



ALAN WILSON
ATTORNEY GENERAL

May 4, 2017

Walter H. Sanders, Jr., P.A., Esquire
Attorney for Allendale County
Post Office Box 840
Fairfax, SC 29827

Dear Mr. Sanders:

Attorney General Alan Wilson has referred your letter dated March 1, 2017 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):

"Allendale County Council wants to appoint an individual to the Allendale County Hospital Board who is currently an elected member of the Allendale County School Board. Please advise if there is any general prohibition against an elected official being appointed to a county board and more specifically please advise if the prohibition against holding of a dual office would apply to this appointment to the Allendale County Hospital Board."

Law/Analysis:

First and foremost, this Office cautions elected officials 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). Moreover, we advise public officials to consult with the South Carolina Ethics Commission for any questions regarding any potential ethical conflicts. We also want you to know this Office still uses the criteria in the Crenshaw case to determine if a position is an office of "honor or profit" for dual office holding purposes. See State v. Crenshaw, 274 S.C. 475, 266 S.E.2d 61 (1980). The criteria in Crenshaw consist of four questions, though not all of them need to be met to be an office:

- 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 powers of the State?

Id. The sovereign powers of the State traditionally include the power to tax, police power and the power of eminent domain. Op. S.C. Atty. Gen., 2017 WL 1290050 (S.C.A.G. Mar. 24, 2017); 2016 WL 4698870 (S.C.A.G. Aug. 24, 2016) (citing Op. S.C. Atty Gen., 1996 WL 599391 (September 6, 1996) (citing Philadelphia Nat. Bank v. U.S. of America, 666 F.2d 834 (3rd Cir. 1981))).

As you mention in your letter, the South Carolina Constitution prohibits holding more than one office of honor or profit at one time. S.C. Const. Arts. VI § 3; XVII § 1A. This Office has consistently answered the question of whether one may hold the position of a county hospital board member and a

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school board member by concluding that one cannot not hold both positions without violating the dual office holding prohibition in the South Carolina Constitution. See Op. S.C. Att’y Gen., 2004 WL 885191 (S.C.A.G. April 20, 2004) (Abbeville County Memorial Hospital Board of Trustees and Abbeville County School Board of Trustees); 1981 WL 157898 (S.C.A.G. August 5, 1981) (Marion District #1 School Board and Marion County Hospital District Commissioner); 1975 WL 4141 (S.C.A.G. September 29, 1975) (Bamberg County Memorial Hospital Board of Trustees and Bamberg County School District #1 Board Member). This conclusion is consistent with numerous opinions of this Office finding membership on a county hospital board to be an office for dual office purposes of South Carolina Constitution. See Op. S.C. Att’y Gen., 2016 WL 963695 (S.C.A.G. Feb. 12, 2016) (Lexington County Health Services District Board of Directors); 2015 WL 6520644 (October 15, 2015) (Beaufort County Memorial Hospital Board of Trustees); 2012 WL 1260181 (S.C.A.G. April 4, 2012) (Edgefield County Hospital Board of Directors); 2007 WL 1651330 (S.C.A.G. May 2, 2007) (Lexington County Hospital Board of Trustees); February 26, 2007 (Barnwell County Hospital Board of Trustees); 2005 WL 1609299 (S.C.A.G. June 1, 2005) (Bamberg County Hospital Board); 2004 WL 885191 (S.C.A.G. April 20, 2004) (Abbeville County Memorial Hospital Board of Trustees); 2000 WL 356780 (S.C.A.G. January 17, 2000) (Edgefield County Hospital Board); (1999 WL 92413) (S.C.A.G. January 11, 1999) (board of trustees for the Regional Medical Center of Orangeburg and Calhoun Counties); 1997 WL 87868 (S.C.A.G. January 7, 1997) (Barnwell County Hospital and Nursing Home Board); 1992 WL 682770 (S.C.A.G. January 9, 1992) (Edgefield County Hospital Board); 1983 WL 142737 (S.C.A.G. September 12, 1983) (Board of Trustees of Lexington County Hospital). Furthermore, this conclusion is also consistent with our prior opinions that the position of an Allendale County School Board Trustee is an office for dual office holding purposes. See Op. S.C. Att’y Gen., 2005 WL 3689157 (S.C.A.G. December 20, 2005); 2001 WL 790255 (S.C.A.G. June 21, 2001). It is also this Office’s understanding that the General Assembly established the Allendale County Hospital Board pursuant to Act No. 620 of 1946 and authorized the Board as an official agent of the county. See Act No. 620, 1946 S.C. Acts 1791; Op. S.C. Att’y Gen., 1986 WL 289829 (S.C.A.G. September 4, 1986). This Office believes a court would find a position on the Allendale County Hospital Board would be an office of honor or profit based on the Board’s enabling legislation and prior opinions of this Office regarding county hospital boards.

As a general rule, this Office recognizes a long-standing tradition that it will not overrule a prior opinion by this Office unless it is clearly erroneous or a change occurred in the applicable law. See, e.g., Op. S.C. Atty. Gen., 2013 WL 6516330 (November 25, 2013); 2013 WL 3762706 (July 1, 2013); 2009 WL 959641 (March 4, 2009); 2006 WL 2849807 (September 29, 2006); 2005 WL 2250210 (September 8, 2005); 1986 WL 289899 (October 3, 1986); 1984 WL 249796 (April 9, 1984). Thus, in the absence of a change in the law or clear error, we will maintain the same opinion.

Conclusion:

It is for all of the above reasons we believe a court will conclude that holding both the position of Allendale County School Board member and Allendale County Hospital Board member would violate the dual office holding provisions of the South Carolina Constitution. Moreover, as we stated above, we advise public officials to consult with the South Carolina Ethics Commission for any questions regarding any potential ethical conflicts. However, this Office is only issuing a legal opinion based on the current law at this time and the information as provided to us. This opinion is not an attempt to comment on any pending litigation or criminal proceeding. 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,

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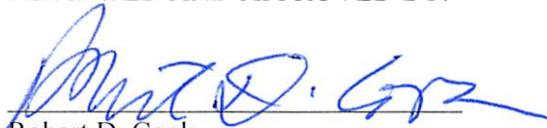
as only a court of law can interpret statutes and make such determinations. See S.C. Code § 15-53-20. If it is later determined otherwise, or if you have any additional questions or issues, please let us know.

Sincerely,



Anita (Mardi) S. Fair
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General