



ALAN WILSON  
ATTORNEY GENERAL

October 15, 2015

Mrs. Terry R. Murray  
Chairman  
Beaufort Memorial Hospital Board of Trustees  
100 Grayson Street  
Beaufort, SC 29902

Dear Mrs. Murray:

Our Office has received your request for an opinion regarding dual office holding. Specifically, you are asking whether or not it would be a violation of the constitutional prohibition against dual office holding for an individual to serve simultaneously on the Beaufort Memorial Hospital Board of Trustees and as Jasper County Attorney.

**LAW/ANALYSIS:**

The South Carolina Constitution provides that “[n]o person may hold two offices of honor or profit at the same time, but any person holding another office may at the same time be an officer in the militia, member of a lawfully and regularly organized fire department, constable, or a notary public.” S.C. Const. art. XVII, § 1A.

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

“[o]ne 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)).

The Beaufort County Memorial Hospital Board of Trustees was created by act of the Legislature and was later re-established by Beaufort County Council as permitted after the advent of home rule. According to the Beaufort County Code of Ordinances, the Board was initially composed of the existing nine members and future vacancies are to be filled by the county council from nominees submitted by the Board. The Board determines its number of voting members, although there has to be a minimum of seven voting members. See Beaufort County, S.C. Code of Ordinances § 46-27. The board members do not appear to have to swear an oath or pay a bond. They do not receive a salary, although they may be reimbursed for expenses with the approval of the county administrator and subject to the provisions of the Board’s charter. See Beaufort County, S.C. Code of Ordinances § 2-195. The Board is given responsibility for managing and controlling the hospital and its financial affairs<sup>1</sup> and its duties include the following: adopting and using a corporate seal; adopting bylaws, rules, and regulations; acquiring real and personal property; accepting gifts, grants, and donations; expending hospital proceeds for the hospital’s operation and maintenance; disposing of real and personal property; borrowing funds for the facilities as long as the county is not financially obligated; entering into contracts for hospital care with federal agencies; and exercising the power of eminent domain. See Beaufort County, S.C. Code of Ordinances § 46-28.

We believe that an individual serving on the Beaufort Memorial Hospital Board of Trustees would hold an office because the Board is exercising the sovereign power of the State. As we stated in a prior opinion,

[t]his conclusion is consistent with the previous and frequently reiterated opinion of this Office that a member of a county hospital board of trustees is an officer within the meaning of Article XVII, Section 1A of the South Carolina Constitution. See, e.g., Ops. Atty. Gen. dated January 7, 1997; January 9, 1992; and April 5, 1991.

Op. S.C. Atty. Gen., January 11, 1999 (1999 WL 92413).

We must now determine if the Jasper County Attorney holds an office. In a prior opinion, we explained:

[w]hether or not a county attorney is an office would depend upon how the office itself is created. If the position is created by state statute or county ordinance and the duties of the position make it an ‘office’ rather than mere employment, it would be violative of the dual office prohibitions of the State Constitution for one individual to hold the office of county attorney and another office.

Op. S.C. Atty. Gen., July 13, 1981 (1981 WL 157862) (quoting Opinion to James I. Redfearn, Esquire, dated August 28, 1974).

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<sup>1</sup> See Beaufort County, S.C. Code of Ordinances § 46-30.

The position of Jasper County Attorney is created by ordinance. According to your letter, Jasper County, S.C. Code of Ordinances § 2-69 states the following:

*County Attorney.* The council shall employ a person licensed to practice law in the State of South Carolina and who is not a member of the county council. The county attorney shall perform such legal and related tasks the council may direct. The county attorney shall attend all meetings of council unless excused by council. The county attorney shall review all ordinances, resolutions, and documents of a legal nature prior to being placed on the agenda and give opinions on questions of procedure, form, and law to members of the council; and act as parliamentarian in the proceedings of council. However, in his role as parliamentarian, the county attorney shall advise only the chair and shall provide parliamentary advice only upon the request of the chair. The chair's ruling shall then be binding unless overturned by a majority of members voting in any procedural question. No county agency, commission, board, department, or committee shall employ an attorney other than the county attorney unless specifically authorized by the county council. The county attorney shall work at the pleasure of the council.

Since the position is created by county ordinance, we must review the duties and other particulars to determine if the Jasper County Attorney holds an office or is an employee.<sup>2</sup> The duties prescribed by the ordinance do not appear to involve an exercise of the sovereign power. The Jasper County Attorney merely performs such tasks as directed by the County Council. This position reviews ordinances, resolutions, and legal documents and gives his opinion on questions of procedure, form, and law to the County Council. He also advises the chair on parliamentary procedure. The County Attorney is not independently making decisions.

The fact that the County Council shall "employ" a person licensed to practice law in the State of South Carolina and that the County Attorney works "at the pleasure of the council" indicates that he is an employee rather than an office holder. Because the relationship between the Jasper County Attorney and the County Council is a contractual one, we do not believe that the Jasper County Attorney is an office for dual office holding purposes.

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<sup>2</sup> "... one who merely performs the duties required of him by persons employing him under an express contract or otherwise, though such persons be themselves public officers, and though the employment be in or about public work or business, is a mere employee."

Op. S.C. Atty. Gen., March 6, 1980 (1980 WL 121076) (quoting Sanders v. Belue, 78 S.C. 171, 174, 58 S.E. 762, 763 (1907).

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**CONCLUSION:**

Because it is our opinion that the Jasper County Attorney is not an office, we believe that an individual may serve as both Jasper County Attorney and on the Beaufort Memorial Hospital Board of Trustees without violating the constitutional prohibition against dual office holding.

Sincerely,



Elinor V. Lister  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Solicitor General