



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON
 ATTORNEY GENERAL

May 13, 2002

Greg Ohanesian, Esquire
 Post Office Box 1373
 Bennettsville, South Carolina 29512-1373

Dear Mr. Ohanesian:

You have asked whether one serving on three separate boards would be dual office holding under the South Carolina Constitution. The three boards you specify are as follows:

1. City of Bennettsville Board of Architectural Review;
2. Northeastern Technical College Board of Trustees;
3. Marlboro County Public Library Committee.

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 certain positions. For this provision to be contravened, a person must concurrently 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).

Local boards of architectural review are authorized pursuant to S.C. Code Ann. Sec. 6-29-870. Subsection (A) states that a local government "may provide for appointment of a board of architectural review or similar body." Subsection (B) establishes the membership of boards and provides for appointment and removal of members. Subsection (C) states that "none of the members [of such boards] may hold any other public office or position in the municipality or county.

Subsection (D) of § 6-29-870 authorizes the chairman of an architectural review board to administer oaths "and compel the attendance of witnesses by subpoena." Decisions are appealed to the board "where there is an alleged error in any order, requirement, determination or decision." §

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6-29-880. In other words, it appears that the architectural review board is a quasi-judicial. In my opinion, a member of such board would be an officer for dual office holding purposes.

With respect to a member of the Northeastern Technical College Board of Trustees, it is my opinion that such position would also constitute an office. This Office has advised on several occasions that members of the various technical education commissions would be considered office holders for dual office holding purposes. See, Op. Atty. Gen., dated April 5, 1994 (Spartanburg County Commission for Technical Education); January 22, 1993 (Richland-Lexington Counties Commission for Technical Education); January 31, 1985 (Chesterfield-Marlboro Area Technical Education Commission); February 1, 1985 (Horry-Georgetown Commission for Technical Education); June 24, 1993 (Sumter Area Technical Education Commission); December 13, 1995 (Piedmont Technical Education Commission).

As to the Marlboro County Public Library Committee, I assume by that you mean the Board of Trustees of the Marlboro County Library. We have previously determined that membership on various county library boards would constitute an office for dual office holding purposes. See, Op. Atty. Gen., October 23, 1995 (Charleston County Library Board of Trustees); September 25, 1989 (Barnwell County Library Board of Trustees); February 11, 1981 (Allendale County Library Board); July 24, 1980 (Greenville County Library Board of Trustees); and March 11, 1976 (Florence County Public Library Trustee).

County councils were required by S.C. Code Ann. § 4-9-35 et seq. (1976, revised 1986), to establish a county public library system within the county by ordinance. The county council was given the authority to provide by ordinance for the composition, function, duties, responsibilities, and operation of the county library system. Provisions are found in § 4-9-35 for appointment of a board of trustees for the management and control of the public library system. Thus, it is quite likely that an ordinance adopted by Marlboro County Council pursuant to these Code sections exists with respect to the Marlboro County Library and its board.

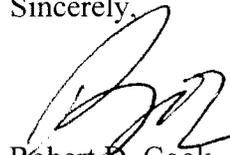
This Office has advised previously that membership on a county library board of trustees established pursuant to § 4-9-35 et seq. would constitute an office. Op. Atty. Gen. dated February 11, 1981, supra. If the Marlboro County Library Board was established or revised according to these Code sections, membership on that Board would most probably constitute an office; to determine that issue with certainty, it would be necessary to examine the ordinance(s) of Marlboro County Council with respect to the Board. It may well be that the referenced opinions are close enough factually to the Marlboro County Library Board to say that membership on that Board would constitute an office for dual office holding purposes; if that is not the case, you may wish to forward a copy of the relevant ordinance(s) to me for further examination.

This letter is an informal opinion only. It has been written by a designated Assistant Deputy Attorney General and represents the position of the undersigned attorney as to the specific question

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asked. It has not, however, been personally scrutinized by the Attorney General and not officially published in the manner of a formal opinion.

Sincerely,



Robert D. Cook
Assistant Deputy Attorney General

RDC/an