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The State of South Carolina  
**OFFICE OF THE ATTORNEY GENERAL**

CHARLES MOLONY CONDON  
ATTORNEY GENERAL

October 9, 1995

The Honorable Harold Jenkins  
Chairman, Piedmont Park Fire District Commission  
2119 State Park Road  
Greenville, South Carolina 29609

RE: Informal Opinion

Dear Commissioner Jenkins:

By your letter of September 27, 1995, to Attorney General Condon, the Piedmont Park Fire District Commissioners have requested legal guidance as to whether a duly elected commissioner could also serve as a volunteer officer/fire-fighter. You have expressed the commission's concern that when an issue that requires a commission vote that would affect fire-fighters' interests, rather than overall district interest, arises, the vote of the commissioner/officer/fire-fighter might reflect the interest of the fire-fighters and not necessarily the interest of the district. You have asked whether this situation would constitute a conflict of interest for the commissioner/officer/fire-fighter.

The Piedmont Park Fire District was created pursuant to Act No. 156 of 1963, as amended by Act No. 905 of 1970; Act No. 1840 of 1972; and Act No. 199 of 1975. The latter act provides for selection of the members of the governing body of the fire district. Section 3 of Act No. 156 of 1963 establishes the powers and duties of the governing body; subsection 9 empowers the governing body to "[a]ppoint officers, agents, employees and servants, prescribe the duties of such, fix their compensation, and determine if and to what extent they shall be bonded for the faithful performance of their duties.: Subsection 13 empowers the governing body to "[t]o provide personnel, voluntary or otherwise, necessary to man such [fire fighting] equipment[.]" while subsection 14 authorizes the governing body "[t]o provide and supervise the training of any volunteers used in manning

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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.<sup>1</sup>

Having a fireman or officer on the governing body of the fire district which employs or selects the volunteers and officers to man the fire fighting equipment 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:

[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 but on rare occasions... . In any event, the applicability of the doctrine does not turn upon the integrity of the office-holder or his capacity to achieve impartiality. ...

67 C.J.S. Officers §27. See also Ops. Att'y Gen. dated May 21, 1984; May 15, 1989; March 3, 1978; January 19, 1994; 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:

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<sup>1</sup>It might be necessary to consider statutes within the Ethics, Government Accountability, and Campaign Reform Act of 1991. Because this Office respectfully defers to the judgment of the State Ethics Commission in interpreting these ethics laws, you may wish to consult the Ethics Commission for its guidance on the applicable ethics laws.

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, 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 administration [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, I am of the opinion that a master-servant relationship, in contravention of common law and public policy, would be created if an individual were to serve both as a commissioner of the Piedmont Park Fire District Commission and as an officer or fire-fighter of the district, where the commissioners have the power and duty to appoint or otherwise select or provide the personnel necessary to man the fire fighting equipment.

It is unnecessary to address the issue of dual office holding. The Constitution of the State of South Carolina was amended in 1989 to remove "a member of a lawfully and regularly organized fire department" from dual office holding considerations. See, inter alia, Art. XVII, §1A (1994 Cum. Supp.). Because a fireman would not be considered an office holder for dual office holding purposes, it is unnecessary to examine further the dual office holding issue.

This letter is an informal opinion only. It has been written by a designated Senior Assistant Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the

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Attorney General nor officially published in the manner of a formal opinion. I trust that the foregoing has satisfactorily responded to your inquiry and that you will advise if additional assistance or clarification should be needed.

With kindest regards, I am

Sincerely,

*Patricia D. Petway*

Patricia D. Petway  
Senior Assistant Attorney General