



The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON  
ATTORNEY GENERAL

May 2, 2000

The Honorable Maggie W. Glover  
South Carolina State Senate  
Post Office Box 142  
Columbia, South Carolina 29202

Dear Senator Glover:

By your letter of April 25, 2000, you have requested this Office's formal opinion as to whether service on the South Carolina Commission for Minority Affairs constitutes an office for the purposes of Article XVII, Sec. 1A of the South Carolina Constitution. As noted in your request letter, this Office has issued two previous informal opinions which concluded that a commission member would not be considered an office holder for dual office holding purposes. *See, Ops. Atty. Gen.* dated November 21, 1996 and October 8, 1998.

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 Honorable Maggie W. Glover

Page 2

May 2, 2000

The State Commission for Minority Affairs was established by Act of the General Assembly, now codified at S.C. Code Ann., § 1-31-10 et seq. (1995 Cum. Supp.). Section 1-31-10 provides for a term of four years and until a member's successor has been appointed and qualifies. Though commissioners are apparently issued an oath of office, there is no specific statutory requirement to do so. Moreover, no provision is made for compensation of members. Most important of all, however, the duties to be exercised pursuant to § 1-31-40 are chiefly advisory in nature: to "provide the minority community with a single point of contact for statistical and technical assistance ... [to] provide for publication of a statewide statistical abstract on minority affairs ... [to] provide the minority community with assistance and information on Voting Rights Act submissions in the State, as well as other related areas of concern to the minority community ...." Such duties lack an exercise of sovereign power. 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, consistent with our earlier opinions, it is the opinion of this Office that a member of the Minority Affairs Commission should not be considered an officer 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 further assistance.

Very truly yours,



Paul M. Koch  
Assistant Attorney General

**REVIEWED AND APPROVED:**



Deb C. Williams, III  
Deputy Attorney General