



ALAN WILSON
ATTORNEY GENERAL

September 21, 2023

The Honorable Brandon Newton
Member
South Carolina House of Representatives
P.O. Box 2501
Lancaster, SC 29721

Dear Representative Newton:

Attorney General Alan Wilson has referred your letter to the Opinions section. Your letter states the following:

I am requesting an opinion dealing with dual office holding. I am currently serving in the State House of Representatives and have been asked to serve on the Palmetto College Board of Visitors. Would accepting this role violate our dual office holding laws?

Law/Analysis

It is this Office's opinion that Palmetto College Board of Visitors members do not hold an office for dual office holding purposes as provided in the South Carolina State Constitution. Article XVII, § 1A of the South Carolina Constitution prohibits a person from holding "two offices of honor or profit at the same time, but any person holding another office may at the same time be an officer in the militia, member of a lawfully and regularly organized fire department, constable, or a notary public." A person violates this provision if he holds two or more public offices which "involv[e] an exercise of some part of the sovereign power ..." Sanders v. Belue, 78 S.C. 171, 58 S.E. 762 (1907); see also Op. S.C. Att'y Gen., 1996 WL 599391 (September 6, 1996) (sovereignty traditionally includes power to tax, power of eminent domain, and police power). In State v. Crenshaw, 274 S.C. 475, 478, 266 S.E.2d 61,62 (1980), the South Carolina Supreme Court stated that relevant considerations for determining whether a position would be considered a public office include whether statutes, or other such authority, establish the position, the qualifications for

appointment, duties, tenure, require an oath for the position, or otherwise authorizes the position to exercise a sovereign power of the state. No single criterion is dispositive, and it is not necessary that a position exhibits all the criteria to find that a position is an office. Id.

It is this Office's understanding that the Palmetto College Board of Visitors is not created by statute. Article VII of the Board of Visitor's bylaws website describes its operations.

The Palmetto College Board of Visitors is an advisory organization. The members have no legal or fiscal responsibility or authority. The advice of each person serving on the Palmetto College Board of Visitors is vitally important to Palmetto College and to the overall success of the Board. The administration is free to accept input from the Palmetto College Board of Visitors at its discretion.

University of South Carolina, Palmetto College, Bylaws, https://sc.edu/about/system_and_campuses/palmetto_college/about/leadership/board_of_visitors/bylaws/index.php (last visited Sept. 21, 2023). As the bylaws state, the Board of Visitors is advisory in nature and does not appear to exercise the sovereign power of the state. This Office's opinions have "concluded on numerous occasions that members of advisory bodies are not considered office holders." Op. S.C. Att'y Gen., 2011 WL 1740744 (April 18, 2011).

Conclusion


This Office has advised on numerous occasions that a member of the House of Representatives holds an office. However, it is this Office's opinion Palmetto College Board of Visitors members do not hold an office for dual office holding purposes as provided in the South Carolina State Constitution. Article XVII, § 1A of the South Carolina Constitution prohibits a person from holding "two offices of honor or profit at the same time." It is this Office's understanding that the Board of Visitor's was not created by statute and is properly considered an advisory body. Because members of the Board of Visitors do not "exercise of some part of the sovereign power" of the State, a court would likely hold its members do not hold an office. Sanders v. Belue, 78 S.C. 171, 58 S.E. 762 (1907). Therefore, you may accept a role on the Palmetto College Board of Visitors without violating the prohibition on holding dual offices.

Sincerely,



Matthew Houck
Assistant Attorney General

REVIEWED AND APPROVED BY:

A handwritten signature in blue ink, appearing to read "Robert D. Cook", is written over a horizontal line.

Robert D. Cook
Solicitor General