

The State of South Carolina



Office of the Attorney General

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October 18, 1988

The Honorable William B. Gaither
Member, Camden City Council
1102 Roberts Street
Camden, South Carolina 29020

Dear Mr. Gaither:

By your recent letter to Attorney General Medlock, you have asked whether, as a member of the Camden City Council, you may continue to serve on the Kershaw County Industrial Development Board without running afoul of the dual office holding prohibitions of this State's Constitution.

Article XVII, § 1A of the South Carolina Constitution 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).

This Office has advised on a number of occasions that one who serves on a city council holds an office for dual office holding purposes. For example, see Op. Atty. Gen. dated January 31, 1984, a copy of which is enclosed.

The Kershaw County Industrial Development Board was established by ordinance of Kershaw County Council. The Board is to consist of nine members to be appointed by Kershaw County Council for terms of

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three years and until their successors have been appointed. To serve on the Board, one must be a citizen of Kershaw County; members must be selected so that each township of the county is represented by at least one member of the Board. No oath is required by the ordinance. No salary or per diem is to be paid to members, although members may be reimbursed for actual expenses incurred in carrying out their duties.

Duties and powers of the Board are set forth in section 6 of the ordinance. The Board has such duties as advising the Kershaw County Council and County Administrator on all matters relative to the objectives of the Board; to cooperate with other county agencies to develop and correlate industrial development plans; to advertise the advantages of Kershaw County for various developmental purposes; to inform and otherwise communicate with individuals and entities to acquaint them with the various opportunities for development in Kershaw County; to provide advice on matters of economic development; to accept gifts and funds to accomplish the stated objectives; to supervise the Executive Director; to organize the encourage community support groups to assist the board with its objective; and to seek and obtain commitments from landowners to sell land at specified prices to industries and enterprises.

This is an extremely close question in determining whether these duties involve an exercise of a portion of the sovereign power of the State. However, Kershaw County Council and the Kershaw County Administrator are ultimately responsible for such activities as employing the Executive Director and enforcing personnel policies with respect to employees. The Board has not been given authority to enter into contracts on behalf of Kershaw County; presumably, that authority has been retained by Kershaw County Council. The duties provided by ordinance are largely advisory or promotional in nature. Thus, the doubt will be resolved in determining that one who would serve on the Kershaw County Industrial Development Board would not hold an office for dual office holding purposes; due to the close question, this conclusion is not completely free from doubt.

Based on the foregoing, one who would serve simultaneously on the Camden City Council and on the Kershaw County Industrial Development Board would probably not contravene the dual office holding prohibitions of the State Constitution. As noted above, however, this conclusion is not completely free from doubt.

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With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/an
Enclosure

REVIEWED AND APPROVED BY:

Robert D. Cook

Robert D. Cook
Executive Assistant for Opinions