

April 5, 2007

Bryan G. Riebe, Chief  
Glassy Mountain Fire Service Area  
2015 Highway 11  
Landrum, South Carolina 29356

Dear Chief Riebe:

We received your letter requesting an opinion concerning dual office holding. Specifically, you request an opinion addressing whether the dual office holding prohibition contained in the South Carolina Constitution prohibits an individual “who serves as a fire department commissioner, from serving as a volunteer firefighter with the same entity?”

### **Law/Analysis**

Article XVII, section 1A of the South Carolina Constitution (Supp. 2006) prohibits a person from holding “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.” In order to contravene this provision, a person concurrently must hold two offices having duties that involve the exercise of some portion of the sovereign power of the State. Sanders v. Belue, 78 S.C. 171, 174, S.E. 762, 763 (1907). Furthermore, our courts recognize other relevant considerations in determining whether an individual holds an office, such as, whether a statute, or other such authority, establishes the position, proscribes the position’s duties or salary, or requires qualifications or an oath for the position. State v. Crenshaw, 274 S.C. 475, 477, 266 S.E.2d 61, 62 (1980).

You have not asked us to opine on whether a particular fire department’s commissioners are officers for purposes of dual office holding. However, we note in numerous opinions, this Office opined that a fire commissioner holds an office for purposes of article XVII, section 1A of the South Carolina Constitution. Ops. S.C. Atty. Gen., August 14, 1996; April 20, 1994; June 4, 1986. Nonetheless, article XVII, section 1A clearly exempts members of lawfully and regularly organized fire departments from the dual office holding prohibition. Thus, we do not believe an individual’s service as a member of a fire department’s commission while serving as a volunteer firefighter runs afoul of this constitutional provision.

Despite finding article XVII, section 1A does not prohibit an individual from serving both on a fire department's commission and as a volunteer firefighter for the same entity, such simultaneous service may create a master-servant relationship that is prohibited under South Carolina common law. In a past opinion, 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.

In several prior opinions, we considered whether a master-servant conflict was created when a fire department commissioner also serves as a firefighter in the same department. Ops. S.C. Atty. Gen., February 28, 2001; January 23, 2001; October 9, 1995; April 20, 1994; January 19, 1994. In these opinions, we considered the fact that the commissioners act in a supervisory capacity over the firefighters, have authority appoint and remove the firefighters, supervise personnel matters, and have authority over the equipment used by the firefighters. Id. Based on these considerations, we concluded a master-servant relationship exists between the commissioners and the firefighters. Id. Thus, simultaneous service in both positions creates a conflict of interest in violation of common law

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master-servant principles. Presuming the fire department commissioners to whom you refer in your letter act in a supervisory capacity over the firefighters, in keeping with our prior opinions, we believe a master-servant conflict would arise prohibiting such individuals from serving in both capacities.

### **Conclusion**

Because firefighters are specifically exempt from the dual office holding prohibition contained in the South Carolina Constitution, we do not believe this provision prevents a firefighter from serving as a commissioner for a fire department. However, such simultaneous service most likely creates a master-servant conflict of interest in degradation of the common law. Thus, if such a conflict exists, one may not serve as both a firefighter for a particular fire department while serving on its commission.

Very truly yours,

Henry McMaster  
Attorney General

By: Cydney M. Milling  
Assistant Attorney General

REVIEWED AND APPROVED BY:

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Robert D. Cook  
Assistant Deputy Attorney General