



HENRY McMASTER  
ATTORNEY GENERAL

August 13, 2009

The Honorable William C. Stanley  
Mayor, Town of Ehrhardt  
P. O. Box 185  
Ehrhardt, South Carolina 29081

Dear Mayor Stanley:

In a letter to this office you indicated that the Ehrhardt Chief of Police who lives in Norway, South Carolina has informed you that he intends to run for the office of mayor of Norway. Referencing such, you have questioned whether the Chief may continue on as Chief of Police of the Town of Ehrhardt between now and the upcoming election in Norway. You also questioned whether if he is elected Mayor of Norway, may he continue as Chief of Police of Ehrhardt.

In examining your question, consideration must first be given to whether there are any municipal ordinances or provisions that would comment on the Chief's eligibility to run for office or engage in any type of political activity while serving as Chief. Inasmuch as this office is not familiar with such local provisions, you should contact you town attorney for his review of whether any local provisions comment on such a candidacy.

Also to be considered is the question of dual office holding. 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 in prior opinion dated March 7, 2008 stated that

[t]he prohibition on dual office holding is only contravened when an individual who holds an office assumes a second office. Merely running for an office does not

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violate the dual office holding prohibition. The problem would arise if the individual holding the first office were elected, took the oath, and began to exercise the duties of the second office.

Therefore, I am unaware of any specific prohibition to a chief of police running for the office of mayor.

However, this office has concluded in prior opinions that the office of chief of police constitutes an office for dual office holding purposes. See: Ops. Atty. Gen. dated August 27, 2003 and May 24, 2000. The August, 2003 opinion noted that the State Supreme Court in Edge v. Town of Cayce, 187 S.C. 171, 197 S.E. 216 (1938) had so held as well. Moreover, the Supreme Court in Richardson v. Town of Mt. Pleasant, 350 S.C. 291, 566 S.E.2d 523 (2002) determined that a municipal police officer is not exempt as a constable and, therefore, holds an office for dual office holding purposes of the State Constitution. Numerous opinions of this office have concluded that a mayor is an officer for dual office holding purposes. See, e.g., Ops. Atty. Gen. dated February 17, 2009; May 6, 2005; May 28, 2002; April 28, 1999. Therefore, consistent with these opinions, while there are no State statutory or constitutional provisions which would prohibit a chief of police from running for the office of mayor, if he was to be successfully elected as mayor, it would be a violation of the dual office holding provision of the State Constitution to hold both offices simultaneously.

With kind regards, I am,

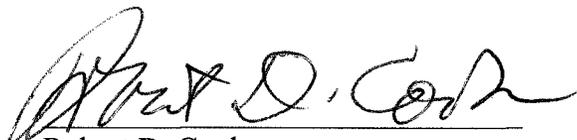
Very truly yours,

Henry McMaster  
Attorney General



By: Charles H. Richardson  
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Deputy Attorney General