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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

December 10, 2002

Mr. Robert P. Richardson
643 Crystal Drive
Spartanburg, South Carolina 29302

Dear Mr. Richardson:

You advise that you currently sit on the Spartanburg County Library Board of Trustees as Treasurer. You also indicate that in 1998 you were appointed to the Spartanburg Planning Commission. You wish to know if the simultaneous occupation of the two positions constitutes dual office holding for purposes of the South Carolina Constitution. It is our opinion that serving concurrently in the two positions would constitute dual office holding.

Article XVII, Section 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, 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 public 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 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).

This Office has concluded on numerous occasions that a member of a county library board holds an office for dual office holding purposes. See, Op. Atty. Gen., November 1, 1995 (Charleston County Library Board); Op. Atty. Gen., October 23, 1995 (Charleston County Library Board); Op. Atty. Gen., September 25, 1989 (Barnwell County Library Board); Op. Atty. Gen., February 11, 1981 (Allendale County Library Board); Op. Atty. Gen., July 24, 1980 (Greenville County Library Board); Op. Atty. Gen., March 11, 1976 (Florence County Library Board). But see, Op. Atty. Gen., February 3, 1995 (since Beaufort County Library Board has only recommendatory duties, membership thereupon does not constitute an office). Thus, if the Spartanburg County Library Board is similar to most other library boards previously examined by this Office, I would conclude that membership thereon would constitute an office for dual office holding purposes.

Likewise, this Office has repeatedly found that membership on a municipal planning commission constitutes an office. Op. Atty. Gen., October 17, 2000; Op. Atty. Gen., February 8, 1983 (City of Conway Planning Commission); Op. Atty. Gen., April 5, 1990 (City of Florence

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Planning Commission); Op. Atty. Gen., August 24, 1992 (City of Florence Planning Commission); Op. Atty. Gen., June 26, 1978 (City of Rock Hill Planning Commission); Op. Atty. Gen., March 29, 1982 (Town of Lexington Planning Commission).

Based upon the information you have provided, it would appear that the two positions you have identified each constitute an office for dual office holding purposes. Thus, I am of the opinion that the situation you have described most likely would constitute dual office holding. The fact that neither position receives compensation is not a factor in whether the position constitutes an office. The only caveat to this conclusion is that if the duties of the Spartanburg County Library Board are recommendatory only (as with the Beaufort Library Board), a different conclusion may be found. If you wish to submit the governing law or ordinance creating the Library Board in Spartanburg County, I will be more than happy to consider it.

When a dual officeholding 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); Dove 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).

Thus, in a dual office holding situation – which this most probably is – upon assumption of the Planning Commission position, the law would automatically create a vacancy with respect to the Library Board position. Such would render the holder of the Library Board position a "de facto" rather than a "de jure" member. However, all actions taken by you as a member of the Library Board would be valid.

If I can be of further assistance, please let me know.

Sincerely,



Robert D. Cook
Assistant Deputy Attorney General

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