

The State of South Carolina



Office of the Attorney General

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July 16, 1993

The Honorable James S. Klauber
Member, House of Representatives
530-A Blatt Building
Columbia, South Carolina 29211

Dear Representative Klauber:

By your letter of June 25, 1993, you have asked whether an individual could serve simultaneously on the Old Ninety Six Tourism Commission and on the Ware Shoals Town Council without contravening the dual office holding prohibitions of the State Constitution.

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 a 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 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).

This Office has advised on numerous occasions that one who serves on a city or town council is considered an officer for dual office holding purposes. See, for examples, Ops. Atty. Gen. dated September 7, 1989 (copy enclosed); October 18, 1988; January 8, 1991; November 20, 1989; and many more. Thus, a member of the Ware Shoals Town Council would be considered an office holder.

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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 Old Ninety Six Tourism Commission. The Commission was created by Act No. 59 of 1981, which has been codified at S.C. Code Ann. § 51-13-1110 et seq.; the Commission was formed to promote the economic development through a formal program of tourism promotion in Abbeville, Edgefield, Greenwood, Laurens, McCormick, and Saluda counties. Two commissioners from each county are appointed by the Governor upon recommendation of that county's legislative delegation. Commissioners serve terms of four years and until their successors are appointed and qualify. No oath is required; no compensation is provided for in Act No. 59 of 1981.

Duties of the Commission are enumerated in § 51-13-1120, including taking action necessary to establish the Old Ninety Six tourism 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; and so forth. While these are important duties, their exercise does not appear to be restricted only to the sovereign power of the state or its political subdivisions.¹ Thus, we would conclude that the exercise of these duties would not necessarily be an exercise of a portion of the sovereign power of the state.

Considering all of the foregoing indicia, we are of the opinion that service on the Old Ninety Six 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. While a term is specified, the term is not called a "term of office," nor is "holding office" or similar language found in Act No. 59 of 1981. This may be a close question, but we resolved doubt, in such cases, in favor of finding such a position not to be an office.

In conclusion, it is our opinion that an individual could most probably serve simultaneously on the Ware Shoals Town Council and on the Old Ninety Six Tourism Commission without contravening the dual office holding prohibitions of the State Constitution.

¹See Ops. Atty. Gen. dated February 21, 1985 and September 3, 1985 as to the status of the entity itself; we have previously determined that the Old Ninety Six Tourism Commission is not a political subdivision or special purpose district.

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With kindest regards, I am

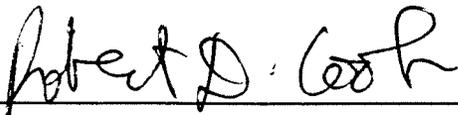
Sincerely,



Patricia D. Petway
Assistant Attorney General

PDP/an

REVIEWED AND APPROVED BY:



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