



ALAN WILSON
ATTORNEY GENERAL

July 19, 2011

The Honorable Kent M. Williams
South Carolina Senate
PO Box 1514
Marion, SC 29571

Dear Senator Williams:

We received your letter requesting an opinion of this Office concerning dual office holding. You asked whether it would be allowed for an “individual who was appointed by the Marion County Council to serve on the county planning commission to also be selected by the Marion County Board of Education to serve on the local school board for the Marion County School District 2 Board.”

Law/Analysis

Article XVII, section 1A of the South Carolina Constitution 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). “one who is charged by law with duties involving an exercise of some part of the sovereign power, either great or small, 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. 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).

Title 6, Chapter 29, Article 1 of the South Carolina Code of Laws of 1976 governs the creation of local planning commissions. S.C. Code § 6-29-320 states that the “county council of each county may create a county planning commission.” The powers, qualifications and duties of a local planning commission, as described in Article 1 makes it clear that members exercise some degree of sovereign power of the state, meaning that membership on the Planning Commission constitutes an office within the definition of the Sanders and Crenshaw cases, supra. See, S.C. Code §§ 6-29-340 – 6-29-380. On numerous occasions, this Office opined that a **member of a county or municipal planning commission holds an office for purposes of dual office holding.** See, Ops. S.C. Atty. Gen., November 27, 2007 (City of Mauldin Planning Commission); May 9, 2007 (Spartanburg Planning Commission); December 1, 2006 (Myrtle Beach Planning Commission); April 10, 2006 (Town of Bluffton Planning Commission); May 8, 2001

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(Horry County Planning Commission); August 3, 2000 (Charleston County Planning Commission) (emphasis added).

Further, we have also determined numerous times that a **member of a county school board would hold an office** within the meaning of the dual office holding provision. See, Ops. S.C. Atty. Gen., September 3, 2010; December 12, 2007; June 16, 2006; January 29, 1997; July 31, 1992; September 24, 1982 (emphasis added). Specifically, we have opined that one serving on a Marion County School Board would be considered an officer for dual office holding purposes. Ops. S.C. Atty. Gen., July 8, 1983 (Marion County School Boards); July 20, 1976 (Marion County School District #4 Board); September 29, 1975 (Marion District #1 School Board).

Conclusion

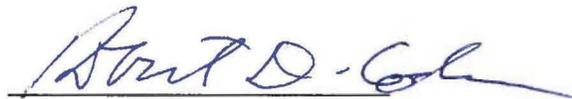
Consistent with our prior opinions, it is the opinion of this Office that simultaneously serving on the Marion County Planning Commission and serving as a member of the Marion County School District 2 Board would constitute dual office holding in contravention of Article XVII, Section 1A of the South Carolina Constitution.

Sincerely,



Leigha Blackwell Sink
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General