



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

February 28, 2001

G. Edward Welmaker, Esquire
Pickens County Attorney
Post Office Box 899
Pickens, South Carolina 29671

Dear Mr. Welmaker:

By your letter of February 26, 2001, you have requested an opinion of this Office concerning whether an individual serving as chairman of the Crosswell Fire District in Pickens County may also serve as a full-time fire fighter for the City of Easley. You inform us that the Crosswell Fire District has a contract with the City of Easley for all of its fire protection.

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, member of a lawfully and regularly organized fire department, constable, or a notary public. For this provision to be contravened, a person concurrently must hold two public offices which have duties involving an exercise of some portion of the sovereign power of the State. See 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 tenure, duties or salary, or require qualifications or an oath for the position. See State v Crenshaw, 274 S.C. 475, 266 S.E.2d 61 (1980).

As stated in the preceding paragraph, the Constitution exempts from dual office holding those persons who are members of a lawfully and regularly organized fire department. Thus, by operation of the Constitution, the position as fire fighter for the City of Easley would not be considered an office for dual office holding purposes. See OPS. ATTY. GEN. June 13, 1996; Jan.19, 1994.

Although service in these two positions would not contravene the dual office holding prohibitions of the State Constitution, the relationship between the two positions is problematic because the chairman of the fire district and the fire fighter are both master and servant. The master-servant relationship has its basis in the common law rather than statutory law and concerns the inevitable conflict of interest that may arise when one office has supervisory power over the other.

Mr. Welmaker
February 28, 2001
Page 2 of 2

In at least two prior opinions of this Office we have discussed the master-servant relationship as it relates to a member of a fire district commission who also wishes to serve as a fire-fighter. See OPS. ATTY. GEN. Oct. 9, 1995; Jan. 19, 1994 (enclosed for your review). In these opinions we concluded that the service in both positions would violate common law and public policy. The reasoning applies to your question, as well. If the Crosswell Fire District, which provides fire protection to Easley, acts in any supervisory capacity over the city fire fighters, by the provision of personnel, equipment, compensation, funding, etc., a master-servant relationship exists and the individual could not occupy both positions.

This letter is an informal opinion only. It has been written by a designated Assistant Attorney General and represents the position of the undersigned attorney as to the specific question asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kind regards, I remain

Very truly yours,



Susannah Cole
Assistant Attorney General