



HENRY McMASTER  
ATTORNEY GENERAL

August 5, 2008

Marian D. Nettles, Esquire  
Nettles, Turbeville & Reddeck  
Post Office 699  
Lake City, South Carolina 29560

Dear Ms. Nettles:

We understand from your letter that you currently serve on the Commission for Lawyer Conduct (the "Commission") and have been nominated to serve on the Florence/Darlington Technical Center Area Commission (the "Technical Center Commission"). Thus, you ask "[w]ould service on these two (2) boards constitute dual office holding?"

### **Law/Analysis**

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." 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).

The Legislature established the Technical Center Commission as a body politic and corporate pursuant to sections 59-53-710 et seq. of the South Carolina Code (2004). Section 59-53-710 states that the Technical Center Commission (referred to as the Area Committee for Florence-Darlington Technical College in the statutes) is composed of ten members appointed by the Governor on the recommendation of the legislative delegation. The only qualification for a position on the Technical Center Commission is residency, and each member serves a three-year term. We did not find an oath requirement or any indication that members of the Technical Center Commission receive compensation for their service. Section 59-53-720 states the Technical Center Commission "administer[s] the program of vocational and technical education in Darlington and Florence Counties . . ." Furthermore, section 59-53-730 describes the powers and duties afforded to the Technical Center Commission, which include the power to adopt bylaws, rules, and regulations;

acquire real property; employ personnel; and expend funds for the operation and maintenance and improvement of facilities.

Based on our review of the Technical Center Commission's enabling legislation, we believe the Technical Center Commission members exercise a portion of the sovereign power of the State. Taking this factor into account along with the fact that the Technical Center Commission is established by statute, which provides a term and qualifications for service, we are of the opinion that membership on the Technical Center Commission is an office for purposes of dual office holding. This finding is consistent with previous opinions of this Office concluding membership on other area technical education commissions are offices. See Ops. S.C. Atty. Gen., April 14, 2005 (Denmark Technical College Area Commission); December 15, 2003 (Spartanburg County Technical Education Commission); May 13, 2002 (Northeast Technical College Area Commission); December 13, 1995 (Piedmont Technical Education Commission); January 22, 1993 (Midlands Technical College Commission); August 6, 1990 (Technical College of the Lowcountry Area Commission); February 1, 1985 (Horry-Georgetown Technical College Commission); June 24, 1983 (Central Carolina Technical College Commission). Thus, we must determine whether a position on the Commission is an office.

The South Carolina Supreme Court created the Commission by Rule 3 of Rule 413 of the South Carolina Appellate Court Rules. Rule 3 states "the Commission shall have jurisdiction over all allegations that a lawyer has committed misconduct or is incapacitated." Rule 413, SCACR. According to this Rule, "[t]he Commission shall be composed of 44 members appointed by the Supreme Court. 42 members shall be active members of the South Carolina Bar. 2 members shall be public members." Id. Rule 3 provides that Commission members shall serve four-year terms. The powers of the Commission generally are as follows:

- (1) The Commission shall have the duty and authority to:
  - (A) adopt its own rules of procedure for discipline and incapacity proceedings subject to the approval of the Supreme Court; and
  - (B) propose amendments to the Rules of Professional Conduct and these Rules for Lawyer Disciplinary Enforcement to the Supreme Court.
- (2) In addition to the duties assigned to disciplinary counsel and Commission counsel in Rules 5 and 6, the Commission may delegate to either the disciplinary counsel or the Commission counsel the duty and authority to:
  - (A) maintain the Commission's records;

(B) maintain statistics concerning the operation of the Commission and make them available to the Commission and the Supreme Court;

(C) prepare an annual report of the Commission's activities for presentation to the Supreme Court and the public; and

(D) inform the public of the existence and operation of the lawyer discipline system, including the Commission's address and telephone number and the disposition of each matter in which public discipline is imposed.

According to Rule 4 of Rule 413, Commission members are divided into panels, some of which perform investigations while others conduct hearings involving lawyer misconduct. Rule 4 assigns the following powers specifically to investigative panels and hearing panels:

(f) Powers and Duties of Investigative Panel. An investigative panel shall have the duty and authority to:

(1) review the recommendations of the disciplinary counsel after preliminary investigation and either authorize a full investigation or dismiss the complaint;

(2) review the recommendations of disciplinary counsel after full investigation and approve, disapprove or modify the recommendations as provided in Rule 19(d)(2), to include dismissal of the complaint;

(3) designate a member of the panel to preside over the investigative panel in the absence of the chair or vice-chair of the Commission; and

(4) declare a matter closed, but not dismissed prior to the filing of formal charges and, after proper notice, to reopen a matter that has been previously closed but not dismissed.

(g) Powers and Duties of Hearing Panel. A hearing panel shall have the duty and authority to:

(1) rule on pre-hearing motions, conduct hearings on formal charges and make findings, conclusions, and recommendations to the Supreme Court for sanctions or for the dismissal of the case, pursuant to Rule 26;

Ms. Nettles  
Page 4  
August 5, 2008

- (2) designate a member of the panel to serve as the chair of the panel; and
- (3) declare, after proper notice, a matter closed, but not dismissed, after the filing of formal charges.

Although a position on the Commission shows some indications of being an office as its members are appointed and serve a specified term, the Commission was created under the Supreme Court's rule making authority not by legislation. Moreover, while the Supreme Court gives the Commission the authority to investigate, conduct hearings, and make recommendations as to the disposition of matters involving attorney misconduct, disciplinary authority ultimately remains with the Supreme Court. Accordingly, we do not believe a member of the Commission exercises a portion of the sovereign power of the State. Thus, we are of the opinion that a member of the Commission does not hold an office for purposes for dual office holding.

**Conclusion**

Although we are of the opinion that membership on the Technical Center Commission constitutes an office for purposes of dual office holding, we do not believe a position on the Commission for Lawyer Conduct is an office. Therefore, we are of the opinion that you would not be in violation of article XVII, section 1A of the South Carolina Constitution if you simultaneously served in both of these positions.

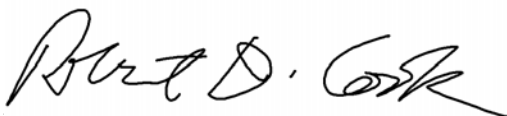
Very truly yours,

Henry McMaster  
Attorney General



Henry McMaster

REVIEWED AND APPROVED BY:



ROBERT D. COOK  
Assistant Deputy Attorney General