



9330-9880

ALAN WILSON  
ATTORNEY GENERAL

February 19, 2015

The Honorable Wendy Nanney  
Greenville County Legislative Delegation  
301 University Ridge, Suite 2400  
Greenville, SC 29601

Dear Representative Nanney:

This Office received your request for an opinion as to whether it would be dual office holding for an individual to serve on both the Greenville County Legislative Delegation Transportation Committee ("Transportation Committee") and the Metropolitan Sewer Subdistrict of the Greenville County Sewer Authority ("Subdistrict").

**LAW/ANALYSIS:**

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)).

A member of a county transportation committee is a public officer. In a prior opinion, Op. S.C. Atty. Gen., April 20, 2006 (2006 WL 1207284), we stated that:

[t]his office has advised in prior opinions that a member of a county transportation committee would likely be considered an office holder for dual office holding purposes. See: Ops. Atty. Gen. dated February 14, 2005; July 26, 2002; April 2, 1998; September 3, 1994; January 25, 1994; July 28, 1993.

The issue is whether a commissioner on the Subdistrict is also an officer for dual office holding purposes. The Subdistrict was established by the Legislature in Act Number 687 of 1969, as amended by Act Number 1842 of 1972. Act Number 687 created the Subdistrict and provided for governance by a commission consisting of three members appointed by the Governor for terms of four years upon the recommendation of the Greenville County Council. There were no qualifications for appointment of the commissioners and salary, bond, and oath were not mentioned. Act Number 1842 granted the Subdistrict, acting through its commissioners, certain powers, including: to sue and be sued; to adopt, use and alter a corporate seal; to make bylaws for the management and regulation of its affairs; to build, construct, maintain and operate sewage collector lateral lines and related facilities and equipment; to accept gifts or grants of services, properties or monies from the United States or any of its agencies; to prescribe such regulations as it shall deem necessary to provide for the efficient and sanitary collection of sewage; to make contracts and execute instruments; to lease or sell and convey lands; to exercise the power of eminent domain; to appoint officers, agents, employees and servants and to prescribe their duties and to fix their compensation; to impose sewer service charges and tap-in fees; and to issue and sell not more than ten million dollars of general obligation bonds.

It should be noted that Act Number 1842 confirmed the Subdistrict as a body politic and corporate. The Act provided that the rates charged by the Subdistrict for services would not be subject to supervision or regulation by a state bureau, board, commission, or agency and that all property of the Subdistrict would be exempt from all ad valorem taxes. The Act did require the Subdistrict at the end of the fiscal year to be audited by certified public accountants of good standing and copies of the audits to be filed with the Greenville County Clerk of Court and with members of the legislative delegation.

There is no question that the commissioners on the Subdistrict are exercising a portion of the sovereign power of the State. This is supported by our prior opinions. As you stated in your letter, the Subdistrict is a special purpose district. See Op. S.C. Atty. Gen., February 29, 2012 (2012 WL 889088). Our Office has previously examined commissioners of special purpose districts and determined that such membership would constitute an office.

This Office has previously concluded that commissioners of certain public service or special purpose districts would be considered office holders for dual office holding purposes. Ops. S.C. Atty. Gen. January 7,

1991, October 12, 1990 (Sea Pines Public Service District); September 13, 1990 (North Charleston Public Service District); October 19, 1990 (Saluda County Water and Sewer Authority); and numerous other opinions. In determining that members of public service districts are officers, we found that the following duties involve an exercise of a portion of the sovereign power of the state: prescribing regulations with respect to use of property or facilities owned by the District; building or acquiring facilities; imposing rates; exercising eminent domain; employing personnel; entering into contracts; incurring indebtedness; levying taxes; and the like. See Op. S.C. Atty. Gen.' January 7, 1991.

Op. S.C. Atty. Gen., April 3, 2003 (2003 WL 21043505).

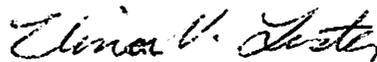
Accordingly, the State Constitution prohibits a person from simultaneously serving as a commissioner on a public service district and serving on another board or commission which exercises a portion of the sovereign power of the State.

#### CONCLUSION

In conclusion, it is our opinion that it would constitute dual office holding under the South Carolina Constitution for an individual to serve on both the Greenville County Legislative Delegation Transportation Committee and the Metropolitan Sewer Subdistrict of the Greenville County Sewer Authority.

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