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Office of the Attorney General

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April 16, 1985

The Honorable William W. Doar, Jr.
Member, Senate of South Carolina
404 Gressette Building
Columbia, South Carolina 29202

Dear Senator Doar:

You have asked for the opinion of this Office on whether one who would serve on the governing body of the Georgetown County Historical Commission would hold an office in the context of dual office holding. Based upon the following discussion, we would advise that the individual would not be considered to hold an office.

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).

The Georgetown County Historical Commission was created by Act No. 23, 1967 Acts and Joint Resolutions. The original act was amended by Acts No. 62 of 1973, No. 332 of 1977, and No. 761 of 1978. By Section 1 of the most recent amending act, terms of four years "and until their successors are appointed and qualify" are specified. Duties (or powers) are specified by Section 4 of Act No. 23 of 1967 and include various corporate powers and duties; acquisition of land, buildings, and such structures; making contracts; prescribing rules and regulations;

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and other similar powers, all of which appear to involve an exercise of a portion of the sovereign power of the State. Members of the commission are to serve without compensation. No oath or qualifications for service are specified.

But for a provision found originally in Section 3 of Act No. 23 of 1967 and continually in force since that time, most recently re-enacted in Section 1 of Act No. 761 of 1978, a commission member would appear to hold an office. The provision in effect since 1967 states that "[m]embership on the commission shall not be construed to be an office of honor or profit." While there is some question as to the Legislature's authority to interpret as exempt, by statute, a position from the dual office holding prohibitions of the State Constitution, such an interpretation is nevertheless entitled to much weight. Acker v. Cooley, 177 S.C. 144, 181 S.E. 10 (1935). Thus, by statute, one who serves on the Georgetown County Historical Commission would not be deemed to hold an office for dual office holding purposes.

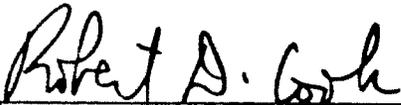
We trust that the above satisfactorily responds to your inquiry. Please advise if we may assist you further.

Sincerely,

Patricia D. Petway
Patricia D. Petway
Assistant Attorney General

PDP/an

REVIEWED AND APPROVED BY:



Robert D. Cook
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