



ALAN WILSON
ATTORNEY GENERAL

April 18, 2011

The Honorable Robert W. Hayes, Jr.
South Carolina Senate, District 15
P.O. Box 142
Columbia, SC 29202

Dear Senator Hayes:

We are in receipt of your letter regarding dual office holding. You asked whether your service as a commissioner on the Uniform Law Commission would violate the dual office prohibition of the South Carolina Constitution, as you currently serve as a South Carolina State Senator. This opinion will address prior relevant opinions regarding dual office holding.

Article XVII, Section 1A of the South Carolina Constitution (Supp. 2007) 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, member of a lawfully and regularly organized fire department, constable, or a notary public. 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, 58 S.E. 762 (1907). Further, our courts recognize other relevant considerations such as whether a statute, or other such authority, establishes the position, proscribes the position’s tenure, 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 service as a state senator clearly qualifies as an office for purposes of “dual office holding,” the relevant inquiry is whether serving as a commissioner on the Uniform Law Commission constitutes an office in violation of the dual office holding prohibition. Sections 1-21-10 – 30 of the South Carolina Code governs the “Board of Commissioners for Promotion of Uniformity of Legislation in the United States.” Section 1-21-10 provides that “[t]he Governor shall appoint three suitable persons who, with their successors, shall constitute a ‘Board of Commissioners for the Promotion of Uniformity of Legislation in the United States.’” Further, any vacancy shall be filled by appointment by the Governor. Id. The duties of the Board are to:

- (1) Examine the subjects of insolvency, the descent and distribution of property, the execution and probate of wills and other subjects upon which uniformity of legislation in the various states and territories of the union is desirable but which are outside the jurisdiction of the Congress of the United States;
- (2) Confer upon these matters with the commissioners appointed by other states and territories for the same purpose;

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- (3) Consider and draft uniform laws to be submitted for approval and adoption of the several states; and
- (4) Generally devise and recommend such other or further course of action as shall accomplish the purposes of this chapter.

S.C. CODE ANN. § 1-21-20. The final section of Chapter 21 simply provides for the Board to keep a record of its transactions and to make a report to the General Assembly. S.C. CODE ANN. § 1-21-30.

Although the position is established by statute, which describes the duties of the position, there appears to be no tenure, salary, qualifications, or oath prescribed for a commissioner on the Uniform Law Commission. Most significantly, the duties of the Board appear to be advisory in nature and do not involve an exercise of the sovereign power of the State. As stated in a prior opinion, “[t]his Office has concluded on numerous occasions that members of advisory bodies are not considered office holders.” Op. S.C. Att’y Gen. (May 2, 2000) (citing Ops. S.C. Att’y Gen. dated May 9, 1989 (Indigent Care Advisory Board); May 15, 1989 (Work Support Advisory Council); and October 12, 1990 (Beaufort County Aviation Board)). See also Op. S.C. Att’y Gen. dated December 1, 2000 (Local Drought Response Committee is advisory in nature and therefore not an office) and September 18, 1975 (State Personnel Advisory Council is advisory and therefore does not exercise sovereign power of this State).

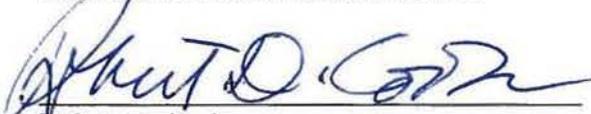
Accordingly, consistent with our earlier opinions, it is the opinion of this Office that a member of the “Board of Commissioners for the Promotion of Uniformity of Legislation in the United States” should not be considered an officer for dual office holding purposes. Therefore, you may serve as a member of the South Carolina Senate as well as on the Board of Commissioners for the Promotion of Uniformity of Legislation in the United States.

Very truly yours,



ElizabethAnn L. Felder
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General