



ALAN WILSON
ATTORNEY GENERAL

June 17, 2013

The Honorable Shane Martin
Senator, District No. 13
Post Office Box 142
Columbia, South Carolina 29202

Dear Senator Martin,

You seek an opinion as to whether State law prohibits an individual from simultaneously serving as a member of the Union County Commission on Alcohol and Drug Abuse and as a member of the City of Union Municipal Election Commission. By way of background, you inform us that a constituent has contacted you and expressed concern that this individual's dual service violates an ethics rule.

Law/Analysis

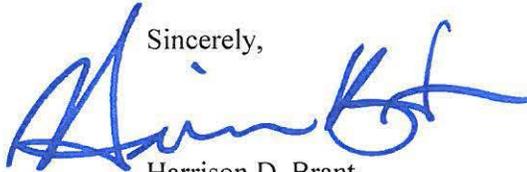
As a threshold matter, we note that any questions as to violations of the State Ethics Act, S.C. Code §§ 8-13-100 *et seq.*, should be referred to the State Ethics Commission. With that being said, Article XVII, § 1A of the South Carolina Constitution provides that “[n]o person may hold two offices of honor or profit at the same time, but any person holding another office may at the same time be an officer in the militia, member of a lawfully and regularly organized fire department, constable, or a notary public.” For a violation of this provision to occur, an individual must concurrently hold two public offices which have duties “involving an exercise of some part of the sovereign power” of the State. *Sanders v. Belue*, 78 S.C. 171, 174, 58 S.E.2d 762, 763 (1907). A public officer is “[o]ne who is charged by law with duties involving an exercise of some part of the sovereign power, either great or small, in the performance of which the public is concerned, and which are continuing, and not occasional intermittent, is a public officer.” *Id.*, 58 S.E.2d at 762-63. Other relevant considerations include: “whether the position was created by the legislature; whether the qualifications for appointment are established; whether the duties, tenure, salary, bond, and oath are prescribed or required; whether the one occupying the position is a representative of the sovereign; among others.” *State v. Crenshaw*, 274 S.C. 475, 478, 266 S.E.2d 61, 62 (1980).

As we stated in a previous opinion, “[t]his office has consistently opined that board members of county commissions on alcohol and drug abuse, including that of Union County, are public officers for purposes of dual office holding.” *Op. S.C. Att’y Gen.*, 2011 WL 612035 (Nov. 15, 2011) (citations omitted). In addition, we have advised on numerous occasions that members of county or municipal election commissions also hold such an office. *See Ops. S.C. Att’y Gen.*, 2006 WL 1207267 (April 10, 2006); 2004 WL 3058235 (Dec. 15, 2004). Consistent with these prior opinions, we believe Article

The Honorable Shane Martin
Page 2
June 17, 2013

XVII, § 1A prohibits an individual from simultaneously serving on the Union County Commission on Alcohol and Drug Abuse and the City of Union Municipal Election Commission.

Sincerely,



Harrison D. Brant
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General