

The State of South Carolina



Office of the Attorney General

T. TRAVIS MEDLOCK
ATTORNEY GENERAL

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April 10, 1989

Ms. Tamra N. West
Chester County Mental Retardation Board
Post Office Box 246
Chester, South Carolina 29706

Dear Ms. West:

Your recent letter addressed to Attorney General Medlock has been referred to me for reply. You have inquired if it would constitute dual office holding for a person to serve on the Chester County Mental Retardation Board and be a member of the Olde English Tourism District Commission.

This Office has determined on numerous occasions that a member of a Mental Retardation Board is an office for dual holding purposes. See enclosed opinion dated March 31, 1987.

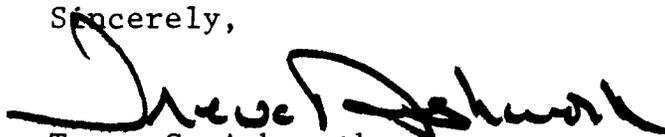
A person serving on the Olde English Tourism District Commission would also appear to hold an office within the meaning of the dual office holding provisions of Article XVII, § 1A of the South Carolina Constitution which provides that "... no person shall hold two offices of honor or profit at the same time." 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). Not all of these factors must be present in order for the office to be deemed an office within the dual office holding prohibition.

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The Olde English District Commission was created by Act 347 of 1982 and is codified at South Carolina Code of Laws, 1976, as amended, Section 51-13-1610, et seq. The law establishes how the positions are to be appointed and the vacancies filled. Terms of office are established as three year terms that continue until their successors are elected. The statute further provides that the commission may "[t]ake such action as is necessary to establish the District as a major center of tourism and recreation." South Carolina Code of Laws, 1976, as amended, Section 51-13-1630 (1). Subsection 6 of that same code section allows the Commission to "[s]eek out, apply for, receive, process and distribute available funds and grants" In Article XI, Section 1 of the bylaws of the Commission, the Commission is given the power to accept gifts or grants.

A person serving on the Olde English District Commission would be exercising part of the sovereign power of this State and would, therefore, be holding an office. That same person could not simultaneously hold a position on the Olde English District Commission and on the Chester County Mental Retardation Board without most probably contravening the dual office prohibition of the State Constitution.

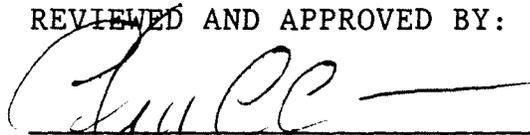
Sincerely,



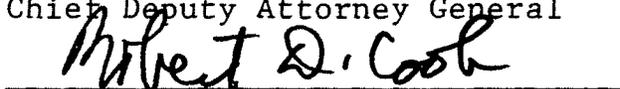
Treva G. Ashworth
Senior Assistant Attorney General

TGA:bvc
Enclosures

REVIEWED AND APPROVED BY:



EDWIN E. EVANS
Chief Deputy Attorney General



ROBERT D. COOK
Executive Assistant for Opinions