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The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER  
ATTORNEY GENERAL

May 3, 2005

Alyson C. Fudge, Esquire  
Legal Counsel for the  
Town of Hollywood, South Carolina  
710 Johnnie Dodds Boulevard, Suite 320  
Mt. Pleasant, South Carolina 29464

Dear Ms. Fudge:

You have requested that this Office issue an opinion regarding whether a conflict of interest would arise from the Executive Director of the Charleston County Human Services Commission running as a candidate or being elected to the Hollywood Town Council. In your letter, you have provided a job description of the Executive Director position. It is my understanding from an attachment to your letter that the Charleston County Human Services Commission is exclusively federally funded through the Office of Community Services in Washington, D.C. Furthermore, you have provided a copy of an information memorandum regarding the Community Services Block Grant Program. That memorandum comments in part on political activity regarding programs assisted with these federal funds. It is my understanding that neither the Town Council nor the Charleston County Human Services Commission nor any of the members or employees of either body have any duties, obligations or responsibilities regarding the other body.

In responding to your question it will be necessary to consider any possible dual office holding issues that may arise from the candidacy and or election of this individual to the Hollywood Town Council. 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). Furthermore, "(o)ne who merely performs the duties required of him under an express contract or otherwise, though such persons themselves

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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.

This Office has advised on numerous occasions that a member of a city or town council would be considered an officer for dual office holding purposes. See: Ops. Atty. Gen., April 12, 1998; June 12, 1995; February 4, 1994; July 23, 1993; July 24, 1991. Therefore, the question is whether the position of Executive Director for the Charleston County Human Services is an Office for dual office holding purposes. Along with your letter, you attached a description of the duties and responsibilities of the Executive Director

This Office has determined that the position of executive director for a commission or governing board generally does not constitute an office. See: Ops. Atty. Gen. dated June 7, 2004; January 27, 2004; July 24, 2001; November 24, 1997; May 15, 1989; June 11, 1985; March 19, 1975. It was referenced in the July 24, 2001 opinion that the executive director in that instance served at the pleasure of the governing board or authority. In short, in virtually every previous instance in which the question has arisen, we have concluded that an executive director of a governing board or commission would be characterized as an employee rather than an officer.

Based upon the forgoing authorities and my review of the duties and responsibilities of the position, it is my opinion that the position of Executive Director for Charleston County Human Services is not an office for dual office holding purposes. Accordingly, we advise it would not be a violation of the dual office holding prohibition for the Executive Director of Charleston County Human Services to concurrently serve as a councilman on the Hollywood Town Council. I am unaware of any other State statutory or constitutional provisions which would be applicable to the situation. Again, it is my understanding that neither the Town Council nor the Charleston County Human Services Commission nor any of the members or employees of either body have any duties, obligations or responsibilities regarding the other body.

Notwithstanding the fact that there are no constitutional problems raised by the Executive Director's situation, an area of possible concern is the applicability of the Hatch Act. The Hatch Act is a federal statute that prohibits certain partisan political activities of public employees whose positions are somehow tied to federal funds. Because of the nature of the funding for the Charleston County Human Services Commission, we would advise that you contact the Office of the Special Counsel of the United States Merit Systems Protection Board, which gives advice on applicability of the Hatch Act, to obtain a more conclusive answer as to the relevancy of the Hatch Act to your situation. That agency may be contacted by calling toll-free 1-800-85-HATCH (42824).

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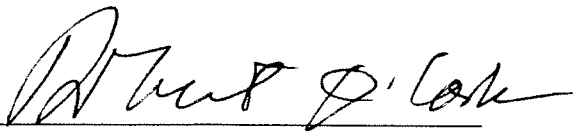
With kind regards, I am,

Very truly yours,



Charles H. Richardson  
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Assistant Deputy Attorney General