

2013 WL 5955671 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 28, 2013

\*1 The Honorable Tom D. Corbin

Senator

District No. 5

1139 Bailey Mill Road

Travelers Rest, SC 29690

Dear Senator Corbin:

This Office received your request for an opinion as to whether an individual can serve on the board of the South Carolina Commission on Higher Education while also serving on the board of a local hospital.

**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 hospital board is a public officer. In a prior opinion, Op. *S.C. Atty. Gen.*, April 4, 2012 (2012 WL 1260181), we stated that:

We have issued numerous opinions concluding that a position on the governing board of a county hospital is an office for purposes of dual office holding. See, e.g., *Ops. S.C. Atty Gen.*, 2007 WL 1651330 (May 2, 2007) (Lexington Medical Center Board); 2007 WL 655610 (February 26, 2007) (Barnwell County Hospital Board); 2004 WL 885191 (April 20, 2004) (Abbeville County Memorial Hospital Board of Trustees).

\*2 The issue is whether an individual who is a member of the South Carolina Commission on Higher Education is a public officer. The State Commission on Higher Education is provided for in the South Carolina Code (S.C. Code Ann. § 59-103-5 et seq. (1976 Code, as amended)). The statutes provide for the appointment of the members; their qualifications; their terms of office; their payment of per diem and mileage; and their duties. With the duties given, the members appear to be exercising the sovereign power of the State. Therefore, a member of the South Carolina Commission on Higher Education is an officer for dual office holding purposes.

**CONCLUSION**

In conclusion, this Office believes that a Court would determine that the positions of hospital board member and member of the South Carolina Commission on Higher Education are offices and that it would constitute dual office holding under the South Carolina Constitution for an individual to serve as both.

Sincerely,

Elinor V. Lister  
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook  
Solicitor General

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