

June 14, 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 a follow-up opinion from this Office based on information provided to you in an opinion dated April 5, 2007. Specifically, you ask whether a member of the Glassy Mountain Fire Service Area's ("GMFSA's") Commission Board (the "Board") may serve as a volunteer firefighter for GMFSA.

Law/Analysis

In our April 5, 2007 opinion, we addressed whether the dual office holding prohibition contained in the South Carolina Constitution prohibits an individual from serving as a fire department commissioner while serving as a volunteer firefighter for the same entity. Op. S.C. Atty. Gen., April 5, 2007. We concluded that because article XVII, section 1A exempts members of lawfully and regularly organized fire departments from the dual office holding prohibition, such simultaneous service is not prohibited under article XVII, section 1A. Id. However, we cautioned that such service could give rise to a master-servant conflict of interest. Id. We explained how and when a master-servant conflict of interest arises and pointed you to several opinions of this Office addressing whether such a conflict is created when a fire department commissioner also serves as a firefighter in the same department. Id. We noted: "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. (citing Ops. S.C. Atty. Gen., February 17, 2001; January 23, 2001; October 9, 1995; April 20, 1994; January 19, 1994). Based on these considerations, we concluded a master-servant relationship exists between the commissioners and the firefighters. Id.

In your letter, you provided us with the following information:

In January the GMFSA Commission Board was established as a Special Tax District by Greenville County through Ordinance 1786. The Commission Board consists of 7 elected members with the authority pursuant to the South Carolina Code 4-19 with noted changes related only to the ability of the Commission to levy and

collect taxes or assess fees. The Commissioners are administered an oath and sworn in by the local County Council representative. Following the death of an elected Commissioner, an appointment to fill the unexpired term was made April 16, 2007, effectively creating a Board majority who also serve as volunteers with the department.

From the information you provided, it appears membership on the Board constitutes an office. However, as we emphasized in our April 5, 2007 opinion, because article XVII, section 1A exempts firefighters from the dual office holding prohibitions, we do not find service as a member of the Board while also serving as a firefighter for GMFSA violates this provision. However, we must consider whether the simultaneous service in these positions creates a master-servant conflict of interest.

In a conversation with you, we learned you, as GMFSA's chief, have authority over the hiring and firing of its firefighters. You also have authority over disciplinary matters concerning firefighters. But, as you pointed out, an aggrieved firefighter may appeal your decision to the Board. You create GMFSA's personnel policies, but these policies must be approved by the Board. Further, you draft GMFSA's budget, which includes a line item for stipends for volunteer firefighters, but it also must be approved by the Board. Lastly, you informed us that your position reports directly to the Board.

Unlike our prior opinions in which the fire department commissioners directly supervised, hired, and fired firefighters, we understand in the case of GMFSA, the chief is directly responsible for the firefighters. However, because the chief reports directly to the Board and because much of the chief's authority is subject to the approval of the Board, we are of the opinion that a volunteer firefighter's service as a member of the Board most likely creates a master servant conflict of interest. Thus, if a court were to come to this conclusion, a volunteer firefighter would be prohibited from serving as a member of the Board.

Very truly yours,

Henry McMaster
Attorney General

By: Cydney M. Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:

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