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Subject: ED LS: Interesting Atty Gen Opinion

The Attorney General recently issued an interesting Attorney General's Opinion. While the facts in the opinion are virtually unique, the opinion does discuss a number of issues relevant to Alliances and county EDs.

A member of County Council was an employee of an Alliance. The County contributes \$50,000 to the Alliance. The Alliance and the County entered into an Economic Development Services Agreement. The County has an Economic Development Commission, which was established by state statute, presumably because it also had authority over an airport.

The Opinion covers several issues.

DUAL OFFICE HOLDINGS

The SC Constitution prohibits an individual from holding two "offices." It is not always clear what constitutes an "office." Clearly county council is an office. The first issue was whether the Alliance was an "office." The opinion held that the Alliance was not a "public body" or "office" for dual office holding purposes as its duties, salary and tenure were not created by the legislature, it did not have the authority to enter into contracts on behalf of the county and its duties were largely advisory. Accordingly, it did not violate the dual office holding provision for a county council member to serve on county council and be employed by an Alliance.

By contrast, the Attorney General held that the Economic Development Commission was an "Office" as it was created by statute and exercise a sovereign power of the state (principally in regards to aeronautical matters.) A council member who served as a member of the Commission would violate dual office holding unless he served in an *ex officio* capacity. The Attorney General held that it was clear from the Commission enabling legislation that County Council members did not serve in an *ex officio* capacity. "A Commission member's eligibility depends on residency and appointment by the governing body."

ALLIANCE – COUNTY CONTRACT

The Economic Development Services Agreement entered into between the county and the Alliance did not provide how many years it was to be in effect. The Attorney General opined that multi-year contracts are valid but should include a non-appropriations clause. The Agreement was a legitimate exercise of the County's proprietary power, but "Because the Agreement does not state a duration, a Court may very well determine that it is void as a matter of public policy."

OTHER ISSUES

The opinion also discusses other issues including conflicts of interest and reporting to the Ethics

Commission

Email me if you would like a copy of the opinion

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