

1974 S.C. Op. Atty. Gen. 280 (S.C.A.G.), 1974 S.C. Op. Atty. Gen. No. 3862, 1974 WL 21363

Office of the Attorney General

State of South Carolina

Opinion No. 3862

September 23, 1974

***1 Re: Dual Office Holding**

William K. Marsh
Director
Planning and Development
Parks, Recreation and Tourism
Box 113, Edgar A. Brown Building
Columbia, S.C. 29201

Dear Mr. Marsh:

In your letter of September 9, 1974, you request an opinion regarding the New Horizons Development Authority. Section 2 of the Act provides that certain members of the Authority's Board are to be appointed by the Governor upon the nominations of the South Carolina Parks, Recreation and Tourism Commission, the South Carolina Land Resources Conservation Commission, the State Development Board, the Fairfield County Council and the Fairfield County Development Board. You state that 'a question has arisen as to whether or not commission members of these various organizations can be appointed to the New Horizons Development Authority's Board or would this be considered dual office holding under the Laws of the State of South Carolina'.

Article XVII, section 1A of the Constitution of South Carolina (1895) (as amended) provides that '. . . no person shall hold two offices of honor or profit at the same time . . .' In Sanders v. Belue, 78 S.C. 171 at 174, 58 S E 762 (1907), the South Carolina Supreme Court defines 'public officer' as 'one who is charged by law with duties involving an exercise of some part of the sovereign power, either shall or great, in the performance of which the public is concerned, and which are continuing and are not occasional or intermittent.' With the above prohibition and definition in mind, each organization will be considered individually.

The New Horizons Development Authority, created by Act bearing R. No. 1224 (June 17, 1974), is a body politic and corporate under the laws of the State of South Carolina, Acts and Joint Resolutions, Section 1 at 2301 (1974). Pursuant to the Act, the Authority is given broad powers. Section 7, under the Act, among other things, endows the authority with the powers of a body corporated including the power to sue and to be sued and to make contracts; with the power to rent, lease, buy, own, require, subdivide, mortgage and dispose of property, both real and personal; with the power to adopt, alter or repeal by-laws, rules and regulations governing the manner it transacts business; and with the authority to do any and all things necessary to accomplish the purposes of the Act. Section 8 grants the authority of the power of eminent domain to acquire such property it deems necessary for the project. Even from this brief look at the Authority's powers, it is obvious that any member appointed to the Authority by the Governor pursuant to Section 2 of the Act is one 'who is charged by law with duties involving an exercise of some part of the sovereign power' of this State, and is therefore an officer in the meaning of the dual office prohibition.

The Fairfield County Council was created by Act bearing R. No. 1009 (March 8, 1968). Pursuant to that act the Fairfield County Council has the authority to lease, sell and dispose of property in the name of Fairfield County, to acquire by purchase or gift in the name of the County, to grant the powers of eminent domain, and to make appropriations and to levy taxes for county purposes. These are but a few of the powers exercised by the County Council. It is obvious

that the County Council exercises the sovereign power of the State and therefore are officers with the name of the dual office prohibition.

*2 The Powers of the Fairfield Planning and Development Commission were amended and broadened by Act bearing R. No. 1252 (May 14, 1966). Pursuant to this Act, the Fairfield Planning and Development Commission has the authority to purchase, lease or otherwise acquire real and personal property in the name of the County, to incorporate with and provide planning assistance to municipal and other local agencies in the County, to hold public and private hearings, and sponsor business meetings, whenever it deems necessary, and to exercise all other powers necessary and proper to discharge its duties. The members of the Commission again exercise some of the sovereign powers of the State, alter the power exercised by them is not as great as those exercised by the above discussed organizations. Therefore, the members of this Commission also fall within the dual office holding prohibitions of the State's Constitution.

The State Land Resources Conservation Commission is established under § 63–61, *et seq.*, CODE OF LAWS OF SOUTH CAROLINA (1962) as amended. Generally, the Commission has the power to coordinate the development of soil and water conservation within the State. § 63–67, CODE OF LAWS OF SOUTH CAROLINA (1962) as amended. The Commission's powers include the authority to allocate State appropriated funds. § 63–67, CODE OF LAWS OF SOUTH CAROLINA (1962) as amended. Like the members of the above discussed organizations, a Commissioner of the Land Resources Conservation Commission is an officer within the meaning of the 'dual office' holding prohibition.

Also, a question has arisen as to whether or not an employee of the Land Resources Conservation Commission can serve on the Authority. Under Section 3 of the Act bearing R. No. 1076 (1974), members of the authority receive a per diem, including travel expenses, for each day of performance of official duties. However, Section 98 of the 1974 State Appropriation Act R–1314 provides:

No full-time officer or employee of the State shall draw any per diem allowance for service on [State] boards, commissions or committees.

Assuming *arguendo* that a State Land Resources employee can serve on the Authority, the employee is not eligible for a per diem. Also, there is the prohibition that a person cannot serve as a master and servant at the same time. If Land Resources and the employer in question perform services for the Authority, the employee is prohibited from serving on the Authority's board.

Finally, there is the question as to whether a member of the Midlands Regional Planning Council can serve on the authority. This Office has issued an earlier opinion stating that members of regional planning councils are not officers within the meaning of the dual office holding prohibition. *See* enclosure.

If you have further questions, please do not hesitate to contact me.

Yours very truly,

M. Elizabeth Crum
Assistant Attorney General

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