



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

October 2, 1995

The Honorable Kathleen Fanning
Mayor, Town of Springfield
Post Office Box 31
Springfield, South Carolina 29146

RE: Informal Opinion

Dear Mayor Fanning:

By your letter of September 27, 1995, to Attorney General Condon, you have sought an opinion on a matter facing the Town Council of the Town of Springfield. You have advised that the Town has a financial problem and a water and sewer system requiring extreme maintenance. One of the present members of council has valuable experience in water and sewer maintenance. He has agreed to serve as water and sewer supervisor for a small salary per month. By being on the payroll he would be eligible for insurance coverage through the State of South Carolina. You have further advised that the form of government in Springfield is mayor-council and that the member of council has no authority for Town decisions and expenditures without approval of you as Mayor. You further advise that the Town needs his services in the maintenance and you feel that he should be allowed insurance coverage.

Your letter presents several issues to be addressed. First, I advise that S.C. Code Ann. §5-7-180 requires consideration; that Code section provides:

Except where authorized by law, no mayor or councilman shall hold any other municipal office or municipal employment while serving the term for which he was elected.

I am not aware of a provision of law which might fall within the first phrase of §5-7-180, "Except where authorized by law," so as to authorize the type of municipal employment

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in question. Therefore, I am of the opinion that §5-7-180 would be violated if a member of the Town Council were also to be employed by the Town simultaneously.

Such simultaneous service would also cause some concern based on the common law doctrine of the master-servant relationship, which is summarized as follows:

[A] conflict of interest exists where one office is subordinate to the other, and subject in some degree to the supervisory power of its incumbent, or where the incumbent of one of the offices has the power of appointment as to the other office, or has the power to remove the incumbent of the other, or to punish the other. Furthermore, a conflict of interest may be demonstrated by the power to regulate the compensation of the other... .

....
The offices may be incompatible even though the conflict in the duties thereof arises but on rare occasions... . In any event, the applicability of the doctrine does not turn upon the integrity of the officeholder or his capacity to achieve impartiality... .

67 C.J.S. Officers §27. While the mayor in the mayor-council form of government is empowered to appoint and suspend municipal employees, see §5-9-30, members of council do have certain responsibilities pursuant to §5-9-40 (1994 Cum. Supp.); it is possible that the common law master-servant doctrine or the common law conflict of interest could arise in the situation described in your letter. Because §5-7-180 considerations are also present, it may not even be necessary to consider the common law doctrines, but I am of the view that you should be advised of the existence of the doctrines.

Should the Town Council and/or you as Mayor proceed with employment of this Town Council member, notwithstanding the plain language of §5-7-180, there may be certain ethics laws which require consideration. You may wish to consult the State Ethics Commission for information on the ethics laws by writing to that agency at Post Office Box 11926, Columbia, South Carolina 29211, or by calling (803) 253-4192.

This letter is an informal opinion only. It has been written by a designated Senior Assistant Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion. I trust that it has been responsive to your inquiry and that you will advise if additional assistance or clarification should be needed.

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With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Senior Assistant Attorney General