



The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER  
ATTORNEY GENERAL

August 12, 2003

The Honorable J. G. McGee  
Member, House of Representative  
3306 Dogwood Chase Ct.  
Florence, South Carolina 29503

Dear Representative McGee:

You have requested an advisory opinion from this Office concerning dual office holding. You have indicated that Mr. Charles L. Appleby was elected by the General Assembly to serve on the Board of Trustees of the Medical University of South Carolina (MUSC) in 2002, and has served continuously as a Trustee since his election. You further indicate that in July of this year, the Florence City Council voted to place Mr. Appleby on the Florence Housing Authority as a commissioner. You ask whether Mr. Appleby, as a Trustee for MUSC, can simultaneously serve on the Florence Housing Authority without violating the constitutional prohibition on dual office holding.

**Law/Analysis**

Article XVII, Section 1A of the State 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, member of a lawfully and regularly organized fire department, constable, or notary public. 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). Other relevant considerations are whether statutes, or other such authority, establish the position, prescribe its 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 advised on several occasions that a member of the Board of Trustees for MUSC would be considered an officer for dual office holding purposes. See Ops. S.C. Atty. Gen. dated March 30, 2000; July 27, 1989; June 28, 1984. This conclusion has been reached on the authority of other numerous opinions of this office that a college or university trustee undoubtedly exercises a portion of the State's sovereign power. See Ops. S.C. Atty. Gen. dated May 8, 2001; October 18, 2000; November 21, 1996. Therefore, the question turns to whether a position on the Florence Housing Authority would likewise be considered an office.

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This Office has consistently opined that a board member of a local housing authority holds an office for dual office holding. See, as representative of those numerous opinions, Ops. S.C. Atty. Gen. dated March 16, 1990 (Darlington Housing Authority); March 10, 1988 (Columbia Housing Authority); June 1, 1987 (commissioner of a regional housing authority); November 18, 1986 (North Charleston Housing Authority). Accordingly, we advise that a commissioner or member of the board of directors for the Florence Housing Authority would undoubtedly be considered as an office holder for dual office holding purposes.

Based on the forgoing authorities, it is our opinion that a person who simultaneously holds the positions of Trustee for MUSC and board member for the Florence Housing Authority would violate the constitutional prohibition on dual office holding. The only question that remains is, what would be the practical effect under state law if Mr. Appleby were to accept the position on the Florence Housing Authority?

When a dual office holding situation occurs, the law operates automatically to "cure" the problem. If an individual holds one office on the date he assumes a second office, assuming both offices fall within the purview of Article XVII, Section 1A of the Constitution (or one of the other applicable constitutional prohibitions against dual office holding), he is deemed by law to have vacated the first office held. Thus, the law operates automatically to create a vacancy in that first office. However, the individual may continue to perform the duties of the previously held office as a de facto officer, rather than de jure, until a successor is duly selected to complete his term of office (or to assume his duties if the term of service is indefinite). See Walker v. Harris, 170 S.C. 242 (1933); Dover v. Kirkland, 92 S.C. 313 (1912); State v. Coleman, 54 S.C. 282 (1898); State v. Buttz, 9 S.C. 156 (1877). Furthermore, actions taken by a de facto officer in relation to the public or third parties will be as valid and effectual as those of a de jure officer unless or until a court should declare such acts void or remove the individual from office. See, for examples, State ex rel. McLeod v. Court of Probate of Colleton County, 266 S.C. 279, 223 S.E.2d 166 (1976); State ex rel. McLeod v. West, 249 S.C. 243, 153 S.E.2d 892 (1967); Kittman v. Ayer, 3 Stob. 92 (S.C. 1848). Accordingly, if Mr. Appleby were to assume the position on the Florence Housing Authority, he would automatically vacate his position on the Board of Trustees for MUSC but serve in a de facto capacity until a successor is elected by the General Assembly.

Very truly yours,



Robert D. Cook  
Assistant Deputy Attorney General