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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

April 14, 2005

Thomas O. Sanders, IV, Esquire
Sanders Law Firm, LLC
1738 Three Oaks Avenue
Charleston, SC 29407

Dear Mr. Sanders:

By letter dated, March 3, 2005, you requested an opinion as to whether an individual serving simultaneously as Commissioner of the Barnwell County Soil and Water Conservation District and serving as Barnwell County Area Commissioner for Denmark Technical College would be in violation of the dual office holding provision of the South Carolina Constitution. We advise that simultaneous service as Commissioner of the Barnwell County Soil and Water Conservation District and as Barnwell County Area Commissioner for Denmark Technical College would constitute dual office holding.

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, member of a lawfully and regularly organized fire department, constable, or notary public. In order 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). Furthermore, "one who merely performs the duties required of him under an express contract or otherwise, though such persons themselves be public officers, and though the employment be in or about a public work or business, is a mere employee." *Sanders, supra*, 78 S.C. at 174.

We have advised on numerous occasions that one who serves as a soil and water conservation commissioner would hold an office for dual office holding purposes. See, *Ops. S.C. Atty. Gen.* dated October 8, 1996; November 1, 1991 and December 17, 1990. Although apparently we have not specifically advised as to whether a Barnwell County Area Commissioner for Denmark Technical College is an officer for purposes of dual office holding, we have concluded on several occasions that area commissioners for other statewide technical colleges are officers for purposes of dual office holding. See, *Ops. Atty. Gen.* dated August 6, 1990 (Technical College of the Low Country);

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February 1, 1985 (Horry-Georgetown); January 31, 1985 (Chesterfield-Marlboro); February 15, 1984 (Richland-Lexington, now Midlands); June 24, 1984 (Sumter Area); and September 11, 1965 (Anderson-Oconee-Pickens).

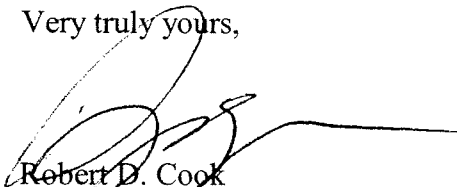
Furthermore, the statute authorizing the position of Area Commissioner clearly indicates that the exercise of such powers is an exercise of a portion of the sovereign power of the State. We note that the Area Commission was established by Section 59-53-610 to be a body politic and corporate. Residency in one of the counties served by the Commission is specified as a qualification. *Id.* The statute further provides for a term of four years, and until successors are appointed and qualify. *Id.* The statutes relative to this entity are silent as to an oath being required or compensation being paid to commissioners. The powers of area commissioners are specified in Section 59-53-630 as follows:

[t]he Commission has the same powers as provided in Article 1, Chapter 53, Title 59 of the 1976 Code, and in addition must prepare and submit its annual budget for approval to the State Board for Technical and Comprehensive Education. Denmark Technical College shall be funded in accordance with the provisions of Section 6 of Act 654 of 1976.

In particular, in Article 1 of Chapter 53 of Title 59, powers of area commissioners are specified in Section 59-53-52 and include such powers as adopting bylaws, rules, and regulations; acquiring sites and constructing facilities; acquiring property by various means; operating institutional facilities; employing the chief administrative officer and other personnel; expending funds; exercising the right of eminent domain; awarding degrees and certificates; and the like. Section 59-53-53 authorizes area commissioners to borrow funds for capital improvements, as specified. Clearly, the exercise of these powers by any area commissioners would constitute the exercise of a portion of the sovereign power of the State.

Accordingly, based upon the foregoing analysis and prior opinions of this Office, it is our opinion that simultaneous service as Commissioner of the Barnwell County Soil and Water Conservation District and as Barnwell County Area Commissioner for Denmark Technical College would constitute dual office holding for purposes of the South Carolina Constitution and would be prohibited thereby.

Very truly yours,



Robert D. Cook
Assistant Deputy Attorney General

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