

7431 February



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON
ATTORNEY GENERAL

September 20, 2002

Mr. Joseph G. Mahaffey
P. O. Box 2526
Greer, South Carolina 29652

Dear Mr. Mahaffey:

Upon your election to the House of Representatives in November (you have no opposition, as I understand it), you wish to know whether you could simultaneously, serve in the House and on the governing Board of North Greenville College without violating the dual office holding provision of the South Carolina Constitution. It is my opinion that serving concurrently in the two positions would not constitute dual office holding.

Law / Analysis

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, a member of a lawfully and regularly organized fire department, constable, or a notary public. As concluded by Attorney General Daniel McLeod in an opinion dated April 26, 1977, "[t]o determine whether a position is an office or not depends upon a number of circumstances and is not subject to any precise formula." The South Carolina Supreme Court, though, 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).

One who serves as a member of the South Carolina House of Representatives unquestionably holds an office for dual office holding purposes. See, Ops. Att'y. Gen. dated September 13, 1990; June 11, 1992; September 4, 1992; and many others. It must therefore be determined whether service on the governing board of North Greenville College would likewise be considered an office.

Dennis

Mr. Mahaffey
Page 2
September 20, 2002

It is my understanding that North Greenville College, located in Tigerville, South Carolina, is a private, eleemosynary Christian college. The school currently has an enrollment of about 1300 students. North Greenville College is affiliated with and committed to the South Carolina Southern Baptist Convention and is described on the Institution's web site as a "small, co-educational liberal arts institution that provides opportunities for higher education in a Christian atmosphere." See, <http://ngc.edu/welcome.html>.

The duties and responsibilities of North Greenville College's governing board are not defined in the general statutory laws of the State. As noted, the school is a private, non-profit school. Thus, the carrying out of the institution's mission does not appear to involve an exercise of the State's sovereign powers. In the past, this Office has often concluded that "members of boards of eleemosynary corporations would not be considered office holders." See, Op. Atty. Gen., Op. No. 93-24 (April 12, 1993); Op. Atty. Gen., October 18, 1988; Op. Atty. Gen., September 8, 1987, and others.

Accordingly, it is our opinion that the simultaneous holding of positions as a member of the House of Representatives and the governing board of North Greenville College would not constitute dual office holding under the South Carolina Constitution.

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