



ALAN WILSON
ATTORNEY GENERAL

March 20, 2012

The Honorable Buck Fralick
Member, Bamberg City Council
P.O. Box 300
Bamberg, South Carolina 29003

Dear Councilman Fralick,

We received your letter requesting an opinion of this Office as to whether State law prohibits you from simultaneously serving as a councilmember for the City of Bamberg (“City”), Chairman of the City Fire Commission, and a volunteer fireman for the City. You explain that you have served as a volunteer fireman for many years and continue to do so. After further discussion regarding your position on the Fire Commission, it is our understanding the Fire Commission is a simply a committee of the City Council. Thus, we find it necessary to only address whether State law prohibits you from simultaneously serving as a member of City Council and as a volunteer fireman for the City.

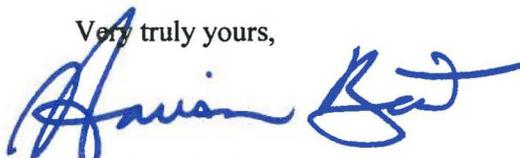
Law/Analysis

Article XVII, section 1A of the South Carolina Constitution provides that “[n]o person may hold 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.” For a violation of this provision to occur, an individual must concurrently hold two public offices which have duties “involving an exercise of some part of the sovereign power” of the State. Sanders v. Belue, 78 S.C. 171, 174, 58 S.E.2d 762, 763 (1907). A public officer is “[o]ne who is charged by law with duties involving an exercise of some part of the sovereign power, either great or small, in the performance of which the public is concerned, and which are continuing, and not occasional intermittent, is a public officer.” Id., 58 S.E.2d at 762-63. Other relevant considerations include: “whether the position was created by the legislature; whether the qualifications for appointment are established; whether the duties, tenure, salary, bond, and oath are prescribed or required; whether the one occupying the position is a representative of the sovereign; among others.” State v. Crenshaw, 274 S.C. 475, 478, 266 S.E.2d 61, 62 (1980).

This Office has issued numerous opinions concluding that a position on a town or city council is an office for purposes of dual office holding. See, e.g., Ops. S.C. Atty. Gen., March 29, 2011; June 11, 2008; October 7, 2006; November 5, 2003. However, Article XVII, section 1A clearly exempts a “member of a lawfully and regularly organized fire department” from the dual office holding prohibition. Thus, your service as a volunteer firefighter does not constitute an office for such purposes. Consequently, your simultaneous service as a member of City Council and as a volunteer fireman does not contravene the constitutional prohibition against dual office holding.

However, your simultaneous service as a member of City Council and as a volunteer fireman for the City may contravene statutory law. S.C. Code section 5-7-180 provides that “[e]xcept where authorized by law, no mayor or councilman shall hold any other municipal office or municipal employment while serving the term for which he was elected.” As we have previously stated, “this provision prevents mayors and members of [city] councils from being employed by their [cities] while in office.” Op. S.C. Att’y Gen., February 17, 2009. This Office has repeatedly opined that volunteer firemen are municipal employees for purposes of section 5-7-180 such that a mayor or councilmember of a municipality is prohibited from holding such a position. See Ops. S.C. Att’y Gen., January 8, 1996; December 6, 1995; September 7, 1982; August 9, 1979. A copy of the December 6, 1995 opinion is attached for your review. Accordingly, this Office of the opinion that your service as a volunteer fireman for the City during your term as a member of City Council violates section 5-7-180. We further note that under section 5-7-200(a), a violation of section 5-7-180 constitutes grounds for forfeiture of the office of mayor or councilman of a municipality.¹

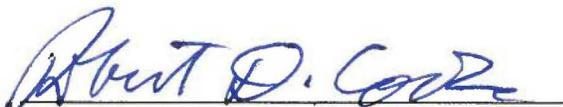
Very truly yours,



Harrison D. Brant
Assistant Attorney General

Enclosures

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General

¹ Specifically, section 5-7-200(a) provides, with emphasis:

A mayor or councilman shall forfeit his office if he (1) lacks at any time during his term of office any qualification for the office prescribed by the general law and the Constitution; (2) violates any express prohibition of Chapters 1 to 17; or (3) is convicted of a crime involving moral turpitude.