

7530 Library



The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER  
ATTORNEY GENERAL

April 28, 2003

The Honorable John M. Knotts, Jr.  
Senator, District No. 23  
Post Office Box 142  
Columbia, South Carolina 29202

Dear Senator Knotts:

You have asked for an opinion as to whether a person serving on the Central Midlands Council of Government holds an office for dual office holding purposes. It is our opinion that a member of the Central Midlands Council of Government does not hold an office for purposes of the dual office holding provisions of the South Carolina Constitution.

Law / Analysis

Article XVII, § 1A of the South Carolina Constitution 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, a member of a lawfully and regularly organized fire department, constable, or a notary public. As concluded by Attorney General Daniel McLeod in an opinion dated April 26, 1977, "[t]o determine whether a position is an office or not depends upon a number of circumstances, and is not subject to any precise formula." The South Carolina Supreme Court has held that for this provision to be contravened, a person concurrently must hold two 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., 78 S.C. at 174. Other relevant considerations, as identified by the Court, are whether statutes, or other 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).

In an opinion of this Office dated May 2, 1996, we described at length the authority creating the Central Midlands Regional Planning Council and the powers exercised by that entity. We also addressed provisions in the South Carolina Constitution which concern regional councils of government and the relationship of those provisions to Central Midlands. It is helpful, by way of background to quote liberally from this opinion:

... there are two constitutional provisions which are to be considered when analyzing powers and duties of regional councils of government. The first is Article VII, Section 15, which provides:

*Rembert C. Dennis*

The General Assembly may authorize the governing body of a county or municipality, in combination with other counties and municipalities, to create, participate in, and provide financial support for organizations to study and make recommendations on matters affecting the public health, safety, general welfare, education, recreation, pollution control, utilities, planning, development and such other matters as the common interest of the participating governments may dictate. Such organizations, which shall be designated regional councils of government, may include political subdivisions of other states. The studies and recommendations by such organizations shall be made on behalf of and directed to the participating governments and other governmental instrumentalities which operate programs within the jurisdiction of the participating governments.

The legislature may authorize participating governments to provide financial support for facilities and services required to implement recommendations of such organizations which are accepted and approved by the governing bodies of the participating political subdivisions. Such organizations shall not have the power to levy taxes. Local funds for the support of such organizations shall consist of contributions from the participating political subdivisions as may be authorized and granted by their respective governing bodies.

[The prohibitions against dual office holding contained in Section 2 of Article 2 and Section 24 of Article 3 of this Constitution shall not apply to any elected or appointed official or employee of government who serves as a member of a regional council.]

This constitutional provision has been deemed not to be self-executing; the statutory provisions of §6-7-110 et seq. thus effectuate the constitutional provisions.

The second constitutional provision to be considered is Article VIII, Section 13, which provides in relevant part:

(A) Any county, incorporated municipality, or other political subdivision may agree with the State or with any other political subdivision for the joint administration of any function and exercise of powers and the sharing of the costs thereof.

(B) Nothing in this Constitution may be construed to prohibit the State or any of its counties, incorporated municipalities, or other political subdivisions from agreeing to share the lawful cost, responsibility, and administration of functions with any one or more governments, whether within or without this State.

(C) The prohibitions against dual office holding contained in Article VI of this Constitution do not apply to any elected or appointed

The Honorable John M. Knotts, Jr.  
Page 3  
April 28, 2003

official or employee who serves on a regional council of government created under the authority of this section.

(Emphasis added).

This Office has applied the referenced provisions of the State Constitution – Article VII, § 15 and Art. VIII, § 13 – on a number of occasions in concluding that membership on a regional council of government does not constitute an office for dual office holding purposes. In an opinion dated August 29, 2001, we opined that a person could serve simultaneously as a member of a school board and as Chairman of a Regional Council of Governments without contravention of the Constitution. In an opinion dated June 28, 1995, we stated that “Article VII, § 15 and Article VIII, 13(C) of the state Constitution exempt members of regional councils of governments, who are elected or appointed officials or employees of government, from the dual office holding prohibitions of the South Carolina Constitution..”

And in Op. S.C. Atty. Gen., May 6, 1992, we concluded that

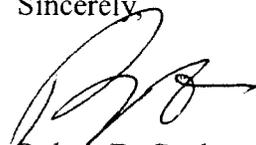
[m]embership on a council of governments, as to elected or appointed officials or employees, is not deemed to be an office, by virtue of express exemption of the state Constitution. See Art. VIII, § 13 and Art. VII, § 15 of the state Constitution; also Ops. Atty. Gen. dated February 7, 1984 and November 4, 1991 ... .

In the February 7, 1984 opinion (No. 84-13), we reasoned that “the prohibition against dual office holding in Article VI, Section 3 must be read with Article VIII, Section 13 as not applying to elected city, county or state officials who would also serve on the Appalachian Council of Governments.” See also, Ops. S.C. Atty. Gen., March 11, 1982; March 21, 1978; February 1, 1973; February 28, 1972; September 17, 1970; December 29, 1969. Each of these opinions is clear that membership on a regional council of government board is not an office for dual office holding purposes.

#### **Conclusion**

For the foregoing reasons, and based upon the foregoing authorities, it is our opinion that membership upon a council of government (COG) – in this instance, Central Midlands – is not an office for dual office holding purposes.

Sincerely,



Robert D. Cook  
Assistant Deputy Attorney General

RDC/an