



HENRY McMASTER
ATTORNEY GENERAL

June 23, 2009

John B. Williams, Esquire
Moncks Corner Town Attorney
209 East Main Street
Moncks Corner, South Carolina 29461

Dear Mr. Williams:

In a letter to this office you questioned whether it is a violation of the dual office holding provisions of the State Constitution for an individual who is a member of the Moncks Corner Rural Volunteer Fire Department to also serve as an officer of the Moncks Corner Rural Fire Commission.

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 in prior opinions concluded that a member of a fire commission board is an officer for dual office holding purposes. See: Ops. Atty. Gen. dated December 5, 2008; March 3, 2004; January 19, 1994; and December 29, 1983. Therefore, in the opinion of this office, an officer of the Moncks Corner Rural Fire Commission would similarly hold an office for dual office holding purposes.

As noted above, there is an exception in Article XVII, Section 1A of the State Constitution from consideration as an officer for dual office holding purposes of "a member of a lawfully and regularly organized fire department." Therefore, this office has concluded in numerous opinions that a member of "a lawfully and regularly organized fire department" is not a position considered to be an office for dual office holding purposes. See: Ops. Atty. Gen. dated June 14, 2007; July 25, 2005; January 23, 2001; June 13, 1996. As a result, there would not be any dual office holding violations

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for an officer of the Moncks Corner Rural Fire Commission could also serving as a member of the Moncks Corner Rural Fire Department.

However, if one individual was to serve in both capacities, such service could give rise to a master-servant problem. In an opinion of this office dated April 5, 2007 it was stated that

Despite finding article XVII, section 1 A 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.

Presuming that 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. As a result, inasmuch as 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

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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.

With kind regards, I am,

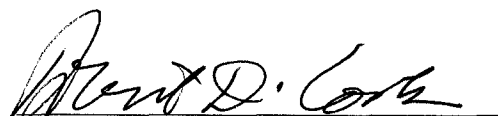
Very truly yours,

Henry McMaster
Attorney General

A handwritten signature in black ink, appearing to read "Charles H. Richardson", with a long horizontal flourish extending to the right.

By: Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:

A handwritten signature in black ink, appearing to read "Robert D. Cook", written over a horizontal line.

Robert D. Cook
Deputy Attorney General