



ALAN WILSON  
ATTORNEY GENERAL

February 3, 2014

Walter H. Sanders, Jr., Esquire  
Allendale County Attorney  
PO Box 840  
Fairfax, SC 29827

Dear Mr. Sanders:

This Office received your request for an opinion on several issues regarding William E. Robinson's service as a member of Allendale County Council, as an ex officio member of the Allendale County Aeronautics and Economic Development Commission, and as an employee of SouthernCarolina Alliance. Each issue and its analysis follows.

### FACTS

Our understanding of the facts is that William E. Robinson ("Robinson") currently serves as a member of the Allendale County Council. He is also an employee, specifically the Allendale County economic developer, of SouthernCarolina Alliance. SouthernCarolina Alliance f/k/a Tri-County Economic Development Alliance is a non-profit economic development organization representing Allendale, Bamberg, Barnwell, Colleton, Jasper, and Hampton Counties. The Alliance is a 501(c)(3) non-profit organization funded by federal, state, and local funds as well as non-public contributions. The primary purpose of the Alliance is to provide marketing services for and the recruitment of industry into the region. The Alliance has agreements with the six (6) counties and for three (3) of the counties, including Allendale County, the Alliance provides full and comprehensive economic development services including an economic developer, which is Robinson. Allendale County contributes \$50,000.00 per year to the Alliance for these services. Danny Black, the current President and CEO of SouthernCarolina Alliance, has advised you that the \$50,000.00 is used to provide total economic services, including work force development, product development, and community development, by supporting marketing personnel, administration personnel, and economic development personnel.

Allendale County Council and SouthernCarolina Alliance entered into an Economic Development Services Agreement ("Agreement"), which you provided to us. The Agreement does not provide how many years it is to be in effect. It does provide that Allendale County will pay \$50,000.00 per year and that this fee will be reviewed by the parties every three years, and "may be adjusted due to circumstances at that time." The Agreement provides for an economic developer and that the person who holds this position will attend Allendale County Council and Allendale County Aeronautics and Economic

Development Commission meetings to keep “these bodies abreast of economic development efforts and activities.”

According to the information you provided, Robinson states that he serves as an ex officio Council representative on the Allendale County Aeronautics and Economic Development Commission (“Commission”) and does not have voting rights. The Commission website appears to show Robinson as a member. Furthermore, you have informed us that Robinson has presided over a meeting of the Commission when the chair was not present. It is unclear from the information provided whether or not Robinson is a member of the Commission.

According to 2008 Act Number 372 that you provided us, which created the Commission and granted it its powers and duties, the Commission has the ability to acquire property by grant, purchase, lease, or condemnation and sell, lease, trade, convey, and exchange such property. It can lease property and enter into agreements relative to the establishment, operation, and maintenance of an airport and aeronautical field in the county. It can accept gifts and grants of money. It can act for Allendale County in all matters relating to airports, aviation, and development in the county and has all the rights and powers given to counties under the Uniform Airports Act (Chapter 9, Title 55, Code of Laws of South Carolina).

#### LAW/ANALYSIS:

#### I. ALLENDALE COUNTY COUNCIL AND SOUTHERNCAROLINA ALLIANCE

##### **A. Is it dual office holding or a conflict of interest for Robinson to serve on Allendale County Council and as an economic developer of Allendale County through his employment by SouthernCarolina Alliance?**

The South Carolina Constitution provides that “no person may hold two offices of honor or profit at the same time. This limitation does not apply to officers in the militia, notaries public, members of lawfully and regularly organized fire departments, constables, or delegates to a constitutional convention.” S.C. Const. art. IV § 3.

The South Carolina Supreme Court explains that an “office” for dual office holding purposes is:

“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.” Sanders v. Belue, 78 S.C. 171, 174, 58 S.E. 762, 763 (1907). “In considering whether a particular position is an office in the constitutional sense, it must be demonstrated that “[t]he power of appointment comes from the state, the authority is derived from the law, and the duties are exercised for the benefit of the public.” Willis v. Aiken County, 203 S.C. 96, 103 26 S.E.2d 313, 316 (1943). “The powers conferred and the duties to be discharged with regard to a public office must be defined, directly or impliedly, by the

legislature or through legislative authority...” 63C Am Jur.2d Public Officers and Employees § 5 (2009).

Segars-Andrews v. Judicial Merit Selection Commission, 387 S.C. 109, 691 S.E.2d 453 (2010). “Other relevant considerations [as to whether a position is a public office] include: ‘whether the position was created by the legislature; whether the qualifications for appointment are established; whether the duties, tenure, salary, bond, and oath are prescribed or required; whether the one occupying the position is a representative of the sovereign; among others.’” See Op. S.C. Atty. Gen., June 17, 2013 (2013 WL 3243063) (quoting State v. Crenshaw, 274 S.C. 475, 478, 266 S.E.2d 61,62 (1980)).

“This Office has consistently advised that a position on a county council constitutes an office.” Op. S.C. Atty. Gen., No. 77 - 119, April 26, 1977 (1977 WL 24461). The issue is whether Robinson’s role as economic developer for Allendale County through his employment with SouthernCarolina Alliance also constitutes an office for dual office holding purposes. In our opinion, Robinson’s position with SouthernCarolina Alliance is not an office. The position and its duties, salary, and tenure were not created by the legislature. The principal function is to provide marketing services and recruitment of industry, which is not an exercise of the sovereign power since the position does not appear to have the authority to enter into contracts on behalf of Allendale County and the duties appear to be largely advisory to the county council and promotional in nature.<sup>1</sup>

Additionally, SouthernCarolina Alliance is a nonprofit corporation according to the records of the South Carolina Secretary of State. “[T]he fact that a nonprofit organization receives public funds “does not make it a public body or state agency, or the officers of the body public officers.” See, Op. S.C. Atty. Gen., November 10, 1983 (citing Ky. Region Eight v. Commonwealth, 507 S.W.2d 489 (Ky. Ct. App. 1974)). Op. S.C. Atty. Gen., July 5, 2005 (2005 WL 1983350). Robinson appears to be a mere employee of a nonprofit corporation, which is not a public body or state agency, and thus can not be an officer.

You also ask if the informal advisory opinion that you provided from the State Ethics Commission (Op. S.C. State Ethics Commission, February 11, 2003) “address[es] the current issues relative to any potential conflicts of interest and dual office holdings by William E. Robinson through his service as a member of Allendale County Council and his employment with SouthernCarolina Alliance?” This opinion was requested by Robinson to determine if he should apply for the SouthernCarolina Alliance position since he was a member of the Allendale County Council. The opinion was clear when it stated the following:

Finally, if employed by the [SouthernCarolina] Alliance, it becomes a business with which you are associated and you have created an inherent conflict of interest with the [SouthernCarolina] Alliance and economic development in general. If you resign as a council member to take this

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<sup>1</sup> This is a clarification of our former opinion, Op. S.C. Atty. Gen., November 7, 2003 (2003 WL 22682946). While economic development is an exercise of the sovereign power, the mere promotion of economic development which is advisory in nature is not an exercise of governmental power.

position, then the conflict no longer exists. However, absent your resignation from the Council, when a matter comes before the Council that would affect the economic interest of the [SouthernCarolina] Alliance, a business with which you are associated, then you must recuse yourself from the proceedings.

We have addressed the issue of dual office holding but it would be improper for us to address the issue of conflict of interest since it has already been determined by another state agency. *See Op. S.C. Atty. Gen.*, Nov. 27, 2007 (2007 WL 4284627), which provides:

Courts, as well as this Office, generally give great difference to interpretations of statutes by an administrative agency charged with its interpretation. Georgia-Carolina Bail Bonds, Inc. v. County of Aiken, 354 S.C. 18, 26, 579 S.E.2d 334, 338 (Ct. App. 2003); *Op. S.C. Atty. Gen.*, March 20, 2007. “Where an agency is charged with the execution of a statute, the agency's interpretation should not be overruled without cogent reason.” Nucor Steel, a Div. of Nucor Corp. v. South Carolina Pub. Serv. Comm'n, 310 S.C. 539, 543, 426 S.E.2d 319, 321 (1992).

You also asked if specific actions of Robinson during council meetings regarding proposed economic development in Allendale County constituted dual office holding or a conflict of interest. We can not make a determination of this as we can not decide questions of fact. *See Op. S.C. Atty Gen.*, 2010 WL 3896162 (Sept. 29, 2010) (“This Office is not a fact-finding entity; investigations and determinations of fact are beyond the scope of an opinion of this Office and are better resolved by a court”).

**B. Is Robinson required to file periodic statements with the South Carolina Ethics Commission detailing his income and benefits from SouthernCarolina Alliance?**

The pertinent information can be found in the Disclosure of Economic Interests Act, S.C. Code Ann. § 8-13-1110 *et al* (1976 Code, as amended). “Public officials are required to file statements of economic interest.” S.C. Code Ann. § 8-13-1110 (1976 Code, as amended). Furthermore, Section 8-13-1120 provides:

(A) A statement of economic interests filed pursuant to Section 8-13-1110 must be on forms prescribed by the State Ethics Commission and must contain full and complete information concerning. . .

(8) if a public official, public member, or public employee receives compensation from an individual or business which contracts with the governmental entity with which the public official, public member, or public employee serves or is employed, the public official, public member, or public employee must report the name and address of that individual or business and the amount of compensation paid to the public

official, public member, or public employee by that individual or business. . .

S.C. Code Ann. § 8-13-1120 (1976 Code, as amended).

Robinson is a public official by virtue of being a member of Allendale County Council and he receives compensation from SouthernCarolina Alliance, a business who has a contract with the County Council. Therefore, he is required to report the amount of all income that he receives as an employee of SouthernCarolina Alliance.

**C. Is the multi-year Economic Development Services Agreement entered into by Allendale County Council and SouthernCarolina Alliance an enforceable contract or is it against public policy? Is the Agreement binding on future Council members?**

As we stated above, this Office can not determine questions of fact. "Of course, as we have repeatedly stressed, this Office is not able to comment in an opinion upon the validity of a particular contract previously entered between a state agency and others. Op. Atty. Gen., Op. No. 85-132 (November 15, 1985). Such involves factual determinations which this Office has no authority to make in a legal opinion. Op. Atty. Gen., December 12, 1983." See Op. Atty. Gen., September 12, 1996 (1996 WL 599418). However, we can provide you with the law.

The basic rules of contract law pertain to government contracts. We have previously opined:

Our courts have consistently recognized fundamental rules in the interpretation of contracts. As the Court of Appeals reiterated in State Farm Auto Ins. Co. v. Nationwide Mut. Ins. Co., 327 S.C. 646, 649-650, 491 S.E.2d 272, 274 (1997),

[i]t is not the function of the courts to rewrite or torture the meaning of a contract. See Sphere Drake Ins. Co. v. Litchfield, 313 S.C. 471, 438 S.E.2d 275, 277 (Ct. App. 1993). Courts are limited to the interpretation of the contract made by the parties, regardless of its "wisdom or folly, apparent unreasonableness, or failure of the parties to guard their rights carefully." Id. In interpreting contracts, the foremost rule is to give effect to the intent of the parties, and in doing so, the court looks to the language of the contract. If the language is unambiguous, the language alone determines the contract's force and effect and courts must construe it according to its plain, ordinary, and popular meaning. Id.; G.A.N. Enterprises, Inc. v. South Carolina Health and Human Serv. Fin. Comm'n. 296 S.C. 373, 377, 373 S.E.2d 584, 586 (1988).

Furthermore, it is well recognized that “the rules of law pertaining to the contracts of a governmental body or agency are not different from those pertaining to any other contract.” Op. S.C. Atty. Gen., Feb. 22, 1982 (citing 72 C.J.S. Public Contracts § 2).

Op. Atty. Gen., July 1, 2003 (2003 WL 21691879). Thus, the language of the Economic Development Services Agreement would have to be carefully reviewed by a court to determine if it is enforceable.

The Economic Development Services Agreement (“Agreement”) entered into by Allendale County Council and SouthernCarolina Alliance does not provide how many years it is to be in effect. County Councils can enter into binding multi-year contracts as long as the funds are available. In a November 15, 1983 Attorney General opinion, the issue was “whether contracts executed by County Council and agencies of the county for terms in excess of one year would be binding upon the county inasmuch as appropriations are made by County Council annually, for a period of up to one year.” Our Office determined that “contracts executed for terms in excess of one year will be binding; however, the contract should contain a proviso to the effect that the contract is subject to cancellation if funds are not appropriated or otherwise made available for the contract after the first year.” See Op. S.C. Atty. Gen., Op. No. 83 – 89, November 15, 1983 (1983 WL 142758).

A concern is that the Agreement could extend longer than the terms of the Allendale County Council members who entered into it. In City of Beaufort v. Beaufort-Jasper County Water and Sewer Authority, 325 S.C. 174, 480 S.E.2d 728 (1997), the Supreme Court held:

When a municipal contract extends beyond the term of the governing members of the municipality entering into the contract, the subject matter of the contract will determine its validity:

The general rule is that, if the contract involves the exercise of the municipal corporation's business or proprietary powers, the contract may extend beyond the term of the contracting body and is binding on successor bodies if, at the time the contract was entered into, it was fair and reasonable and necessary or advantageous to the municipality. However, if the contract involves the legislative functions or governmental powers of the municipal corporation, the contract is not binding on successor boards or councils.<sup>2</sup> *Piedmont Pub. Serv. Dist.*

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<sup>2</sup> There is an exception. A contract involving legislative functions or governmental powers of the municipal corporation can be binding on successor boards or councils if “the statute conferring power to contract clearly authorizes the council to make a contract extending beyond its own term.” See Newman v. McCullough, 212 S.C. 17, 46 S.E.2d 252 (1948).

*v. Cowart*, 319 S.C. 124, 459 S.E.2d 876 (Ct.App.1995)  
(citing *Newman v. McCullough*, 212 S.C. 17, 46 S.E.2d  
252 (1948)), *aff'd*, 324 S.C. 239, 478 S.E.2d 836 (1996).<sup>3</sup>

In *Copper Country Mobile Home Park v. City of Globe*, 131 Ariz. 329, 641 P.2d 243 (Ariz. Ct. App. 1981), the Court explained that “[a] governmental function is generally recognized as one undertaken because of a duty imposed on the city for the welfare or protection of its citizens.” In *Boyle v. Municipal Authority of Westmoreland County*, 796 A.2d 389 (Pa. Commw. Ct. 2002), it was further explained:

A governmental function is one performed for public purposes exclusively in its public, political or municipal character. *Falls Township [v. Scally]*, 115 Pa.Cmwth. 56, 539 A.2d 912 (1988)]. A proprietary function, on the other hand, is a function which traditionally or principally has been performed by private enterprise. *State Street Bank & Trust Co. v. Commonwealth*, 712 A.2d 811 (Pa.Cmwth.1998)

South Carolina uses the “discretionary test” when determining if a contract involves a governmental or proprietary function. Our Supreme Court has stated:

As the Court of Appeals observed in *Cowart*, it is often difficult to determine whether a particular function is governmental or proprietary. For purposes of determining the validity of a contract requiring or involving a particular action by a municipality, the test for whether the action is governmental or proprietary should be “whether the contract itself deprives a governing body, or its successor, of a discretion which public policy demands should be left unimpaired.” *Cowart*, 319 S.C. at 133, 459 S.E.2d at 881.

*City of Beaufort*, 325 S.C. at 179, 480 S.E.2d at 731. The Supreme Court has also stated that “the acts of former councils relating to the governmental functions of said councils which involve a matter of discretion to be exercised by such councils, are without force and effect upon succeeding councils.” See *Newman*, 212 S.C. at 25, 46 S.E.2d at 256.

The contract at issue pertains to economic development services. Economic development is a legitimate public goal. *WDW Properties v. City of Sumter*, 342 S.C. 6, 535 S.E.2d 631 (2000). Economic development is a matter of public concern. *Carll v. S.C. Jobs-Economic Development Authority*, 284 S.C. 438, 327 S.E.2d 331 (1985). Economic development is a function and operation of the county. See S.C. Code Ann. § 4-9-30(5)(a) (1976 Code, as amended). Therefore, economic development is a governmental discretionary power.

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<sup>3</sup> The Court in *Cunningham v. Anderson County*, 402 S.C. 434, 741 S.E.2d 545 (Ct. App. 2013), applied the reasoning of the two *Cowart* cases and determined that counties and county agencies, similar to municipal corporations, can not bind their successor governing bodies with contracts that involve governmental or legislative powers (unless there is a statute providing otherwise, as shown in Footnote 1).

However, the principal function of Southern Carolina Alliance is to provide marketing services and recruitment of industry, which is not a governmental power since the position does not appear to have the authority to enter into contracts on behalf of Allendale County and the duties appear to be largely advisory to the county council and promotional in nature. Therefore, the Agreement is an exercise of the County's proprietary power and at first glance would be binding on future Council members.

It should be noted, though, that "municipal contracts must, at the time of their execution, be fair and of a reasonable duration." *Id.* at 135, 882. Because the Agreement does not state a duration, a Court may very well determine that it is void as a violation of public policy.

## **II. ALLENDALE COUNTY COUNCIL AND ALLENDALE COUNTY AERONAUTICS AND ECONOMIC DEVELOPMENT COMMISSION**

### **A. Is it dual office holding or a conflict of interest for Robinson to serve on Allendale County Council and as an ex officio member of the Allendale County Aeronautics and Economic Development Commission?**

#### **Dual Office Holding**

The law of dual office holding is stated above and as shown, a county council member holds an office for dual office holding purposes. In a prior opinion, we determined that membership on the Allendale County Aeronautics and Economic Development Commission ("Commission") also constitutes an office. We based our determination on the Commission being created by statute and its members exercising a portion of the sovereign power of the State. *See Op. S.C. Atty Gen.*, 2009 WL 580563 (February 2, 2009). Although our prior opinion was based on the language of Act Number 842, which has since been repealed, a review of the current 2008 Act Number 372 as shown in the "Facts" above indicates that the reasoning remains sound today.

It would appear that serving as both a county council member and a member of the Commission would violate the constitutional prohibition against dual office holding. However, the prohibition does not apply to officers serving in an ex officio capacity. The Supreme Court stated in S.C. Public Interest Foundation v. S.C. Transportation Infrastructure Bank, 403 S.C. 640, 744 S.E.2d 521 (2013) (quoting *Black's Law Dictionary* 267 (3d pocket ed.2006)), that "ex officio is defined as '[b]y virtue or because of an office; by virtue of the authority implied by office.'" The Supreme Court explained in Segars-Andrews v. Judicial Merit Selection Commission, 387 S.C. 109, 691 S.E.2d 453 (2010):

A finding of an 'office,' for constitutional purposes does not end the inquiry. Our jurisprudence has a narrow, yet firmly established, exception which provides that 'double or dual office holding in violation of the constitution is *not applicable to those officers upon whom other duties relating to their respective offices are placed by law.*' Ashmore v. Greater Greenville Sewer District, 211 S.C. 77, 92, 44 S.E.2d 88, 95 (1947) (emphasis added). This exception is commonly referred to as the 'ex officio' or 'incidental duties' exception. . .The 'ex officio' or

'incidental duties' exception may be properly invoked only where there is a constitutional nexus in terms of power and responsibilities between the first office and the 'ex officio' office.

Act number 372 states the members of the Commission are to be chosen as follows:

The Allendale County Aeronautics and Development Commission is created and shall consist of nine members who are residents of the county and who must be appointed by the governing body of the county with at least one member appointed from each election district from which county council members are elected.

2008 Act Number 372.

In a prior opinion, Op. S.C. Atty. Gen., September 19, 2012 (2012 WL 4459270), we stated:

[T]he cardinal rule of statutory interpretation is to ascertain the intent of the General Assembly. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). A statute must receive a practical, reasonable, and fair interpretation consonant with the purpose, design and policy of the lawmakers. Caughman v. Cola. Y.M.C.A., 212 S.C. 337, 47 S.E.2d 788 (1948). Words must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation. State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1990). Further, it is a general rule of construction with any statute that the Legislature is presumed to have intended by its action to accomplish something and not to have done a futile thing. State ex rel McLeod v. Montgomery, 244 S.C. 308, 136 S.E.2d 778 (1964).

The issue is whether the Legislature intended that a county council member perform the duties of a Commission member ex officio. We believe that the statute is clear that this was not the Legislature's intent. A Commission member's eligibility depends on residency and appointment by the governing body. Also, a Commission member is appointed from each election district from which county council members are elected. The law does not state or even imply that a member of county council should assume the duties of a Commission member.

We can not determine from the information you provided if Robinson is a member of the Commission. Since we are not a fact-finding entity as stated above, this is an issue for a court to determine. If Robinson is a member, a court would most likely find that Robinson is not serving the Commission in an ex officio capacity and that a violation of the constitutional prohibition against dual office holding has occurred.<sup>4</sup>

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<sup>4</sup> Since we have already determined that a violation of dual office holding has most likely occurred if Robinson is a member of the Commission, we find no need to address whether there is a constitutional nexus in terms of power and responsibilities between the two offices Robinson may hold.

### **Conflict of Interest**

You have also questioned whether or not there is a conflict of interest if Robinson is both a county council member and a member of the Commission. When opining on issues of conflict of interest, the matter of master-servant relationship must be considered. As we have stated on prior occasions, a conflict of interest may arise from a master-servant relationship 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 demonstrated by the power to regulate the compensation of the other, or to audit his accounts.”

Op. S.C. Atty. Gen., May 21, 2004 (quoting Op. S.C. Atty. Gen., January 19, 1994).

Moreover, our Supreme Court in McMahan v. Jones, 94 S.C. 362, 365, 77 S.E. 1022, 1022 (1913) stated: “No man in the public service should be permitted to occupy the dual position of master and servant; for, as master, he would be under the temptation of exacting too little of himself, as servant; and, as servant, he would be inclined to demand too much of himself, as master. There would be constant conflict between self-interest and integrity.” Thus, we recognize if a master-servant conflict exists, a public official is prohibited from serving in both roles.

*See* Op. S.C. Atty. Gen., July 19, 2006 (2006 WL 2382449).

As stated above, the members of the Commission are appointed by the governing body of the county. In Allendale County, the governing body is the Allendale County Council. *See* 1977 Act Number 270. Since the Allendale County Council has the power to appoint the members of the Commission, a court may determine that a master-servant relationship, and thus a conflict of interest, may exist if a county council member is also a Commission member.

Because the State Ethics Commission was given authority by the Legislature to interpret and issue opinions pertaining to the provisions of the State Ethics Act, we suggest you contact the State Ethics Commission for further advice or information regarding conflict of interest.

### **III. RESOLUTION OF DUAL OFFICE HOLDING AND CONFLICTS OF INTEREST**

**If any violations of dual office holding or conflict of interest have occurred, how can they be resolved?**

We addressed what steps must be followed if a dual office holding situation occurs in a prior opinion:

When a dual office holding situation occurs, the law operates automatically to “cure” the problem. If an individual holds one office on the date he assumes a second office, assuming both offices fall within the purview of Article XVII, Section 1A of the Constitution (or one of the other applicable constitutional prohibitions against dual office holding), he is deemed by law to have vacated the first office held. Thus, the law operates automatically to create a vacancy in that first office. However, the individual may continue to perform the duties of the previously held office as a de facto officer, rather than de jure, until a successor is duly selected to complete his term of office (or to assume his duties if the term of service is indefinite). See Walker v. Harris, 170 S.C. 242 (1933); Dover v. Kirkland, 92 S.C. 313 (1912); State v. Coleman, 54 S.C. 282 (1898); State v. Buttz, 9 S.C. 156 (1877). Furthermore, actions taken by a de facto officer in relation to the public or third parties will be as valid and effectual as those of a de jure officer unless or until a court should declare such acts void or remove the individual from office. See, for examples, State Ex rel. Macleod v. Court of Probate of Collation County, 266 S.C. 279, 223 S.E.2d 166 (1976); State ex rel. McLeod v. West, 249 S.C. 243, 153 S.E.2d 892 (1967); Kittman v. Ayer, 3 Stob. 92 (S.C. 1848).

Op. S.C. Atty. Gen., 2007 WL 1651345 (May 9, 2007) (quoting Op. S.C. Atty. Gen., May 27, 2003).

In accordance with the above cited authority, no steps are necessary because the individual found to hold two offices automatically vacates the first office held by that individual. However, we reiterate that the individual will continue to serve in the first office in a de facto capacity until a successor is appointed.

Id.

We have also addressed what happens if a conflict of interest situation occurs due to a master-servant relationship. If a master-servant conflict exists, a public official is prohibited from serving in both roles. See Ops. S.C. Atty. Gen., March 5, 2012; July 19, 2006; June 7, 2004.

### CONCLUSION

In conclusion, this Office believes that the law is as follows:

1. William E. Robinson’s service as an Allendale County Council member and employment by SouthernCarolina Alliance as economic developer for Allendale County does not violate the prohibition against dual office holding.
2. Robinson is required to report the amount of all income that he receives as an employee of SouthernCarolina Alliance on his statement of economic interest.

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3. The Economic Development Services Agreement between Allendale County Council and Southern Carolina Alliance may be binding on future council members but a Court may determine that it is void as a matter of public policy since it does not state a duration.
4. Robinson does not serve ex officio on the Allendale County Aeronautics and Economic Development Commission.
5. It would most likely be a violation of the dual office holding prohibition and a conflict of interest for a person to serve both as a member of the Allendale County Council and as a member of the Allendale County Aeronautics and Economic Development Commission.
6. If an individual has violated the prohibition against dual office holding by having two offices, he is deemed by law to have vacated the first office held.
7. If a master-servant conflict of interest exists, a public official is prohibited from serving in both roles.

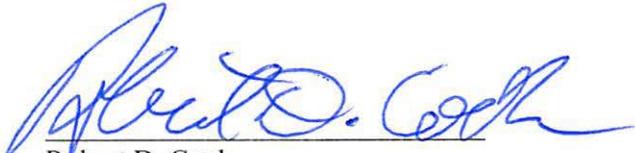
Please be aware that this is only an opinion as to how this Office believes a court would interpret the law in this matter.

Sincerely,



Elinor V. Lister  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Solicitor General