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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

January 23, 2002

Jo Anne Anderson, Executive Director
Education Oversight Committee
P.O. Box 11867
Columbia, South Carolina 29211

Re: Dual Office Holding

Dear Ms. Anderson:

By your letter of December 5, 2001, you have requested an opinion of this Office concerning a member of the Education Oversight Committee. You inform us that the member was elected Mayor of the City of Spartanburg in November of 2001, and assumed his duties as such on January 7, 2002. You now ask if the simultaneous service as a member of the Committee and Mayor of Spartanburg violate the South Carolina Constitution's prohibition against dual office holding.

Article XVII, Section 1A of the South Carolina Constitution states 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. 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).

This Office has concluded on numerous occasions that one who serves as the mayor of a municipality would hold an office for dual office holding purposes. See, OPS. ATTY. GEN. dated April 9, 1997; November 2, 1994; July 28, 1993 and September 21, 1989. Therefore, we need only determine whether membership on the Education Oversight Committee qualifies as an office "of honor and profit" pursuant to the above mentioned constitutional provision.

request letter

As cited in your letter, the general duties, manner of appointment and length of terms of the members of the Education Oversight Committee are set out in S.C. Code Ann. §59-6-10. That Section provides, in pertinent part, as follows:

(A) In order to assist in, recommend, and supervise implementation of programs and expenditure of funds for the Education Accountability Act and the Education Improvement Act of 1984, the Education Oversight Committee is to serve as the oversight committee for these acts. The Education Oversight Committee shall:

- (1) review and monitor the implementation and evaluation of the Education Accountability Act and Education Improvement Act programs and funding;
- (2) make programmatic and funding recommendations to the General Assembly;
- (3) report annually to the General Assembly, State Board of Education, and the public on the progress of the programs;
- (4) recommend Education Accountability Act and EIA program changes to state agencies and other entities as it considers necessary.

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This Office has consistently opined that "members of advisory bodies do not hold an office for dual office holding purposes." See OPS. ATTY. GEN. September 14, 2001; April 26, 1977; March 11, 1982; and March 1, 1983. While certain of its enumerated duties involve reviewing, monitoring, reporting and recommending, the Committee seems to have a more substantive role in the State's public education arena than merely that of an advisory body. As set out in Section 59-6-10, the Committee is to "... assist and supervise the implementation of programs and expenditure of funds for the Education Accountability Act and the Education Improvement Act of 1984" Clearly, there is a great deal of public concern in public education and the large amount of public funds invested in such. The Committee's ability to assist in and supervise these functions is indicative of a body which is exercising some part of the sovereign power of the State.

Further, in addition to the duties prescribed in Section 59-6-10, several other Sections of the Code enumerate additional powers and duties of the Committee. Examples of such are found in the following: Section 59-18-320(B) (Educational Oversight Committee to review and approve standards based assessment of mathematics, English/language arts, etc. which are administered to all public school students); Section 59-18-320(C) (Educational Oversight Committee to review and approve end of course assessments of benchmark courses administered to all public school students); Section 59-18-320(D) (any new standards and assessments be developed and adopted upon advice and consent of Educational Oversight Committee); Section 59-18-1560(B) (Education Oversight Committee to approve eligibility guidelines for grant programs and methods for distributing funds as developed by the State Board of Education); Section 59-18-900(A)(B) (Education Oversight Committee to establish annual report cards and criteria for academic performance ratings for public schools and districts); Section 59-18-360 (Education Oversight Committee to approve recommended revisions to state standards and assessments); Section 59-18-920 (Education Oversight Committee

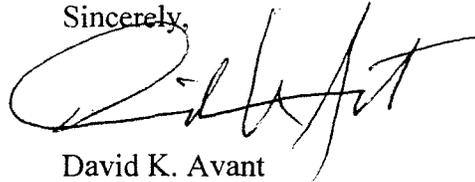
Ms. Anderson
Page 3
January 23, 2002

to develop report cards for vocational schools); Section 59-1-453 (Education Oversight Committee to oversee planning, development, and implementation of Target 2000 program).

While the above list is not an exhaustive one, it does indicate that the Education Oversight Committee possesses a great deal of influence over both policy and financial decisions made in reference to South Carolina's public education system. In fact, the extent of the authority given the Education Oversight Committee caused some state legislators to question the constitutionality of its existence. In November of 1998, this Office was asked to comment on "the constitutionality of the General Assembly placing [the Education Oversight Committee] in position to have authority over the State Board of Education, the State Superintendent of Education and/or the State Department of Education." After reviewing the situation, we opined that the delegation of such powers to the Committee would pass constitutional muster, but we recognized the extensive authority that had been granted to the Committee. See OP. ATTY. GEN. November 24, 1998.

Based on the foregoing, I am compelled to conclude that a member of the Education Oversight Committee would hold an office for dual office holding purposes. Accordingly, it is my opinion that one may not serve simultaneously as the Mayor of the City of Spartanburg and a member of the Education Oversight Committee.

Sincerely,



David K. Avant
Assistant Attorney General

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