



ALAN WILSON  
ATTORNEY GENERAL

June 1, 2016

The Honorable Cecil LaVear Stevens  
Lee County Auditor, Senior Official  
Lee County Court House  
Post Office Box 241  
Bishopville, South Carolina 29010

Dear Auditor Stevens,

You have requested the opinion of this Office as to whether simultaneous service as auditor for Lee County and as a non-voting advisory member of the Lee County Archives Commission would violate our State's Constitutional prohibition against dual office holding. Based on the analysis below, we do not believe that it would.

#### Law / Analysis

Article XVII, Section 1A of the South Carolina Constitution states that “[n]o person may hold two offices of honor or profit at the same time . . .” with the exception that individuals serving as officers in the militia, a member of a lawfully and regulated organized fire department, constable, or notary public may hold an additional office. A person not falling into this exception would violate the dual office holding prohibition by concurrently serving in two offices “involving an exercise of some part of the sovereign power [of the State], either small or great, in the performance of which the public is concerned. . . .” Sanders v. Belue, 78 S.C. 171, 174, 58 S.E. 762, 763 (1907). It has been said that the public policy behind the dual office holding prohibition is “to prevent public officials from acting in circumstances in which their personal interests conflicts with the public whose interest they have been elected to represent.” 63C Am. Jur. 2d Public Officers and Employees § 63 (2014) (citing Dykeman v. Symond, 54 A.D.2d 159, 388 N.Y. S.2d 422 (NY 4th Dep’t 1976)).

In considering whether a particular position is an office in the constitutional sense, South Carolina courts look to whether “[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). More specifically, our Supreme Court has clarified that the criteria to be considered includes “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.” State v. Crenshaw, 274 S.C. 475, 478, 266 S.E.2d 61, 62 (1980). However, it has also been determined that “no single criteria is conclusive” and it is not “necessary that all the characteristics of an officer or officers be present.” Id. (citing 67 C.J.S. Officers § 8(a) (1978)).

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On many occasions, this Office has advised that a county auditor holds an office for purposes of dual office holding. See, e.g., Op. S.C. Att’y Gen., 2005 WL 2652384 (Sept. 26, 2005); Op. S.C. Att’y Gen., 2002 WL 1340434 (May 28, 2002); Op. S.C. Att’y Gen., 1980 WL 121132 (March 31, 1980). As we explained in our September 26, 2005 opinion:

The powers and duties of a county auditor are set forth in part in S.C. Code Ann. §§ 12-39-10 to 12-39-350 of the Code. These powers and duties clearly involve an exercise of a portion of the sovereign power of the State. Therefore, the position of county auditor is clearly an office for dual office holding purposes.

Op. S.C. Att’y Gen., 2005 WL 2652384 (Sept. 26, 2005). As this remains the opinion of this Office, we turn to a question we have never addressed: whether serving as a non-voting advisory member for the Lee County Archives Commission would constitute an office for dual office holding purposes.

Based upon the information you have provided to this Office, it is our understanding that the Lee County Archives Commission was established by Ordinance of the Lee County Council on January 26, 2016. See Lee County, S.C., Ordinance 10-15 (Jan. 26, 2016). Pursuant to the “By Laws” passed as a part of the Ordinance, the Commission consists of a Board of Commissioners to be made of five to seven members, with as many as two additional non-voting advisory members. Id. at § II. Such members are appointed by the Lee County Council on an at large basis to serve for a term of four years. Id. However, two members of the initial board will serve a two year term. Id. The members of the Commission elect officers from their membership consisting of a chairman; vice chairman; and a secretary and treasurer, whose roles can be combined. Id. at § III. The general duties of each of these roles are prescribed within the Ordinance. Id.

As mentioned above, it is our understanding that the role you have asked us to consider is a position on the Commission as a non-voting advisory member. In our review, it does not appear non-voting advisory members of the Commission serve for a specified term, conduct a specified service, are compensated for service, or are required to take an oath. Thus, due to the lack of factors set forth above indicating the existence of an office for dual office holding, we believe service as a non-voting advisory member for the Lee County Archives Commission would not be considered an office for dual office holding purposes.

Furthermore, prior opinions of this Office have determined that members of advisory bodies are not officers for dual office holding purposes because they are not deemed to exercise a portion of the sovereign power of the State. See Op. S.C. Att’y Gen., 2006 WL 1877113 (June 1, 2006) (S.C. Education and Economic Development Advisory Board); Op. S.C. Att’y Gen., 2004 WL 439320 (February 24, 2004) (Beaufort County Solid Waste and Recycling Board); Op. S.C. Att’y Gen., 2003 WL 21040133 (January 15, 2003) (Town of Hilton Head Accommodations Tax Advisory Committee); Op. S.C. Att’y Gen., 2001 WL 265251 (February 27, 2001) (legal advisory board for the Department of Natural Resources); Op. S.C. Att’y Gen., 2000 WL 33120657 (December 1, 2000) (local drought response committee); Op. S.C. Att’y Gen., 1987 WL 245509 (December 14, 1987) (Children’s Foster Care Review Board).

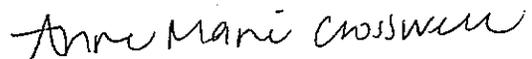
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While you are serving as an advisory member of the Commission rather than on an advisory board or committee like the above cited opinions, we believe the outcome, for purposes of dual office holding, is analogous. Accordingly, it is our opinion that service as a non-voting member of the Lee County Archive Commission would not constitute as an office for dual office holding purposes. It follows that service in such position would not prohibit simultaneous service as auditor for Lee County.

Very truly yours,



Anne Marie Crosswell

Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Solicitor General