



ALAN WILSON  
ATTORNEY GENERAL

March 20, 2017

Mr. Bradley T. Farrar, Esq.  
Chief Deputy Richland County Attorney  
P.O. Box 192  
Columbia, South Carolina 29202

Dear Mr. Farrar,

Attorney General Alan Wilson has referred your letter to the Opinions section regarding whether a member of the Richland County Council can accept any of three potential employment options without violating the prohibition on holding dual offices contained in the South Carolina Constitution. The potential positions listed are as follows:

1. Director of Elections and Voter Registration for Richland County, South Carolina;
2. Director of Campaigns, Midlands Technical College; and
3. Grants and Government Relations Specialist, Columbia Museum of Art.

Your letter continues:

It is clear that service as a county council member qualifies as an "office" for purposes of dual office holding. As such, any of the above that would constitute a second office would be of concern, and the Council member at issue seeks to avoid creating such a conflict.

Thus, the question the member seeks a response to is this:

Do any of the above jobs the Council Member is considering constitute an "office" for dual office holding purposes?

### **Law/Analysis**

It is this Office's opinion that a court could find that the Director of Elections is an office for dual office holding purposes based on the information provided and subject to the limitations discussed below. It is further this Office's opinion that a court is not likely to find the Director of Campaigns for Midlands Technical College nor the Grants and Government Relations Specialist for the Columbia Museum of Art is an office for dual office holding purposes. However, we encourage the council member to contact the South Carolina Ethics Commission regarding potential conflicts with the Ethics, Government Accountability, and Campaign Reform Act of 1991 ("the Ethics Act") (S.C. Code Ann. §§ 8-13-100 *et seq.*). Article XVII, § 1A of the South Carolina Constitution prohibits a person from holding "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." A person violates this provision if he holds two or more public offices which "involv[e] an exercise of some part of the sovereign power..." Sanders v. Belue, 78 S.C. 171, 58 S.E. 762 (1907). In State v. Crenshaw, 274 S.C. 475, 478, 266 S.E.2d 61, 62 (1980), the South Carolina Supreme Court stated

that relevant considerations for determining whether a position would be classified a public office include whether statutes, or other such authority, establish the position, the qualifications for appointment, duties, tenure, require an oath for the position, or otherwise authorizes the position to exercise a sovereign power of the state. Traditionally, the three principal attributes of sovereignty include the power to tax, the power of eminent domain and the police power. Op. S.C. Atty. Gen., 1996 WL 599391 (September 6, 1996) (citing Philadelphia Nat. Bank v. United States, 666 F.2d 834 (3d Cir. 1981)). No single criterion is dispositive and it is not necessary that a position exhibits all the criteria to find that an individual is a public officer. Id.

This Office has issued several opinions stating that the position of county council member is an office within the meaning of Article XVII, § 1A of the South Carolina Constitution.<sup>1</sup> See Ops. S.C. Atty. Gen., 2006 WL 1207271 (April 4, 2006); 2004 WL 1297823 (June 7, 2004); 2004 WL 1297822 (June 7, 2004); 2000 WL 1205948 (July 31, 2000); 1999 WL 626654 (July 25, 1999); 1994 WL 738181 (December 7, 1994); 1985 WL 259212 (August 20, 1985). We agree with the letter's contention that the council member would violate the dual office holding prohibition if he concurrently accepts a position which is likewise found to be an office. Therefore we will address each position in turn to determine if any would constitute an office.

#### **1. Director of Elections and Voter Registration for Richland County, South Carolina**

This Office is unable to state an opinion on whether the Director of Elections and Voter Registration for Richland County, South Carolina ("Director of Elections") is an office for dual office holding purposes. This Office has previously opined that the Spartanburg County Voter Registration/Elections Director "is an administrative position which is not an office." Ops. S.C. Atty. Gen., 2011 WL 1444716 (March 31, 2011); see also 2004 WL 235414 (January 27, 2004) (Charleston County Director of Elections and Voter Registration is not an officer for dual office holding purposes). In both opinions we stated that "[u]nless the Director is deputized by the Board of Elections and Voter Registration as a board member to take applications and issue voter registration certifications, it is our opinion that no dual office holding problem is created." If deputized, the "deputy members shall have the same powers and duties as regular members of the board." S.C. Code Ann. § 7-5-20. This Office has previously advised that members of the Board of Elections and Voter Registration are considered office holders for purposes of dual office holding. Op. S.C. Atty. Gen., 2006 WL 1578566 (May 18, 2006). Based on the position description attached to your letter, it is unclear whether the Director of Elections would be so deputized. The position description states that the Director of Elections "[assists] the Board of Elections and Voter Registration with the certification of elections." This description could be read to mean that the Director of Elections would be deputized to assist the board with the certification of elections. Further factual inquiry would be necessary for this Office to state an opinion on whether a court is likely to find this position is an office. However, such a factual inquiry is beyond the authority of this Office in issuing an opinion. See Op. S.C. Atty. Gen., 2006 WL 1207271 (April 4, 2006) ("Because this Office does not have the authority of a court or other fact-finding body, we are not able to adjudicate or investigate factual questions"). This Office strongly encourages the county council member to further inquire whether this assistance would entail being deputized in such a capacity. If the Director of Elections is not deputized and does not otherwise hold any sovereign power of the State, it is this Office's opinion that a court would find the position is not an office for dual office holding purposes.

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<sup>1</sup> In addition to the constitutional prohibition on holding dual offices, the South Carolina Code also prohibits county council members from holding any other office of honor or profit during their elected terms. S.C. Code Ann. § 4-9-100.

We also suggest that the council member contact the South Carolina Ethics Commission regarding compliance with the Ethics Act. The compensation provision in S.C. Code Ann. § 7-5-10(7) is of particular concern where it states, “Members of the board and its staff shall receive compensation as may be appropriated by the governing body of the county.” The council member would have an economic interest in such an appropriation as the Director of Elections. The South Carolina Ethics Commission has issued advisory opinions setting the procedures to be followed by a public official when required to take an official action on a matter that would affect the economic interest of a business with which he is associated. Op. S.C. St. Ethics Comm., SEC AO2005-003, May 18, 2005. We recommend following the outlined procedures and consulting with the South Carolina Ethics Commission to avoid potential violations of the Ethics Act.

## **2. Director of Campaigns, Midlands Technical College; and**

It is this Office’s opinion that the Director of Campaigns for Midlands Technical College is not an office for dual office holding purposes. This Office has opined that a director position is generally an administrative position which is not an office and is merely an employee who serves at the pleasure of the governing board or commission. Op. S.C. Atty. Gen., 2011 WL 1444716 (March 31, 2011). We similarly find the Director of Campaigns to be an employee as the position satisfies few if any of the Crenshaw considerations. S.C. Code Ann. § 59-53-1710 establishes the Midlands Technical College Commission as an agency of Richland, Lexington and Fairfield counties and further provides for the offices of chairman and vice chairman. However, the Director of Campaigns is not established by this statute nor any other section of Title 59, Chapter 53, Article 20. The position’s qualifications for appointment, duties, salary or tenure are not provided by statute. Further, the position does not require an oath, and the position does not exercise a sovereign power of the State. Therefore, it is this Office’s opinion that a court likely would not find the Director of Campaigns for Midlands Technical College to be an office for dual office holding purposes.

We again suggest that the council member contact the South Carolina Ethics Commission regarding compliance with the Ethics Act. S.C. Code Ann. § 59-53-1730 states “the participating counties shall appropriate and contribute annually to the commission sufficient funds to enable it to defray costs for the operation, maintenance, and improvement of its facilities...” Because the “participating counties” includes Richland County, if the council member accepted the Director of Campaigns position, he may again be presented with a situation where he would be required to take an official action on a matter that would affect the economic interest of a business with which he is associated. We recommend following the outlined procedures and consulting with the South Carolina Ethics Commission to avoid potential violations of the Ethics Act. Op. S.C. St. Ethics Comm., SEC AO2005-003, May 18, 2005.

## **3. Grants and Government Relations Specialist, Columbia Museum of Art.**

It is this Office’s opinion that the Grants and Government Relations Specialist position is not an office for dual office holding purposes. The position satisfies few if any of the Crenshaw considerations. The Columbia Museum and Art Center Commission was created by Act No. 332 of 1949. The Act further establishes the Commission’s five member positions and the Commission’s powers. However, Grants and Government Relations Specialist position is not established by this act and our research has not found other legislation which establishes the position. The position’s qualifications for appointment, duties, salary or tenure are not provided by statute. Further, the position does not require an oath, and the

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position does not exercise a sovereign power of the State. Therefore, it is this Office's opinion that a court likely would not find the Grants and Government Relations Specialist position to be an office for dual office holding purposes.

We again suggest that the council member contact the South Carolina Ethics Commission regarding compliance with the Ethics Act. The position description attached to your letter states that the purpose of the Grants and Government Relations Specialist position is "to coordinate all activities regarding grants, act as government relations specialist to secure funding from City and County Council and coordinate all cultivation efforts with all public officials." Because it is this Office's understanding that the County Council referenced is the Richland County Council, if the council member accepted the Grants and Government Relations Specialist position, he would again be presented with a situation where he would be required to take an official action on a matter affecting the economic interest of a business with which he is associated. We recommend following the outlined procedures and consulting with the South Carolina Ethics Commission to avoid potential violations of the Ethics Act. Op. S.C. St. Ethics Comm., SEC AO2005-003, May 18, 2005.

### Conclusion

We hope that the guidance provided above will assist you and Richland County Council Members in evaluating the potential employment opportunities. We again advise you that even if the position is not an office for purpose of the dual office holding prohibitions, one cannot hold two positions that would cause a conflict of interest. Therefore, we again recommend contacting the South Carolina Ethics Commission regarding compliance with the Ethics Act. This Office is, however, 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 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 (1976 Code, as amended). If it is later determined otherwise, or if you have any additional questions or issues, please let us know.

Sincerely,



Matthew Houck  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Solicitor General