

October 22, 2007

John E. Frampton, Director  
South Carolina Department  
Of Natural Resources  
P. O. Box 167  
Columbia, South Carolina 29202

Dear Mr. Frampton:

In a letter to this office you questioned whether an employee of a Soil and Water Conservation District could serve on the Conservation District Board as a District Commissioner at the same time. According to your letter,

[d]istricts employ individuals and the Commissioners of each district have the following management/relationship with their employee(s): set compensation rates, award bonuses or pay increases, establish work schedules, designate holidays to be recognized, set annual and sick leave policies, take disciplinary actions as needed, is the hiring and firing authority, and all other personnel management of their employees. The Commissioners and the District employees are in an employer-employee relationship.

As noted in an opinion of this office dated July 19, 2006,

[t]his Office, on numerous occasions, described the conflicts of interest that may arise out of a master-servant 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

Mr. Frampton  
Page 2  
October 22, 2007

accounts.” Op. S.C. Atty. Gen., May 21, 2004 (quoting Op. S.C. Atty. Gen., January 19, 1994). Moreover, our Supreme Court in McMahan v. Jones, 94 S.C. 362, 365, 77 S.E. 1022, 1022 (1913) 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.” Thus, we recognize if a master-servant conflict exists, a public official is prohibited from serving in both roles.

That opinion further stated that “[t]raditionally, a master-servant role arises when an individual serves as an employee for the same body to which he or she serves as an officer.” Another opinion of this office dated April 4, 2006 added that

[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.

That opinion recognized, of course, that a determination of whether or not an actual conflict exists is a question of fact, which may not be determined in an opinion of this office. Therefore, an opinion such as this, is limited to a consideration of the applicable law which may be considered by a court in making a particular determination. The opinion further noted that

[i]n identifying situations in which a particular 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.

Consistent with the above, while only a court could resolve the matter with finality, in the opinion of this office, a court may find an employee of a soil and water conservation district serving on the conservation district board as a district commissioner at the same time to be a violation of common law master-servant principles and, therefore, should be avoided.

With kind regards, I am

Mr. Frampton  
Page 3  
October 22, 2007

Sincerely,

Henry McMaster  
Attorney General

By: Charles H. Richardson  
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:

---

Robert D. Cook  
Assistant Deputy Attorney General