

7340 *Letter*



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON
ATTORNEY GENERAL

May 6, 2002

Frans N. Mustert, Chairman
Tourism Expenditure Review Committee
P. O. Box 125
Columbia, South Carolina 29214-0120

Re: Informal Opinion

Dear Mr. Mustert:

You have asked whether a member of a local tourism advisory committee also may serve on the State Tourism Expenditure Review Committee without violating the dual office holding provision of the South Carolina Constitution.

I am enclosing a copy of an opinion written by this Office on September 14, 2001 which addresses your question. In that opinion, we noted that pursuant to S.C. Code Ann. Section 6-4-25, a municipality or county receiving a certain amount of revenue from an accommodations tax must appoint an advisory committee to make recommendations on the expenditure of revenue generated from the accommodations tax. The advisory committee, as you note, consists of seven members with a majority of the committee members being selected from the hospitality industry of the municipality or county receiving the revenue.

Applying the standards set forth by our Supreme Court in Sanders v. Belue, 78 S.C. 171, 58 S.E. 762 (1907) and State v. Crenshaw, 274 S.C. 475, 266 S.E.2d 61 (1980), we concluded that advisory board membership did not constitute an office. As we noted, among other things,

[t]he members are authorized only to make recommendations as to expenditures of revenues; they are not charged with the exercise of a portion of the sovereign power of the State.

In addition, we noted for future reference that "service on the Tourism Expenditure Review Committee would constitute office holding." We elaborated as follows:

[i]n contrast to the position of the advisory Accommodations Tax Committee, a member of the Tourism Expenditure Review Committee does exercise some sovereign power of the state. Act No. 74 of the 2001 Acts and Joint Resolutions states that the Committee "shall serve as the oversight authority on all questionable tourism-related expenditures

Request Letter

Mr. Mustert
Page 2
May 6, 2002

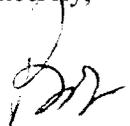
and to that end, all reports filed pursuant to Section 26 6-4-25(D)(3) must be forwarded to the committee for review to determine if they are in compliance with this chapter." Furthermore, if the committee deems a local expenditure of accommodations tax improper," it shall certify the noncompliance to the State Treasurer, who shall withhold the amount of the expenditure found in noncompliance from subsequent distributions in accommodations tax revenue otherwise due the municipality or county." In other words, the Committee has the authority to direct the State Treasurer to withhold funds from a local government. This authority, as well as other indicia in Act 74, such as the prescribed four-year term of office, compels me to conclude that a member of the Tourism Expenditure Review Committee would hold an office for dual office holding purposes. However, for the reasons I stated above, one who is a member of the Tourism Review Committee could serve on an advisory committee without contravening the dual office holding provisions of the Constitution.

While the earlier opinion concluded that it would not constitute dual office holding to hold the positions of membership on the advisory committee and the Tourism Expenditure Review Committee, the opinion also cautioned about a potential conflict of interest in holding the two positions. It was noted therein that

... because the County Accommodations Tax Committee makes recommendations to the county on expenditures that are ultimately reviewed by the Tourism Expenditure Review Committee, arguably a conflict of interest exists. Ascertaining whether such dual service creates a conflict of interest requires an interpretation of the Ethics, Government Accountability and Campaign Reform Act of 1991, specifically S.C. Code Ann. § 8-13-700(B). Pursuant to S.C. Code Ann. § 8-13-320(11), the South Carolina General Assembly has delegated primary responsibility for interpreting the Act's provisions to the South Carolina State Ethics Commission. Accordingly, this Office must defer to the State Ethics Commission in regard to this particular issue. You may contact the Commission by writing to Mr. Herbert Hayden, Executive Director, State Ethics Commission, 5000 Thurmond Mall, Suite 250, Columbia, S.C. 29201.

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 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
Enclosure