



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

July 18, 2000

D'Anne Haydel, Esq.
Orangeburg County Attorney
P.O. Drawer 9000
Orangeburg, South Carolina 29116-9000

Re: Informal Opinion

Dear Ms. Haydel:

By your letter of June 16, 2000 you have asked whether appointment to the board of directors of the Orangeburg-Calhoun Regional Law Enforcement Commission is considered an office for dual office holding purposes.

As you know, 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).

The Orangeburg-Calhoun Regional Law Enforcement Commission was created by ordinances of the Orangeburg and Calhoun County Councils. According to the governing

D'Anne Haydel, Esq.

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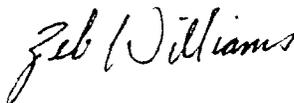
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Orangeburg County Ordinances (OCCO Sections 13-21 through 13-38), the Commission is governed by a board of seven members, five of whom are appointed by Orangeburg County Council. After the initial appointments, all members shall serve a term of four years. There are no provisions concerning an oath or compensation for the members. Besides having the general authority to do all things necessary or convenient for the establishment and maintenance of adequate facilities for incarceration of prisoners for Calhoun and Orangeburg Counties, the specific powers and duties to be exercised by the Board include: acquiring by gift, purchase or otherwise all kinds and descriptions of real and personal property; adopting regulations for the conduct of its business and expenditure of its funds as it may deem advisable; operating the detention facility and other such facilities as it may lease, acquire or construct; and employing such staff and purchasing such equipment and supplies as may be necessary for the operation of the detention facility. Historically, this Office has construed such powers as involving an exercise of a portion of the sovereign power of the State. *See, e.g., Ops. Atty. Gen.* dated January 6, 1998; January 9, 1992; and April 14, 1975. Accordingly, we must conclude that an appointee to the Orangeburg-Calhoun Regional Law Enforcement Commission would hold an office for dual office holding purposes.

I trust this information is responsive to your inquiry and that you will not hesitate to contact me if I can be of additional assistance. This letter is an informal opinion only. It has been written by a designated Deputy Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kind regards, I am

Sincerely yours,



Zeb C. Williams, III
Deputy Attorney General

ZCW/an