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The State of South Carolina



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January 19, 1994

The Honorable Robert E. Walker
Member, House of Representatives
402-D Blatt Building
Columbia, South Carolina 29211

Dear Representative Walker:

By your letter of January 7, 1994, you have requested the opinion of this Office on the following questions:

1. It is proper for a fireman to serve on a fire commission board when the commission itself has the right to hire and dismiss firemen?
2. Is it permissible for a person serving on a local school board to also serve on a fire commission board?

Each of your questions will be examined separately, as follows.

Question 1

It is our understanding that the Croft Fire District is the district under consideration in your first question. This district was created pursuant to Act No. 879 of 1960, as amended by Act No. 177 of 1961. Section 4 of Act No. 879 of 1960 provides for selection of members of the governing body of the Croft Fire District. Section 5 sets forth the powers and duties of the governing body; subsection (c) empowers the commission members 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.

Placing a fireman on the fire commission board which employs the fireman would most probably be viewed as creating a situation in which the individual is both master and

Received Letter

servant. The master-servant relationship is based on common law rather than statutory law and may be summarized as follows:

[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

The Honorable Robert E. Walker

Page 3

January 19, 1994

considered and discussed? Should he and Butler participate, 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 be created if an individual were to serve as both a fireman and on the fire commission board (here, the governing board of the Croft Fire District) which has the right to hire and dismiss firemen.

Question 2

The second inquiry is whether an individual may serve simultaneously on a local school board and on a fire commission board, here the Cherokee Springs Fire District board, without violating the dual office holding prohibitions of the state Constitution.

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 numerous occasions that one who serves on a local school board would hold an office for dual office holding purposes. See, as examples of

The Honorable Robert E. Walker
Page 4
January 19, 1994

the numerous opinions, Ops. Atty. Gen. dated August 8, 1990; September 8, 1992; March 3, 1989; June 19, 1991; and many more.

We have apparently never considered whether a member of the governing board of the Cherokee Springs Fire District would be considered an officer for dual office holding purposes. This fire district was created pursuant to Act No. 318 of 1965, as amended by Act No. 489 of 1967; Act No. 740 of 1990; and Act No. 226 of 1993. Section 4 of Act No. 318 of 1965 established the board of fire control, to consist of seven members appointed by the Governor upon recommendation of the majority of the Spartanburg County Legislative Delegation. A six-year term is specified. Members are to serve without pay. Section 5 of that act enumerates the powers and duties to be exercised by the governing body, including buying equipment, selecting sites, providing and selecting drivers and firemen, upkeep and maintenance of equipment, promulgating rules and regulations, and incurring debt on behalf of the fire district. These powers and duties appear to involve an exercise of a portion of the sovereign power of the State.

Considering the foregoing factors, we 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. Thus, if one individual served simultaneously on a local school board and on the governing board of the Cherokee Springs Fire District, the dual office holding prohibitions of the state Constitution would most likely be violated.

With kindest regards, I am

Sincerely,



Patricia D. Petway
Assistant Attorney General

PDP/an

REVIEWED AND APPROVED BY:

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