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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON
ATTORNEY GENERAL

March 30, 2000

Mr. Dennis L. Dabney
Certified Public Accountant
Post Office Box 11970
Columbia, South Carolina 29211

Re: Informal Opinion

Dear Mr. Dabney:

By your letter of March 23, 2000, you have asked whether a dual office holding situation would exist if you were to serve simultaneously on the Richland County Airport (Owens Field) Commission and the Medical University of South Carolina Board of Trustees. As I stated during our telephone conversation yesterday, it is my opinion that concurrent service on these boards would not violate the South Carolina Constitution's prohibition against dual office holding.

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).

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This Office has previously advised that a member of the MUSC Board of Trustees would be considered an office holder for dual office holding purposes. *See*, Ops. Atty. Gen. dated July 27, 1989 and June 28, 1984. Therefore, it must be determined whether membership on the Richland County Airport Commission would likewise constitute an office.

Along with your request, you forwarded a copy of the Richland County Ordinance creating the County Airport Commission. Commissioners are appointed by County Council for four-year terms. No provision is found in the ordinance requiring commissioners to take an oath, and no compensation is provided for in the ordinance. Moreover, no qualifications to be met by commissioners are specified in the ordinance. Section 3-22 of the ordinance details the Commission's duties and responsibilities. These include the promotion of aviation-related actions to broaden the county's economic base; recommending funding priorities to county council; maintaining contact with the FAA and the State Aeronautics Commission; recommending contracts for ultimate execution by county council; and proposing airport regulations for adoption by county council. Thus, it appears that the Richland County Airport Commission is largely advisory in nature and that the actual exercise of sovereign power is carried out by Richland County Council. This Office has concluded on numerous occasions that members of advisory bodies are not considered office holders. *See, e.g.*, Ops. Atty. Gen. dated May 9, 1989 (Indigent Care Advisory Board); May 15, 1989 (Work Support Advisory Council); and October 12, 1990 (Beaufort County Aviation Board). Therefore, based upon the reasoning and conclusions of these earlier opinions, a member of the Richland County Airport Commission would not be deemed an office holder for dual office holding purposes. Accordingly, it is my opinion that a member of the Richland County Airport Commission may simultaneously serve on the Medical University of South Carolina Board of Trustees without contravening the dual office holding prohibitions of the State Constitution.

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.

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With kind regards, I am

Sincerely yours,

A handwritten signature in cursive script that reads "Zeb Williams".

Zeb C. Williams, III
Deputy Attorney General

ZCW/an