

## The State of South Carolina



## Office of the Attorney General

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April 20, 1994

Ms. Lori A. Hinds  
Administrative Assistant  
Spartanburg County Legislative Delegation  
Room 1210, 366 North Church Street  
Spartanburg, South Carolina 29303

Dear Ms. Hinds:

You have asked whether it would be viewed as a conflict if a commissioner of a fire district (or member of a board of fire control) were to serve as an auxiliary or honorary fireman. By "conflict," I understand the concern to be the constitutional proscription against dual office holding.

Article XVII, Section 1A of the state 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. 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. State v Crenshaw, 274 S.C. 475, 266 S.E.2d 61 (1980).

This Office has advised on many occasions that a member of a board of fire control or a commissioner of a fire district would be considered an office holder for dual office holding purposes. See, as examples, Ops. Atty. Gen. dated January 19, 1994 (Cherokee Springs Fire District); June 11, 1992 and June 4, 1986 (North Spartanburg fire department); and November 30, 1962 (Converse Area Fire District).

We have no information on what an auxiliary fireman is, how a person is selected to be an auxiliary fireman, what an auxiliary fireman does, or the like. Thus, we cannot reach a conclusion as to your specific question. We would point out that if such a fireman is appointed by and subject to the control of the board of fire control or the fire

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district commission, there could be conflict of interest, or master-servant, problems as outlined in our opinions of January 19, 1994, to Spartanburg delegation members. Dual office holding would probably not be a problem if auxiliary firemen are considered members of lawfully and regularly organized fire departments, as the State Constitution, art. XVII, § 1A, supra, excepts those individuals from dual office holding.

As to an honorary fireman, you have kindly furnished a portion of the constitution and bylaws (revised November 1993) of the Spartanburg County Fire Chief's Association. In Article VII, part 6, on page 3 is the following:

Honorary members shall consist of those persons on whom the Association desires to bestow the honor. He may not vote or hold office. However, he may serve as an ex-officio member on any committee.

We are informed by the office of the Secretary of State that the Association does not appear to be incorporated; thus, we assume it is an organization of some unofficial stature, comprised primarily of the fire chiefs of the various fire departments in Spartanburg County. Since the entity is apparently not created by statute, probably an honorary member thereof would not be considered an office holder. If matters should come before the Association which would affect a particular fire district, we observe that honorary members cannot vote and thus would not be in a position to weigh their loyalty to the fire district versus their loyalty to the Association, an issue often arising when conflict questions are asked.

This opinion is rendered on the basis of the very limited information available on "honorary firemen." If there is other documentation which would require examination, to have today's conclusion re-examined, please advise.

Sincerely,

*Patricia D. Petway*

Patricia D. Petway  
Assistant Attorney General

PDP/an

REVIEWED AND APPROVED BY:

*Robert D. Cook*

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Executive Assistant for Opinions