



ALAN WILSON
ATTORNEY GENERAL

April 4, 2012

Michael S. Medlock, County Attorney
Edgefield County
124 Courthouse Square
Edgefield, South Carolina 29824

Dear Mr. Medlock,

We received your letter requesting an opinion of this Office as to whether an individual's concurrent service on the Edgefield County Transportation Committee ("Transportation Committee") and the Board of Directors for the Edgefield County Hospital ("Hospital Board") violates the constitutional prohibition against dual office holding. You inform us that the members of the Transportation Committee are appointed by the Edgefield County Legislative Delegation ("Legislative Delegation") pursuant to S.C. Code section 12-28-2740 (Supp. 2004). You state you are aware that prior opinions of this Office indicate a position on the Transportation Committee could be considered an office for purposes of dual office holding.

You also inform us that the Edgefield County Hospital Board was established by Act No. 1514 of 1968. You indicate that although the members of the Hospital Board were originally appointed by the Legislative Delegation, the County Council assumed the authority to appoint such members with the advent of Home Rule. In addition, you state you are aware of a January 7, 1997 opinion of this Office which addressed a similar dual office holding question. However, you believe the present situation is somewhat distinguishable.

Law/Analysis

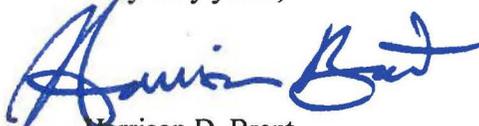
Article XVII, section 1A of the South Carolina Constitution provides that "[n]o person may hold two offices of honor or profit at the same time, but any person holding another office may at the same time be an officer in the militia, member of a lawfully and regularly organized fire department, constable, or a notary public." For a violation of this provision to occur, an individual must concurrently hold two public offices which have duties "involving an exercise of some part of the sovereign power" of the State. Sanders v. Belue, 78 S.C. 171, 174, 58 S.E.2d 762, 763 (1907). A public officer is "[o]ne 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 intermittent, is a public officer." Id., 58 S.E.2d at 762-63. Other relevant considerations include: "whether the position was created by the legislature; whether the qualifications for appointment are established; whether the duties, tenure, salary, bond, and oath are prescribed or required; whether the one occupying the position is a representative of the sovereign; among others." State v. Crenshaw, 274 S.C. 475, 478, 266 S.E.2d 61, 62 (1980).

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We have issued numerous opinions concluding that a position on the governing board of a county hospital is an office for purposes of dual office holding. See, e.g., Ops. S.C. Att’y Gen., 2007 WL 1651330 (May 2, 2007) (Lexington Medical Center Board); 2007 WL 655610 (February 26, 2007) (Barnwell County Hospital Board); 2004 WL 885191 (April 20, 2004) (Abbeville County Memorial Hospital Board of Trustees). In fact, we have twice concluded that a member of the Edgefield County Hospital Board holds such an office. See Ops. S.C. Att’y Gen., 2000 WL 356780 (January 17, 2000); 1992 WL 682770 (January 9, 1992). A copy of the 1992 opinion is enclosed for your review.

Likewise, we have repeatedly concluded that a position on a county transportation committee is an office for purposes of dual office holding. See, e.g., Ops. S.C. Att’y Gen., 2006 WL 120784 (April 20, 2006) (Chesterfield County Transportation Committee); 2005 WL 469065 (February 14, 2005) (Dorchester County Transportation Committee). Accordingly, this Office is of the opinion that an individual’s simultaneous service on the Edgefield County Hospital Board and the Edgefield County Transportation Committee violates the constitutional prohibition against dual office holding.

Very truly yours,



Harrison D. Brant
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General