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The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON  
ATTORNEY GENERAL

January 29, 1998

The Honorable Maggie W. Glover  
Senator, District No. 30  
910 West Sumter Street  
Florence, South Carolina 29501

Re: Informal Opinion

Dear Senator Glover:

You have asked whether an individual may simultaneously serve as a part-time magistrate and as a member of the Pee Dee Tourism Commission without violating the dual office holding prohibitions of the South Carolina Constitution. You have also inquired as to whether a master-servant relationship would exist.

Article XVII, Section 1A of the State 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, member of a lawfully and regularly organized fire department, constable, or notary public. For this provision to be contravened, a person concurrently must hold two public 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). Other relevant considerations are whether statutes, or other such authority, establish the position, prescribe its 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).

This Office has concluded on numerous occasions that an individual who serves as a magistrate would hold an office for dual office holding purposes. Ops. Atty. Gen. dated June 19, 1987 and September 23, 1980.

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In the context of dual office holding, this Office has apparently never opined as to the status of one who would serve on the Pee Dee Tourism Commission. The Commission is codified at S.C. Code Ann. § 51-13-610 et seq. The purpose of the Commission is to promote economic development through a formal program of tourism promotion in Florence, Lee, Williamsburg, Marion, Dillon, Marlboro, and Darlington Counties. The Commission is composed of four members from each county, appointed by the Governor upon recommendation of the legislative delegation of each county. Commissioners serve terms of four years and until their successors are appointed and qualify. The members are not required to take an oath and receive no compensation.

Duties of the Commission are enumerated in Section 51-13-630 of the Code. These duties include taking action necessary to establish the Pee Dee region as a major center of tourism; bringing together various interests to develop a formal tourism program; encouraging promotion of tourism through various agencies and entities; identifying tourist attractions in the region; applying for and using or distributing funds from various sources. While these are all important duties, their exercise does not necessarily appear to be an exercise of a portion of the sovereign power of the state.

Considering all of the foregoing, this Office is of the opinion that service on the Pee Dee Tourism Commission is most probably not an office. Exercise of sovereign power is lacking, as are statutory requirements that an oath be taken and compensation be paid.

In summary, it is this Office's opinion that an individual could most probably serve simultaneously as a part-time magistrate and on the Pee Dee Tourism Commission without contravening the dual office holding prohibitions of the State Constitution. However, the individual in question may wish to consult the Advisory Committee on Standards of Judicial Conduct to make certain that no provisions of the Code of Judicial Conduct would be contravened.

Finally, in regards to whether a master-servant relationship exists, such relationship is based on common law rather than statutory law and is described as follows:

[A] conflict of interest exists where one office is subordinate to the other, and subject in some degree to the supervisory power of its incumbent, or where the incumbent of one of the offices has the power of appointment as to the other office, or has the power to remove the incumbent of the other or to punish the other. Furthermore, a conflict of interest may be

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demonstrated by the power to regulate the compensation of the other... .

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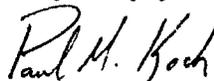
The offices may be incompatible even though the conflict in the duties thereof arises on but rare occasions... . In any event, the applicability of the doctrine does not turn upon the integrity of the officeholder or his capacity to achieve impartiality... .

67 C.J.S. Officers §27; Op. Atty. Gen. dated June 24, 1996. Here, a part-time magistrate would have no supervisory power, control, removal or disciplinary authority, or the like over a member of the Pee Dee Tourism Commission and, therefore, no master-servant relationship exists.

This letter is an informal opinion only. It has been written by a designated assistant attorney general and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kindest regards, I remain

Very truly yours,



Paul M. Koch

Assistant Attorney General