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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

November 19, 2002

Joseph D. Patton, Executive Director
GLEAMNS Human Resources Commission, Inc.
Post Office Box 1326
Greenwood, South Carolina 29648

Dear Mr. Patton:

You have asked for an opinion regarding "whether an appointment to the GLEAMNS Human Resources Commission, Inc. along with an appointment to the Greenwood Metro Board (Water District) is considered dual office [holding.]" It is our opinion that the simultaneous holding of both positions would constitute dual office holding in contravention of the South Carolina Constitution.

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 office of 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).

I assume by your reference to "Greenwood Metro Board" you are specifying the governing board of the Greenwood Metropolitan District. You indicate in your letter that "[t]he Metro Board is a special-purpose district created by the General Assembly and appointed by the County Delegation. This Board serves with compensation and supervises the wastewater treatment and sewer trunk line service throughout its service area."

The Greenwood Metropolitan District was originally created pursuant to Act No. 441 of the 1959 Acts and Joint Resolutions. The Act has been amended many times through the years, apparently most recently by Act No. 450 of 2000. In the original enabling legislation, Section 2 of the Act provided for a governing commission and Section 3 set forth the powers and duties of the District.

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Act No. 450 of 2000 increases the number of commissioners from 6 to 7 and requires that 3 members of the Commission be elected. Terms of two years are specified for those elected members. One member is to be appointed by the Greenwood County Council for a term of four years and the three commissioners of public works of the City of Greenwood are ex officio members of the commission who shall serve terms coterminous with their terms of office.

The powers of the commissioners are multitudinous. Among the Commission's powers is that of condemnation; the operation of the District's sewer system; the power to purchase, lease and hold real estate; the power to purchase and extend existing sewer lines; the authority to make contracts; to make any and all regulations necessary for the operation of the sewer system, etc. Overtime, additional powers and duties such as the issuance of bonds, have been added through the enactment of additional legislation. Clearly, members of the commission exercise a portion of the sovereign power of the State. While we have apparently not addressed the question of whether commissioners of the Greenwood Metropolitan Commission hold an office, we have consistently concluded that similar water and sewer commission members do. See, e.g., Op. Atty. Gen., August 19, 2002; Op. Atty. Gen., January 9, 1992; Op. Atty. Gen., October 19, 1990. Thus, it is our opinion that commissioners of the Metropolitan District holds an office.

With respect to GLEAMNS, we note that the GLEAMNS Human Resources Commission is created by S.C. Code Ann. Section 43-41-10 et seq. In addition, Commission members serve for a specified "term of office." See § 43-41-60. The method of filling vacancies is provided for in § 43-41-70. The makeup of the Commission's membership is set forth in § 43-41-30.

Section 43-41-10 creates the Commission to encompass the area covering Greenwood, Laurens, Edgefield, Abbeville, McCormick, Newberry and Saluda Counties.

In the preamble creating the Act the General Assembly found that

... a public commission should be created in Greenwood, Laurens, Edgefield, Abbeville, McCormick, Newberry, and Saluda Counties charged with the responsibility of implementing programs designed to improve the health, education, welfare, housing, and employment opportunities of economically disadvantaged persons in these counties. The commission must be funded by federal, state, county, municipal or private organizations.

Act No. 16, 1993, Section 1. Section 43-41-20 declares the GLEAMNS Commission to be "a body politic and corporate" and capable of enjoying "all the rights and privileges as such."

The powers of the GLEAMNS Commission are specified in Section 43-41-100. Such provision authorizes the Commission to sue and be sued; to adopt, use and alter a corporate seal; to make bylaws; to appoint agents and employees and to prescribe their duties, fix their compensation and specify their bonding. Other specific powers granted to the Commission are:

... (e) to undertake the improvement of communication and cooperation among existing and future programs administered by federal, state, county and municipal governmental agencies and private organizations designed to improve the health, education, welfare, housing or employment of the low income residents of the counties represented by the commission and, with the consent of such agencies and organizations, to coordinate the same;

(f) to enter into contracts and agreements for performance of its programs and duties with federal, state, county and municipal governmental agencies and subdivisions thereof, and private nonprofit organizations;

(g) to receive and expend funds for the performance of its duties in the administration of its programs from such governmental agencies and subdivisions thereof and private nonprofit organizations, as well as any other sources;

(h) to designate an executive committee from among the members of the commission to which may be delegated one or more duties and responsibilities of the commission and, from time to time, to appoint one or more subcommittees to advise and assist in the administration of its programs and the performance of its duties; all such committees designated to have representation from the three categories enumerated in items (1), (2) and (3) of Section 43-41-30(a) in the same proportion as such categories are represented on the full commission;

(i) to maintain adequate accounts and records of its activities, receipts and expenses in conformance with requirements of any contract or agreement with any federal, state, county or municipal governmental agency, or subdivision thereof, or any private nonprofit organization;

(j) to acquire, own or hold in trust, preserve, restore, maintain, or lease property, facilities and equipment reasonably necessary for the performance of its duties and the administration of its programs;

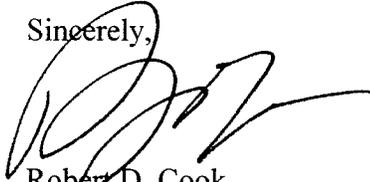
(k) to do such other things as may be necessary to perform the duties prescribed in this chapter.

Based upon the foregoing authority, it is evident that members of the GLEAMNS governing board would hold an office for dual office holding purposes. Clearly Commission members exercise some portion of the sovereign power of the State. Indeed, in an opinion dated August 18, 1997, we concluded that GLEAMNS is similar to a "state agency" for purposes of review by the Legislative Audit Council.

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Accordingly, it is our opinion that the simultaneous serving upon the GLEAMNS commission as well as the Greenwood Metropolitan District board would constitute dual office holding in contravention of the South Carolina Constitution.

Sincerely,

A handwritten signature in black ink, appearing to be 'RDC', written over the word 'Sincerely,'.

Robert D. Cook
Assistant Deputy Attorney General

RDC/an