



HENRY McMASTER
ATTORNEY GENERAL

June 4, 2009

The Honorable Michael W. Gambrell
Member, House of Representatives
400 Filter Plant Road
Honea Path, South Carolina 29654

Dear Representative Gambrell:

In a letter to this office you questioned whether an individual may be appointed to the Anderson County Election Commission if that individual already serves on the Iva Fire Department Board of Directors.

Article XVII, Section 1A of the South Carolina 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, a member of a lawfully and regularly organized fire department, a constable, or a 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).

This office has repeatedly determined that positions on county election commission boards are offices for dual office holding purposes. See: Ops. dated November 8, 2006; May 18, 2006; July 9, 2004; April 21, 1998. Consistent with such, an individual who would serve on the Anderson County Election Commission would hold an office for dual office holding purposes.

As to a member of the Iva Fire Department Board of Directors, I am unaware of any State statutes or enactments by the Anderson County Council authorizing such position or defining its responsibilities. As a result, I contacted Anderson County Fire Chief William Gibson who forwarded to me a copy of the Rules and Regulations of the Anderson County Fire System. Included in such is a section related to the organization of the Board of Directors. Such states in part that

[o]nce the need for...(a)...fire station has been established, the Fire Commission will notify the citizens in the service area that a station will be established. The

community will then elect a Board of Directors. The number of board members must be sufficient to adequately conduct business on behalf of the fire station.

A minimum of three board officers is to be elected.

As to the duties of the Board of Directors, it is stated that the Board of Directors will be responsible for:

1. Naming the station, securing the site for the station, the deed to the land, securing and maintaining the charter of the station.
2. Obtaining and maintaining the non-profit status per state law.
3. Cooperate with the fire commission in conducting fire department business and finances.
4. Creating a constitution and bylaws governing the operation of the Board of Directors. This constitution must be approved by the Fire Commission.
5. Appointing committees to solicit funds for the fire station.
6. Cooperate with the Fire Commission and county fire chief to obtain funding for the fire station and specifications for the fire station.
7. Assuming financial responsibility pertaining to the construction and future operation for the fire stations.
8. Cooperate with the Fire Commission and county fire chief to determine sites for substations as needed and specifications for substations.
9. The Fire Commission will secure bond for the station treasurer.
10. Holding public meetings quarterly. Holding special meetings as needed.
11. Providing a copy of the minutes of all meetings to the Fire Commission.
12. Holding annual elections for board members and officers by March 1st of each year. Documentation of the election must be provided to the Fire Commission. Terms of board members should be arranged to allow staggered terms.
13. Supervise the spending of all funds taken in by the fire station. This will include: money allotted by the Fire Commission, state 1% funds, and funds raised by the station.
14. Maintaining at least three (3) separate accounts for the purpose of accounting. One for county funds, one for 1% funds, and one for station raised funds.
15. Providing regular periodic financial statements to the Fire Commission.
16. Providing financial statements...(to)...the Commission or the Commission auditor upon request.

A review of prior opinions of this office with regard to certain boards of directors is helpful in resolving your question. An opinion of this office dated July 22, 1998 dealt with the question of whether a member of the board of the Powdersville Water Company constituted an office for dual office holding purposes. That opinion stated in part that

This Office has never addressed the question of whether service on the board of the Powdersville Water Company would be considered an office for dual office holding purposes. However, we have addressed the question in regards to other water companies created in a like manner. In an opinion dated September 7, 1993, this Office was asked whether service on the board of directors of the Chesterfield County Rural Water Company, Inc. would be considered an office for dual office holding purposes. In researching the Chesterfield County Rural Water Company, this Office discovered that it was a nonprofit corporation formed in whole or in part by funds from the Farmers Home Administration. The rights, powers, and duties which may be exercised by the corporation were set forth in Act No. 1030 of 1964. The referenced Act is presently codified as Chapter 35 of Title 33, relating to federally financed nonprofit corporations. The opinion further stated:

While the entity is created pursuant to general enabling legislation, no specific legislation created this specific entity. No legislation created the position of director or member of the governing body; specifies qualifications to be met by the holder of the position; requires an oath of the holder; or provides for his compensation. These matters are all provided for in the charter or bylaws. A review of the powers and duties to be exercised by directors or members of the governing body (as found in the charter and in chapter 35 of title 33) does not reveal any powers or duties which are indicative of an exercise of sovereign power (i.e., eminent domain, levying and collecting taxes, pledging the credit of the State or a political subdivision, among many others).

Considering all of the foregoing factors, this office was of the opinion that one who would serve as a director or member of the governing body of the Chesterfield County Rural Water Co., Inc. would most probably not be considered an office holder for dual office holding purposes. The July, 1998 opinion concluded that since the Powdersville Water Company was created in a manner similar to the Chesterfield County Rural Water Company and exercised like powers, the conclusions reached in the aforementioned opinion would apply to the situation at hand. Therefore, it was determined that membership on the board of the Powdersville Water Company would most probably not be considered an office for dual office holding purposes.

An opinion of this office dated July 22, 1986 determined that a member of the board of directors of the Greenville Central Area Partnerships, Inc. is not an office holder for dual office holding purposes. It was recognized that no legislative act of the General Assembly or the Greenville City or County Councils was involved in creating the Partnership. Also, a review of the activities of the Partnership did not appear to involve an exercise of the sovereign power of the State.

Another opinion of this office dated March 27, 1985 dealt with the question of whether a member of the Board of Directors of the Governor's School for the Arts constituted an opinion for

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dual office holding purposes. The opinion recognized that the Board was created by an executive order of the Governor whose members served specific terms but there were no provisions for qualifications, an oath or a salary. It was referenced that it appeared that "...the powers and duties exercised by the Board do not involve an exercise of sovereign power but are more advisory in nature." As a result, it was concluded that a member of the Board would not hold an office for dual office holding purposes.

Consistent with the conclusions and bases for the above-referenced opinions, based upon my review of the duties and responsibilities of the Board of Directors of the Iva Fire Department, in the opinion of this office, a member of the Board would most probably not be considered an office holder for dual office holding purposes in that the duties of a member of the Board of Directors do not appear to involve an exercise of some portion of the sovereign power of the State. As a result, in the opinion of this office, a single individual may serve both as a member of the Board of Directors of the Iva Fire Department and as a member of the Anderson County Election Commission.

With kind regards, I am,

Very truly yours,

Henry McMaster
Attorney General



By: Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General