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The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON  
ATTORNEY GENERAL

January 11, 1999

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 October 26, 1998 you have asked whether appointment to the board of trustees (the "Board") of The Regional Medical Center of Orangeburg and Calhoun Counties (the "TRMC") 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 Regional Medical Center of Orangeburg and Calhoun Counties was originally created by act of the General Assembly and was later re-established by Orangeburg County

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Council as permitted after the advent of home rule. According to the governing Orangeburg County Ordinances (OCCO Sections 8-36 through 8-56), TRMC is governed by a board of seventeen members, twelve of whom are appointed by Orangeburg County Council. After the initial appointments, all members shall serve a term of four years or until their successors are appointed and qualify. There are no provisions concerning an oath or compensation for the members. The 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; expending the proceeds derived from the charges made for the use of the services and facilities of the hospital for the operation and maintenance thereof; expending any funds received in any manner; exercising the power of eminent domain; borrowing money not in excess of \$500,000 for operating purposes and pledging the revenue of the hospital as collateral; and performing all things necessary and convenient for the establishment and maintenance of adequate hospital facilities. Considering all of the foregoing, we must conclude that these powers and duties involve an exercise of a portion of the sovereign power of the State and further that an appointee to the Board of Trustees of The Regional Medical Center of Orangeburg and Calhoun Counties would hold an office for dual office holding purposes. This conclusion is consistent with the previous and frequently reiterated opinion of this Office that a member of a county hospital board of trustees is an officer within the meaning of Article XVII, Section 1A of the South Carolina Constitution. *See, e.g., Ops. Atty. Gen.* dated January 7, 1997; January 9, 1992; and April 5, 1991.

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