



HENRY MCMASTER  
ATTORNEY GENERAL

September 29, 2006

Mr. Robert Garner  
400 Gage Avenue  
Union, South Carolina 29379

Dear Mr. Garner:

We received your letter informing us of your desire to obtain a position on the Union City Council ("City Council"). You also informed us that you currently serve as the Assistant Director for the Union County Emergency Services Agency (the "Assistant Director"). You inquire to this Office as to whether a conflict of interest would arise if you are elected to City Council, thus prohibiting you from serving in both positions. Presuming your question relates to a master-servant conflict of interest, it is our opinion that none exists between a position on City Council and a position of Assistant Director. Thus, we do not believe you are prohibited from serving in both positions.

#### Law/Analysis

Initially, it is our understanding that your inquiry of whether your services on City Council while employed as Assistant Director would result in a conflict of interest pertains to whether your simultaneous service in both positions would result in a master-servant conflict of interest. However, we recognize other conflicts of interest may arise due to your service in both positions, particularly those arising under the State Ethics Reform Act. The State Ethics Reform Act specifically affords authority to the South Carolina State Ethics Commission to interpret and issue opinions pertaining to this act. S.C. Code Ann. § 8-13-320(11) (Supp. 2005). Thus, should you require an opinion as to conflicts of interests arising under the State Ethics Reform Act, we suggest you contact the State Ethics Commission.

With regard to a conflict of interest arising out of a master-servant relationship,

"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.

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Furthermore, a conflict of interest may be demonstrated by the power to regulate the compensation of the other, or to audit his accounts.”

Op. S.C. Atty. Gen., May 21, 2004 (quoting Op. S.C. Atty. Gen., January 19, 1994). Moreover, our Supreme Court described such a conflict as follows:

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.

McMahan v. Jones, 94 S.C. 362, 365, 77 S.E. 1022, 1022 (1913). Thus, we must consider whether, if elected, your position on City Council would allow you to exercise some degree of supervision over your position as Assistant Director.

Based on the information you provided to us, the Union County Emergency Services Agency (the “Agency”) is a Union County (“County”) agency. We understand a significant amount of the Agency’s funding comes from 911 subscriber billings, which are collected by the local telephone service provider and remitted to the County. In speaking with your supervisor, the Director of Emergency Services (the “Director”), he informed us that the Agency also receives funding from Union County (the “County”) and from the federal government, but your particular position is funded by the 911 subscriber billings.

You informed us that the position of Assistant Director acts under the supervision of the Director, who may hire and fire the Assistant Director. Based on the job description summary you provided to us, your general duties as Assistant Director entail supervision of the Emergency Services 911 Center; the performance emergency management functions including “planning, mitigation, response and recover programs;” the establishment of rules and performance standards for employees of the Emergency Services 911 Center; and conducting employee evaluations and training programs, to name a few. Additionally, in our conversation with the Director, we inquired as to any interaction between the Agency and the City of Union (the “City”). He explained the role of the Agency is that of a coordinating agency, which works with the local, state, and federal governments in a time of an emergency. He gave no indication that the City had authority over Agency or its employees including the Assistant Director.

Based on the information provided above, the County through the Director, not the City, has the power to hire the Assistant Director. The County, not the City, funds the Assistant Director’s position through its collection of 911 subscriber billings funds the Assistant Director’s position. Moreover, we find no evidence that a position on City Council would allow you to have supervisory power over your position as Assistant Director. Thus, we conclude no master-servant conflict of exists between a position on City Council and your position as Assistant Director.

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In many opinions involving circumstances such as those described in your letter, we cautioned the requester that those employed by governmental agencies must ascertain that their pursuit of elected office does not violate their employing agency's policies. Included in your letter, you provided us with a copy of an excerpt from the Union County employee policies, which states as follows:

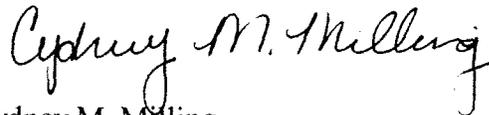
No employee of the County shall engage in political activity:

(1) While on duty or while the employee is carrying out some function, duty, transaction, business, or responsibility for which he was employed; (2) while the employee is wearing, carrying, or in any way displaying a uniform, insignia, sign or any other object which might reasonably identify the employee with an office or position of the County or with County government.

Any County employee who wishes to become a candidate for a County elected office (i.e. Auditor, Clerk of Court, Coroner, County Council, Probate Judge, Sheriff, Supervisor, Treasurer) shall be required to take a leave or absence from employment with the County as of the date the employee files as a candidate for elected office.

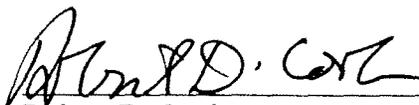
While we are not privy to all Union County employee policies, based on the information provided, it does not appear that you are prohibited from seeking elected office on City Council. However, we note you must comply with the County policy concerning political activity.

Very truly yours,



Cydney M. Milling  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Assistant Deputy Attorney General