

6935 Liberty



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

June 2, 2000

The Honorable Rembert E. Wrenn
Mayor, Town of Bonneau
Post Office Box 70
Bonneau, South Carolina 29431

Dear Mayor Wrenn:

By your letter of May 25, 2000, you have asked whether a dual office holding situation would exist if you were to serve simultaneously as Mayor of the Town of Bonneau, South Carolina and as a member of the Berkeley County Advisory Rural Fire Control Board. For the reasons set forth below, it is my opinion that concurrent service in these positions does not violate the South Carolina Constitution's prohibition against 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, constable, or a notary public. As concluded by Attorney General Daniel McLeod in an opinion dated April 26, 1977, "[t]o determine whether a position is an office or not depends upon a number of circumstances and is not subject to any precise formula." The South Carolina Supreme Court, though, has held that 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). "One 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., 78 S.C. at 174. Other relevant considerations, as identified by the Court, are whether statutes, or other 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, 266 S.E.2d 61 (1980).

This Office has concluded on numerous occasions that one who serves as a mayor of a municipality would hold an office for dual office holding purposes. Ops. Atty. Gen. dated April 9, 1997, November 2, 1994, July 28, 1993, February 25, 1992 and September 21, 1989. Therefore, having determined that a mayor is an office holder within the meaning of Art.

Request Letter

Mayor Rembert E. Wrenn

Page 2

June 2, 2000

XVII, Sec. 1A, it is necessary, then, to address whether membership on the Berkeley County Advisory Rural Fire Control Board would likewise constitute an office.

Along with your request, you forwarded a copy of the Berkeley County Ordinance creating the Advisory Rural Fire Control Board (Ordinance No. 80-3-5). Members are appointed by County Council for terms that are "concurrent with the term of the Council Member from the district which they represent, or until their successors are appointed and qualify." No provision is found in the ordinance requiring members to take an oath, and no compensation is provided for in the ordinance. Moreover, no qualifications to be met by members are specified in the ordinance. The preamble to the ordinance states that it was County Council's "desire to create an *advisory* rural fire control board possessing the same duties as the *advisory* rural fire control board established by Act No. 1055 [of the 1964 Acts And Joint Resolutions]." (Emphasis added.) According to Act No. 1055 of 1964, the Board's sole duty "shall be to coordinate the activities of the local rural fire control board." Thus, it appears that the Berkeley County Advisory Rural Fire Control Board is largely advisory in nature and that the actual exercise of sovereign power, if any, is carried out by the local fire control board. This Office has concluded on numerous occasions that members of advisory bodies are not considered office holders. *See, e.g.*, Ops. Atty. Gen. dated May 9, 1989 (Indigent Care Advisory Board); May 15, 1989 (Work Support Advisory Council); and February 6, 1985 (Wateree District Advisory Board of Health). Therefore, based upon the reasoning and conclusions of these earlier opinions, a member of the Berkeley County Advisory Rural Fire Control Board would not be deemed an office holder for dual office holding purposes. Accordingly, it is my opinion that as Mayor of the Town of Bonneau, South Carolina you may simultaneously serve on the Berkeley County Advisory Rural Fire Control Board without contravening the dual office holding prohibitions of the State Constitution.

I trust this information is responsive to your inquiry and that you will not hesitate to contact me if I can be of additional assistance.

Sincerely yours,



Zeb C. Williams, III
Deputy Attorney General

ZCW/an