



HENRY McMASTER
ATTORNEY GENERAL

April 4, 2006

A. Scott Harris, Administrator
City of Calhoun Falls
P.O. Box 246
Calhoun Falls, SC 29628

Dear Mr. Harris:

From your letter we understand an employee of the City of Calhoun Falls (the "City") is considering running for a seat on the Abbeville County Council ("County Council"). You state, "if elected, [this individual would] over see the town from a County Council position." You add, "This position would have no supervisory capacity over the town except as an influential factor on Council." As you posed it: "The question is can this employee run and, if elected, still work for the town?"

Based on the limited information available to us, we find no reason an employee of the City may not run for a position on County Council and if elected, maintain his or her employment with the City. Nonetheless, because such a determination involves factual issues, a definitive determination of the matter is better addressed by the courts, which may conduct a full examination of the factual issues.

Law/Analysis

Article XVII, section 1A of the South Carolina Constitution provides, in pertinent part: "No person may hold 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." On numerous occasions this Office determined a member of a city or town council is an officer for dual office holding purposes. Op. S.C. Atty. Gen., May 21, 2004. However, we concluded in an opinion dated March 3, 1978, a mere employee of a town is not an office holder for dual office holding purposes. Thus, in our opinion, an employee of the City is not an officer for dual office holding purposes. Accordingly, he or she would not be prevented from serving as a member of County Council for this reason.

Although the situation that you describe does not present a problem with regard to dual office holding, we must also consider whether such relationship creates a conflict of interest arising under

Request Letter

Mr. Harris
Page 2
April 4, 2006

the common law master-servant relationship. In past opinions, we summarized this relationship 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, or to audit his accounts.

...

[I]t is not the performance, or the prospective right of performance, of inconsistent duties only that gives rise to incompatibility, but the acceptance of the functions and obligations growing out of the two offices The offices may be incompatible even though the conflict in the duties thereof arises on but 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.

Op. S.C. Atty. Gen., March 26, 1999 (quoting 67 C.J.S. Officers § 27). Furthermore, the South Carolina Supreme Court in McMahan v. Jones, 94 S.C. 362, 365, 77 S.E. 1022, 1023 (1913), declaring the employment of two commissioners by the commission illegal, stated:

No man in the public service should be permitted to occupy the dual position of master and servant; for, as master, he would be under the temptation of exacting too little of himself, as servant; and, as servant, he would be inclined to demand too much of himself, as master. There would be constant conflict between self-interest and integrity. Should Richardson, as chairman of the commission, appoint the committee to investigate his own management of the infirmary, or check his accounts as treasurer? Should he be present, when his administration of the institution is being considered and discussed? Should he and Butler participate, when their own duties are being prescribed and their compensation fixed? It requires only a moment's reflection to see that the positions are utterly inconsistent, and ought not to be held by the same persons. Propriety, as well as public policy, forbids it.

This Office has considered various situations involving potential violations of common law master-servant principles. In those opinions, we determined whether or not an actual conflict exists is a question of fact, which may not be determined in an opinion of this Office. Op. S.C. Atty. Gen.,

Mr. Harris
Page 3
April 4, 2006

February 19, 2003 (“the ultimate conclusion of whether an actual conflict exist is a factual matter. As we have previously opined, ‘[b]ecause this Office does not have the authority of a court or other fact-finding body, we are not able to adjudicate or investigate factual questions.’ See Ops. Atty. Gen. dated October 9, 1985 & September 3, 1999.”). Thus, this opinion is limited to a consideration of the applicable law which a court may consider in making such a determination.

In identifying situations in which a potential conflict may exist, we primarily consider the level of supervision and control the elected or appointed position may have over the position in which he or she is currently employed. Op. S.C. Atty. Gen., October 17, 2000. In an opinion of this Office dated March 26, 1999, we considered whether a youth counselor, employed by the Department of Social Services (DSS), may run for a position on the Board of Education of Laurens County School District 55. Op. S.C. Atty. Gen., March 26, 1999. In determining a potential conflict existed, we considered the fact that the counselor, although employed by DSS, was on site at a high school in the school district, the high school’s principal partially supervised the counselor, and the counselor received ten percent of his pay from the school district. Id.

We addressed a similar issue of whether a town maintenance worker may serve on the town council in an opinion of this Office dated May 21, 2004. In that opinion, we surmised dual service by the employee would violate the common law master-servant principles. In making this determination, we stated:

There are a wide range of . . . matters related to town employees dealt with by the town council on a regular basis that would inevitably result in the type of conflict described in McMahan v. Jones, supra, where “self-interest and integrity” frequently compete. Examples which immediately come to mind are the setting of policies and duties for town employees, as well as considering contracts for the municipality that may be either beneficial or detrimental to the councilmember’s status as a town employee.

Op. S.C. Atty. Gen., May 21, 2004.

Contrarily, in opinion of this Office, dated June 7, 2004, we considered whether a master-servant conflict existed to prohibit the Executive Director of the Sumter County Commission on Alcohol and Drug Abuse (SCCADA) from serving as a candidate for Sumter County Council. We opined a master-servant conflict did not appear to exist because the executive director is not a county employee and because SCCADA is funded by the state and federal government, not the county. Op. S.C. Atty. Gen., June 7, 2004.

In another opinion of this Office, we found a part-time magistrate serving as a member of a tourism board would not give rise to a conflict under the common law master-servant principles. Op. S.C. Atty. Gen., January 29, 1998. We concluded “a part-time magistrate would have no

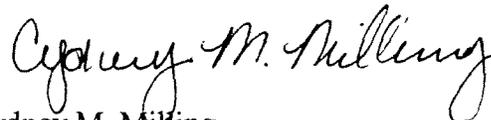
Mr. Harris
Page 4
April 4, 2006

supervisory power, control, removal or disciplinary authority, or the like over a member of the Pee Dee Tourism Commission and, therefore, no master-servant relationship exists." Id.

We were unable to determine from your letter the exact level of supervision and control a County Council member may have over an employee of the City. However, assuming County Council does not have supervisory power, control, removal or disciplinary authority over a City employee, County Council neither sets the policies and duties for City employees nor are City employees subject to the County's personnel policies and procedures, and City employees are not paid from county funds, we presume a court likely would find no master-servant relationship exists between an employee of the City and County Council. However, a final determination of this matter requires an investigation into the facts to determine if such presumptions are fact. As we previously stated, such factual determinations are beyond the scope of an opinion of this Office. Therefore, we are unable to make a definitive determination on whether the employee in question may serve as a member of the County Council. See Op. S.C. Atty. Gen., February 19, 2003.

We also note one final consideration in determining a City employee's ability to serve on County Council. Aside from potential conflicts arising out of the master-servant relationship, other ethical considerations must be made in evaluating the employee's service on County Council. We suggest you seek guidance from the State Ethics Commission regarding any other potential conflicts that may exist due to the employee's dual service.

Very truly yours,



Cydney M. Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Assistant Deputy Attorney General