

8100 Liberty



HENRY McMASTER
ATTORNEY GENERAL

January 18, 2006

T. Marion Robinson, Assistant Executive Director
South Carolina Regional Housing Authority No. 1
Post Office Box 326
Laurens, South Carolina 29360

Dear Mr. Robinson:

In a letter to this office you questioned whether an individual may serve simultaneously as a member of the State Regional Housing Authority No. 1 and as a county councilman.

Article XVII, Section 1A of the South Carolina Constitution provides that "no person may hold two offices of honor or profit at the same time ..." with exceptions specified for an officer in the militia, a member of a lawfully and regularly organized fire department, a constable, and a notary public. For this provision to be contravened, a person concurrently must hold two offices which have duties involving an exercise of some portion of the sovereign power of the State. Sanders v. Belue, 78 S.C. 171, 58 S.E. 762 (1907). Other relevant considerations are whether statutes, or other such authority, establish the position, prescribe its duties or salary, or require qualifications or an oath for the position. State v. Crenshaw, 274 S.C. 475, 266 S.E.2d 61 (1980).

This office has in prior opinions consistently concluded that a member of a county council would be considered an officer for dual office holding purposes. See, as representative of these opinions, Ops. Atty. Gen. dated November 2, 2005; March 18, 2004; July 26, 1999; July 27, 1997.

Article 9 of Chapter 3 of Title 31 of the South Carolina Code of Laws authorizes regional housing authorities to be created. Section 31-3-960 of the Code provides for the appointment of commissioners of regional housing authorities. Qualifications of commissioners are specified by Section 31-3-970. Pursuant to Section 31-3-980, terms of office of the commissioners are set at five (5) years and until the successors are appointed and have qualified. The functions, rights, powers, and duties of regional housing authorities are the same as those functions, rights, powers, and duties of city or county housing authorities according to Section 31-3-1150 and other statutes related thereto. A review of these statutes reveals that the housing authority commissioners would also exercise a portion of the sovereign power of the State. This office has consistently opined that a board member of a housing authority would hold an office for dual office holding purposes. See,

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Ops. Atty. Gen. dated October 8, 2003 (City of Florence Housing Authority Board); March 16, 1990 (Darlington Housing Authority); March 10, 1988 (Columbia Housing Authority); June 1, 1987 (Commissioner of a Regional Housing Authority); November 18, 1986 (North Charleston Housing Authority).

Based upon the above, it is my opinion that an individual who simultaneously holds positions as a member of a regional housing authority and as a county councilman would violate the constitutional prohibition on dual office holding.

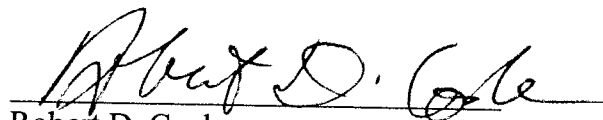
If there are any questions, please advise.

Sincerely,



Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Assistant Deputy Attorney General