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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

March 3, 2004

The Honorable P. J. Tanner
Beaufort County Sheriff
P.O. Box 1758
Beaufort, South Carolina 29901

Dear Sheriff Tanner:

You have requested an opinion from this Office concerning dual office holding. You have indicated that a deputy sheriff under your command has recently been appointed as a commissioner for the Sheldon Township Fire District. You ask whether simultaneously holding the positions of Beaufort County Deputy Sheriff and Sheldon Township Fire District Commissioner would violate the dual office holding provisions of the South Carolina Constitution.

Law/Analysis

Article XVII, Section 1A of the State 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. 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).

I have located three prior dual office holding opinions, issued by this Office, where the positions in question were deputy sheriff and commissioner (or member) of a local fire district board. In all three opinions, we concluded that a person who simultaneously held both positions would violate the dual office holding provisions of the State Constitution. Ops. S.C. Atty. Gen. dated December 19, 2003 (deputy sheriff and Commissioner of the Holly Springs Volunteer Fire District) (copy enclosed); December 13, 1995 (sheriff deputy and Commissioner of the Board of Fire Control of the Croft Fire District) (copy enclosed); June 11, 1992 (deputy sheriff and as a member of the North Spartanburg Fire District Commission).

This Office has also long held that a county deputy sheriff is without exception considered an officer for dual office holding purposes. See, as representative of those numerous opinions, Ops.

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S.C. Atty. Gen. dated December 19, 2003 (enclosed); January 8, 1986; September 24, 1982; March 6, 1979. In addition to the aforementioned opinions regarding fire district commissioners and deputy sheriffs, this Office has also opined in other specific instances that commissioners for local fire control districts hold offices for dual office holding purposes. See Ops. S.C. Atty. Gen. dated January 19, 1994 (member of Cherokee Springs Board of Fire Control would be an office holder); September 18, 1986 (member of Chester County Board of Fire Control would be an office holder); November 18, 1983 (member of Monarch Fire Department Board of Trustees would be considered an office holder); and November 30, 1963 (commissioner of the Converse Area Fire District would be considered an office holder). There appears to be no reason to treat any differently a commissioner of the Sheldon Township Fire District. Based on the forgoing authorities, it is the opinion of this Office that a person who simultaneously holds the positions of Beaufort County Deputy Sheriff and member of the Sheldon Township Fire Commission would likely violate the constitutional prohibition on dual office holding.

When a dual office holding situation occurs, the law operates automatically to "cure" the problem. If an individual holds one office on the date he assumes a second office, assuming both offices fall within the purview of Article XVII, Section 1A of the Constitution (or one of the other applicable constitutional prohibitions against dual office holding), he is deemed by law to have vacated the first office held. Thus, the law operates automatically to create a vacancy in that first office. However, the individual may continue to perform the duties of the previously held office as a de facto officer, rather than de jure, until a successor is duly selected to complete his term of office (or to assume his duties if the term of service is indefinite). See Walker v. Harris, 170 S.C. 242 (1933); Dove v. Kirkland, 92 S.C. 313 (1912); State v. Coleman, 54 S.C. 282 (1898); State v. Buttz, 9 S.C. 156 (1877). Furthermore, actions taken by a de facto officer in relation to the public or third parties will be as valid and effectual as those of a de jure officer unless or until a court should declare such acts void or remove the individual from office. See, for examples, State ex rel. McLeod v. Court of Probate of Colleton County, 266 S.C. 279, 223 S.E.2d 166 (1976); State ex rel. McLeod v. West, 249 S.C. 243, 153 S.E.2d 892 (1967); Kittman v. Ayer, 3 Stob. 92 (S.C. 1848).

Very truly yours,



Robert D. Cook
Assistant Deputy Attorney General

Enclosures