



ALAN WILSON  
ATTORNEY GENERAL

July 19, 2013

The Honorable Shane Martin  
Delegation Chairman  
Spartanburg County Legislative Delegation  
366 N. Church Street, Room 1210  
Spartanburg, SC 29303

Dear Senator Martin:

In your June 24, 2013 letter you request an opinion from this office as to whether two applicants—one employed as a Code Enforcement Officer for the Spartanburg County Sheriff's Department and another employed as a State Trooper at the South Carolina Department of Public Safety—would be permitted to serve as a fire commissioner on a Special Purpose Fire District given the South Carolina Constitution's prohibition on dual office holding.

#### Law/Analysis

Article XVII, Section 1A of the South Carolina Constitution explains, "no person may hold two offices of honor or profit at the same time ...," with exceptions specified for "an officer in the militia, member of a lawfully and regularly organized fire department, constable, or a notary public." This provision is violated when a person concurrently holds two public offices with duties involving an exercise of some portion of the sovereign power of the State. Sanders v. Belue, 78 S.C. 171, 174, 58 S.E. 762, 763 (1907). In determining whether an office is public, and thus whether its occupant constitutes a public officer, South Carolina Courts have explained: "[o]ne who is charged by law with duties involving an exercise of some part of the sovereign power, either small or great, in the performance of which the public is concerned, and which are continuing, and not occasional or intermittent, is a public officer." Id., 58 S.E. 762-63. Other relevant considerations for such a determination include: "whether statutes, or other such authority, establish the position, prescribe its tenure, duties or salary, or require qualifications or an oath for the position." State v. Crenshaw, 274 S.C. 475, 478, 266 S.E.2d 61, 62 (1980).

In previous opinions from this Office, we have advised that a Code Enforcement Officer is an office holder for purposes of dual office holding.<sup>1</sup> Additionally, both this Office<sup>2</sup> and the Supreme Court of South Carolina<sup>3</sup> have opined that a State Trooper is an office holder for dual office holding purposes. Our Office has also concluded that an individual serving as a fire commissioner, or serving as a member of a fire commission, would be an office holder for purposes of dual office holding.<sup>4</sup> Moreover, this Office will not overrule a prior opinion unless it is clearly erroneous or a change occurred in the applicable law. Ops. S.C. Atty. Gen., 2009 WL 959641 (March 4, 2009); 2006 WL 2849807 (September 29, 2006); 2005 WL 2250210 (September 8, 2005); 1986 WL 289899 (October 3, 1986); 1984 WL 249796 (April 9, 1984). As a result, it is this Office's opinion that both of the applicants referenced in your letter would offend Article XVII, Section 1A's dual office holding provision were they to serve as commissioner of a Special Purpose Fire District.

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<sup>1</sup> See Op. S.C. Atty. Gen., 2012 WL 5376055, n.1 (October 19, 2012) (detailing Code Enforcement Officers exercise police powers meaning they are an officer for dual office holding purposes); Op. S.C. Atty. Gen., 2012 WL 1154553 (March 27, 2012) (stating that both a county and municipal Code Enforcement Officer would be an office holder for dual office holding purposes); Inf. Op. S.C. Atty. Gen., 2001 WL 265263 (February 9, 2001) (concluding a county Code Enforcement Officer is an office holder for dual office holding purposes, despite the fact constables are excluded from Art. XVII, § 1's dual office holding provision); Inf. Op. S.C. Atty. Gen., 1998 WL 62947 (January 6, 1998) ("This Office has previously concluded that a county code enforcement officer would be considered an office holder for dual office holding purposes."); Inf. Op. S.C. Atty. Gen., 1997 WL 568835 (July 10, 1997) (noting a Code Enforcement Officer is an office holder for dual office holding purposes); Inf. Op. S.C. Atty. Gen., 1997 WL 255969 (April 24, 1997) ("We have concluded that a Code Enforcement Officer is an 'officer' for dual office holding purposes."); Inf. Op. S.C. Atty. Gen., 1997 WL 255956 (April 9, 1997) (analyzing the South Carolina Code and determining a county code enforcement officer is an office holder because the officer exercises the traditional sovereign power of the State, specifically the police power); Op. S.C. Atty. Gen., 1994 WL 703272 (November 2, 1994) ("I must advise that a mayor or council member would be prohibited from serving as a police officer, police chief, or code enforcement officer during the term for which he was elected, due to the applicable statutory and constitutional prohibitions discussed above.").

<sup>2</sup> See e.g. Op. S.C. Atty. Gen., 2012 WL 4836949 (October 2, 2012) (noting a State Trooper is an officer holder for purposes of dual office holding); Op. S.C. Atty. Gen., 2011 WL 3346425 (July 8, 2011) (stating a state trooper or highway patrolman is an office holder for purposes of dual office holding); Inf. Op. S.C. Atty. Gen., 1999 WL 540716 (June 21, 1999) ("We have also concluded that a highway patrolman holds an office for dual office holding purposes."); Op. S.C. Atty. Gen., 1982 WL 189467 (October 19, 1982) (concluding highway patrolmen are considered officers under Art. XVII, § 1A of the South Carolina Constitution); Op. S.C. Atty. Gen., 1982 WL 189462 (October 14, 1982) (opining highway patrolmen are considered officer for dual office holding purposes).

<sup>3</sup> See State v. Bridges, 329 S.C. 11, 16, 495 S.E.2d 196, 199 (1997) ("[W]e hold that Highway Patrol officers and troopers are 'public officials.'").

<sup>4</sup> See Op. S.C. Atty. Gen., 2009 WL 1968630 (June 23, 2009) ("This office has in prior opinions concluded that a member of a fire commission board is an officer for dual office holding purposes."); Op. S.C. Atty. Gen., 2008 WL 5476550 (December 5, 2008) (concluding a member of a fire commission board is an office for dual office holding purposes); Op. S.C. Atty. Gen., 2004 WL 439328 (March 3, 2004) ("[T]his office has also opined in other specific instances that commissioners for local fire control districts hold offices for dual office holding purposes."); Op. S.C. Atty. Gen., 1994 WL 50434 (January 19, 1994) ("[W]e are of the opinion that members of the governing body of the Cherokee Springs Fire District would be considered office holders for purposes of dual office holding."); Op. S.C. Atty. Gen., 1983 WL 182083 (December 29, 1983) (opining that a member of the Anderson County Fire Commission would be an office holder for dual office holding purposes); Op. S.C. Atty. Gen., 1972 WL 20449 (May 9, 1972) (finding an individual's membership on a fire commission would render that individual an officer holder for purposed of dual office holding).

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**Conclusion**

In conclusion, our previous opinions have determined Code Enforcement Officers, State Troopers and Fire Commissioners are each office holders for purposes of dual office holding. Furthermore, our Office has explained it will not overrule a prior opinion unless it is clearly erroneous or a change occurred in the applicable law. Accordingly, it is this Office's opinion that both of the applicants referenced in your letter would offend Article XVII, Section 1A's prohibition on dual office holding provision were they to serve as commissioner of a Special Purpose Fire District.

Sincerely,



Brendan McDonald  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Solicitor General