

5330 Liebrang

The State of South Carolina



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January 19, 1994

The Honorable William Douglas Smith
Member, House of Representatives
320-A Blatt Building
Columbia, South Carolina 29211

Dear Representative Smith:

By your letter of January 14, 1994, you have requested our opinion as to whether a conflict of interest would be created if an individual were to serve simultaneously as Commissioner of the Whitney Area Fire District and also as Fire Chief. In this situation, there would not be a dual office holding problem, see Art. XVII, § 1A and other sections of the State Constitution, but a common law master-servant or conflict of interest situation would most probably exist.

The Whitney Area Fire District was created pursuant to Act No. 856 of 1964, as amended by Act No. 173 of 1969; Act No. 550 of 1971; and Act No. 1150 of 1974. Section 4 of Act No. 856 of 1964 provides for selection of members of the board of fire control, the governing body of the Whitney Area Fire District. Section 5 of that act sets forth the duties of the governing body; subsection (c) empowers the board of fire control to "provide and select the drivers and other volunteer firemen to man such equipment... ." These acts are silent as to the issue you have raised; however, principles of common law and judicial decisions provide the necessary guidance.

Having a fireman or fire chief on the board of fire control or commission which employs or selects the fireman or chief would most probably be viewed as creating a situation in which the individual is both master and servant. The master-servant relationship is based on common law rather than statutory law and may be summarized as follows:

Respectfully,
T. Travis Medlock

[A] conflict of interest exists where one office is subordinate to the other, and subject in some degree to the supervisory power of its incumbent, or where the incumbent of one of the offices has the power of appointment as to the other office, or has the power to remove the incumbent of the other or to punish the other. Furthermore, a conflict of interest may be demonstrated by the power to regulate the compensation of the other, or to audit his accounts.

....

[I]t is not the performance, or the prospective right of performance, of inconsistent duties only that gives rise to incompatibility, but the acceptance of the functions and obligations growing out of the two offices The offices may be incompatible even though the conflict in the duties thereof arises on but rare occasions In any event, the applicability of the doctrine does not turn upon the integrity of the officeholder or his capacity to achieve impartiality. ...

67 C.J.S. Officers, § 27. See also Ops. Atty. Gen. dated May 21, 1984; May 15, 1989; March 3, 1978; and others.

The Supreme Court, in McMahan v. Jones, 94 S.C. 362, 77 S.E. 1022 (1913), declared employment of two commission members, by the commission, to be illegal. The court stated:

No man in the public service should be permitted to occupy the dual position of master and servant; for, as master, he would be under the temptation of exacting too little of himself, as servant; and as servant, he would be inclined to demand too much of himself, as master. There would be constant conflict between self-interest and integrity.

Should Richardson, as chairman of the commission, appoint the committee to investigate his own management of the infirmary, or check his accounts as treasurer? Should he be present, when his administration of the institution is being considered and discussed? Should he and Butler participate,

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when their own duties are being prescribed and their compensation fixed? It requires only a moment's reflection to see that the positions are utterly inconsistent, and ought not to be held by the same persons. Propriety, as well as public policy, forbids it.

If it be said that there are three other members of the commission, who would make a quorum, the answer is that the legislature has expressed the intention that the State should have the benefit of the judgment and discretion, individually and collectively, of a commission of five members,--not three,-- in the administraton [sic] of this charity. By disqualifying two of their number, the commission has practically reduced its membership to three.

Id., 94 S.C. at 365.

Based on the foregoing, it is our opinion that a master-servant relationship, in contravention of common law and public policy, would most probably be created if an individual were to serve concurrently as a fire chief or fireman and on the fire commission board (here, the governing board of the Whitney Area Fire District) which has the right to select or employ such fireman.

With kindest regards, I am

Sincerely,



Patricia D. Petway
Assistant Attorney General

PDP/an

REVIEWED AND APPROVED BY:



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