recognize that membership on the Commission on Women has some characteristic of an office as its members serve for a term, are required to meet certain qualifications, and receive a per diem and subsistence, in reviewing the duties of the Commission, we do not believe members exercise a portion of the sovereign power of the State. Several opinions of this Office found that a Board or Commission's ability to promulgate regulations signals its ability to exercise sovereign power of the State. See Op. S.C. Atty. Gen., April 20, 2004; April 14, 2005; December 18, 2008. The

¹ To the extent this opinion is in conflict with or contradicts the November 25, 1975 opinion of this Office regarding the Commission on Women, the November 25, 1975 opinion is overruled.

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functions of the Commission on Women appear to be advisory in nature, as the Commission simply makes recommendations to the Governor.

Hence, a position on the Commission on Women would not qualify as an office for the purpose of dual-office holding..

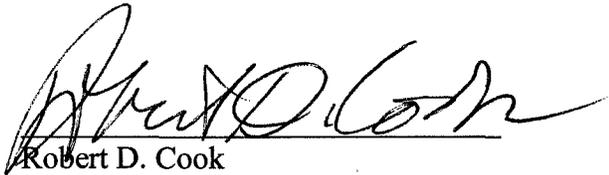
Sincerely,

Henry McMaster
Attorney General



By: Leigha Blackwell
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General