



ALAN WILSON
ATTORNEY GENERAL

March 31, 2011

Henry M. Laye, III, Director
Spartanburg County Voter Registration & Elections
366 North Church Street, Room 1630
Spartanburg, SC 29303

Dear Mr. Laye:

We received your letter requesting an opinion of this Office regarding a conflict of interest. You asked whether it would "be a conflict of interest for [you] to continue as the County Voter Registration/Elections Director and be a member of the [Greenville-Spartanburg] GSP Commission," should you be nominated by the County's Legislative Delegation and appointed by the Governor.

As background, you provided that you previously spent two years at the GSP airport working with the Commission and staff. Because of your experience and knowledge of how the airport works as a result of your work on the 1988-89 expansion project for the Greenville Spartanburg Airport, I am certain that your assistance would be of tremendous help as the airport plans another expansion.

This Office will address whether a conflict of interest would exist should you serve in both positions.

Law/Analysis

S.C. Code § 8-13-700 states as follows:

- (A) **No public official, public member, or public employee may knowingly use his official office, membership, or employment to obtain an economic interest for himself, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated.** This prohibition does not extend to the incidental use of public materials, personnel, or equipment, subject to or available for a public official's, public member's, or public employee's use which does not result in additional public expense.

- (B) **No public official, public member, or public employee may make, participate in making, or in any way attempt to use his office, membership, or employment to influence a governmental decision in which he, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated has an economic interest.** A public official, public member, or public employee who, in the discharge of his official responsibilities, is required to take an action or make a decision which affects an economic interest of himself, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated shall:
- (1) **prepare a written statement describing the matter requiring action or decisions and the nature of his potential conflict of interest** with respect to the action or decision . . .
 - (4) if he is a public official, other than a member of the General Assembly, he shall **furnish a copy of the statement to the presiding officer** of the governing body of any agency, commission, board, or of any county, municipality, or a political subdivision thereof, on which he serves, who shall cause the statement **to be printed in the minutes and require that the member be excused from any votes, deliberations, and other actions on the matter on which the potential conflict of interest exists** and shall cause the disqualification and the reasons for it to be noted in the minutes. . . .

S.C. Code § 8-13-700(A) & (B) (emphasis added).

This Office is not a fact-finding entity; investigations and determinations of facts are beyond the scope of an opinion of this Office and are better resolved by a court. Ops. S.C. Atty. Gen., September 29, 2010; September 14, 2006; April 6, 2006. However, it does not appear in this instance that one serving as County Voter Registration/Elections Director is in a position to use his office to influence a governmental decision in which he or a business with which he is associated, such as the GSP Airport, has an economic interest. Therefore, no conflict of interest would exist.

The request letter provides that neither the Voter Registration Chair nor the County Administrator is concerned about one serving as both County Voter Registration/Elections Director and member of GSP Commission. Also, this Office is unaware of any written statement prepared by the County Voter Registration/Elections Director describing the nature of any potential conflict of interest with the GSP Airport or Commission.

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In 1913, the South Carolina Supreme Court held in McMahan v. Jones that “[n]o man in public service should be permitted to occupy the dual position of master and servant.” It is unlikely that the positions of County Voter Registration/Elections Director and member of GSP Commission would be viewed by a court as master and servant positions. A court would likely find that serving as the Spartanburg County Voter Registration and Elections Director and member of GSP Commission would not create a conflict.

One should also note, there is no dual office holding problem. Article XVII, Sec. 1A of the South Carolina Constitution provides that “. . . no person shall 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).

This Office has repeatedly expressed the opinion that an individual serving on a county airport commission, such as the GSP Commission, would hold an office for purposes of dual office holding. See, Ops. S.C. Atty. Gen., October 14, 2010; August 25, 2005; July 11, 2005; April 29, 1985; January 19, 1983; November 9, 1982; August 22, 1975.

However, on numerous occasions, this Office has opined that the position of “executive director or director is an administrative position which is not an office.” Ops. S.C. Atty. Gen., August 19, 2002; June 24, 1994; May 15, 1989. The director generally serves at the pleasure of the governing board and would be considered a mere employee. “Unless the director is deputized by the Board of Elections and Voter Registration as a board member to take applications and issue voter registration certifications, it is our opinion that no dual office holding problem is created.” Op. S.C. Atty. Gen., January 27, 2004.

Since serving as director would not be considered an office for dual office holding purposes, there would be no dual office holding violation under the South Carolina Constitution if one served as both County Voter Registration/Elections Director and as a member of the GSP Commission.

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Conclusion

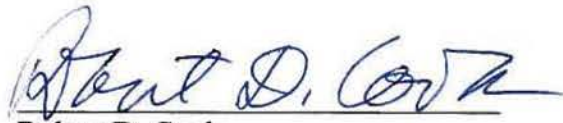
No conflict of interest is apparent on the face of the two positions. However, the South Carolina Ethics Commission has primary jurisdiction over the state's ethics laws and should be consulted for further advice or information.

Sincerely,



Leigha Blackwell
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General