



ALAN WILSON
ATTORNEY GENERAL

August 24, 2016

Mr. H. Jerry Morris, Chairman
Barnweil County Museum
PO 422
Barnweil, SC 29812

Dear Mr. Morris:

Attorney General Alan Wilson has referred your letter dated August 10, 2016 to the Opinions section for a response. The following is this Office's understanding of your question and our opinion based on that understanding.

Issue (as quoted from your letter):

Is ... service on the Kline Town Council and the Barnweil County Museum & Historical Board considered "dual office holding" under the Constitution of the State of South Carolina?

Law/Analysis:

As you mention in your letter, the South Carolina Constitution prohibits holding more than one office of honor or profit in this State at the same time. S.C. Const. Arts. 6 § 3; 17 § 1A; 3 § 24. This Office has answered many questions on dual office holding. Regarding dual office holding, this Office has previously opined that:

South Carolina follows the criteria in the Crenshaw case to determine if a position is an office of "honor or profit" for dual office holding purposes. The criteria in the Crenshaw case consist of four questions:

- 1) Was the position created by the General Assembly?
- 2) Are there established qualifications for appointment?
- 3) Are duties, tenure, salary, bond and oath required or prescribed?
- 4) Is the position representative of sovereign duties?

An office of "honor or profit" does not require an affirmative answer to all of the questions, nor is any one question conclusive to the determination. State v. Crenshaw, *supra*. Traditionally, sovereignty holds three powers: the power to tax, the power of eminent domain and the power to police. Op. S.C. Att'y Gen., 1996 WL 599391 (September 6, 1996) (citing Philadelphia Nat. Bank v. U.S. of America, 666 F.2d 834 (3rd Cir. 1981)).

Op. S.C. Att'y Gen., 2016 WL 3545857 (S.C.A.G. June 14, 2016). Moreover, this Office has previously opined that a member of a town council is an office of honor or profit. *See, e.g., Op. S.C. Att'y Gen.*, 1960 WL 8129 (S.C.A.G. April 22, 1960); Richardson v. Town of Mt. Pleasant, 350 S.C. 291, 566 S.E.2d 523 (2002) (where it was stipulated in the case that a position on a town council was an office of honor or profit). Regarding a position on the Barnweil County Museum and Historical Board, our analysis would

Mr. H. Jerry Morris, Chairman
Page 2
August 24, 2016

rely on the questions in Crenshaw. Concerning a different museum board, this Office has previously opined that the Greenville County Museum Commission was an office for dual office holding purposes. See Op. S.C. Att’y Gen., 1980 WL 121167 (S.C.A.G. April 14, 1980).¹ The 1980 opinion regarding the Greenville County Museum Commission reached its conclusion based on the following: the Commission was created by act of the General Assembly, and its powers and duties include “the power to purchase, lease or otherwise, property of all kinds, to solicit and accept gifts, grants, donation, etc., to expend any funds in any manner to defray any costs incident to providing museum services and facilities.” Id. Regarding the South Carolina Museum Commission, this Office has previously opined that it would be an office of honor or profit. Op. S.C. Att’y Gen., 1983 WL 181818 (S.C.A.G. March 28, 1983). This Office has also previously stated regarding the Barnwell County Museum Board that at the time of the request we did not have enough information on the Board to make a determination. See Op. S.C. Att’y Gen., 1989 WL 508588 (S.C.A.G. September 25, 1989).² Thus, we encourage you to use the information provided to assist you in answering your question. However, if you are not able to determine whether a court would find the Barnwell County Museum & Historical Board is an office of honor or profit for dual office holding purposes, please send us more information, and we will further assist in helping you make a determination.

In addition to dual office holding concerns, we must further caution against violations of the common law master-servant principle. See, e.g., McMahan v. Jones, 94 S.C. 362, 77 S.E. 1022 (1913) (prohibiting one from holding two positions resulting in the same person to be both master and servant in service to the public). Thus, if County Council funds the Board or otherwise has control or supervision over the Board, the County Council member could not vote or otherwise exercise authority concerning the Board. Moreover, the South Carolina Ethics Commission has primary jurisdiction over the State Ethics Act, and we encourage you to consult them regarding any ethical issues holding the two positions may pose. S.C. Code Ann. § 8-13-320.

Conclusion:

We believe a court will find that service on the Kline Town Council is an office of honor or profit, and we trust the information provided herein will assist you in answering your question of whether service on the Barnwell County Museum and Historical Board is also an office of honor or profit. However, this Office is only issuing a legal opinion based on the current law at this time and the information as provided to us. Until a court or the General Assembly specifically addresses the issues presented in your letter, this is only an opinion on how this Office believes a court would interpret the law in the matter. Additionally, you may also petition the court for a declaratory judgment, as only a court of law can interpret statutes and make such determinations. See S.C. Code § 15-53-20. If you have any additional questions or issues, please let us know.

¹ Please also note that the Greenville County is or at least was at the time of the case and opinion, receiving taxpayer money for the operation of the museum. See John D. Hollingsworth on Wheels, Inc. v. Greenville County Treasurer, 276 S.C. 314, 278 S.E.2d 340 (1981).

² Please note there is also a judicial advisory opinion concluding that “a full-time magistrate judge may be a member of the Board of Trustees for a local museum and cultural center provided that the judge does not participate in fundraising/soliciting funds.” S.C. Adv. Comm. Std. Jud. Cond. Op. No. 13-2016, 2016 WL 4268978 (July 29, 2016). However, the judicial advisory opinion makes no mention of consideration of the dual office holding prohibition in the South Carolina Constitution. Id.

Mr. H. Jerry Morris, Chairman
Page 3
August 24, 2016

Sincerely,



Anita S. Fair
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General