

October 22, 2007

W. Clay Young, County Administrator
Dillon County
Post Office Box 449
Dillon, South Carolina 29536

Dear Mr. Young:

We understand from your letter that you wish to obtain an opinion of this Office concerning a member of the Dillon County Council's ability to serve as the E-911 Director for Dillon County. You state that you received an opinion from your county attorney on this issue, which you enclosed, but also seek the advice of this Office.

Law/Analysis

First, we agree with your county attorney's assessment that the councilmember's service as E-911 Director would not violate the dual office holding prohibition contained in the South Carolina Constitution. 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).

While on numerous occasions this Office opined that a position on a county council is an office for purposes of dual office holding, we do not believe service as the E-911 Director (the "Director") for Dillon County also is an office. Ops. S.C. Atty. Gen., January 18, 2006; November 2, 2005; March 18, 2004; July 26, 1999. According to your letter, the Director is hired by the County Administrator, reports to the County Administrator, and serves at the County Administrator's pleasure holding no term of office. We also understand that the Director does not take an oath of office, is paid a salary, and is considered a county employee. Moreover, we have no reason to believe the Director exercises any sovereign power of the State. Thus, we conclude that

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the Director is an employee of Dillon County rather than an officer. Accordingly, service of a member of the Dillon County Council as Director likely does not violate article XVII, section 1A of the South Carolina Constitution.

Although we do not believe a councilmember's service as director constitutes dual office holding, we believe his or her simultaneous service in both roles creates a common law master-servant conflict of interest. Our Supreme Court in McMahan v. Jones, 94 S.C. 362, 77 S.E. 1022 (1913) explained the rationale for the prohibition against master-servant conflicts of interest. "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." Id. at 365, 77 S.E. at 1023. In prior opinions, we described when such a conflict exists.

"[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."

Op. S.C. Atty. Gen., May 21, 2004 (quoting Op. S.C. Atty. Gen., January 19, 1994).

Based on your letter and our conversations with you, we understand that the County Administrator hires and may fire the Director. Furthermore, the Director reports to the County Administrator and serves at his discretion. However, the County Administrator reports directly to County Council. Thus, although the Director does not directly serve and report to County Council, we believe County Council nonetheless has ultimate authority over the Director's position. Moreover, you informed us that County Council sets the budget for the E-911 department, which includes the Director's salary. Thus, County Council is in a position to regulate the compensation of the Director. Accordingly, we believe if a member of County Council serves as Director, a master-servant conflict of interest will likely arise and therefore, we advise against one person's service in both positions.

Conclusion

We agree with the conclusion of your county attorney that a councilmember's service as E-911 Director does not violate the dual office holding provision contained in the South Carolina Constitution. However, in reviewing the nature of the Director's position, a councilmember's service as Director likely creates a master-servant conflict of interest in violation of common law principles. Thus, we believe a court would find the simultaneous service of one individual in both positions is prohibited.

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Very truly yours,

Henry McMaster
Attorney General

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Assistant Attorney General

REVIEWED AND APPROVED BY:

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