



The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON  
ATTORNEY GENERAL

June 12, 1995

The Honorable Steven V. Morrone  
Member, Springfield Town Council  
Post Office Box 31  
Springfield, South Carolina 29146

RE: Informal Opinion

Dear Mr. Morrone:

By your letter of May 31, 1995, to Attorney General Condon, you have sought an opinion as to whether you may serve concurrently as a member of the Springfield Town Council and as police chief for the Town, uncompensated other than to have workers compensation coverage provided. You have also advised that you currently work for Wackenhut Services Inc. Savannah River Site. The issues involve the constitutional prohibition against dual office holding and S.C. Code Ann. §5-7-180.

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 a member of a city or town council would be considered an officer for dual office holding purposes. See, as representative of those numerous opinions, Ops. Att'y Gen. dated February 4, 1994; July 23, 1993; and July 24, 1991.

The Honorable Steven V. Morrone

Page 2

June 12, 1995

This Office has advised on many occasions, as well, that a police officer or police chief would be considered an officer for dual office holding purposes. See Ops. Att'y Gen. dated February 4, 1994 and November 2, 1994. State v. Crenshaw, supra.

This Office has advised previously that an individual employed as a sergeant with Wackenhut Services at the Savannah River nuclear facilities would be considered an officer for dual office holding purposes. You did not specify what position you hold with Wackenhut, but I wanted to make you aware that such employment could well be considered an office. Enclosed is a copy of an opinion dated January 31, 1992, concluding that an individual employed as a sergeant with Wackenhut at the Savannah River Site could not serve as a reserve police officer without violating the dual office holding prohibitions of the South Carolina Constitution.

Also to be considered is §5-7-180, which provides:

Except where authorized by law, no mayor or councilman shall hold any other municipal office or municipal employment while serving the term for which he was elected.

This statute would be violated if you, as a council member, were to serve as police chief during the term for which you were elected to be on council. I am of the opinion that your declining compensation would not make a difference; you would still be exercising the sovereign power that is necessarily involved in being a police officer or chief. Compensation is only one issue. The statute is, in part, designed to address the fact that one cannot be both master (on council) and servant (police officer or chief, an employee of council) at the same time.

Pointing out the language of §5-7-180 as to "[e]xcept where authorized by law," you have asked whether there could be an exception, authorized by law, in your case. I am not aware of any such exception having been created by the General Assembly or the courts of this State which would permit such service as you propose. Certainly this Office is without authority to create such an exception.

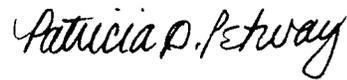
In conclusion, I am of the opinion that the dual office holding prohibitions of the South Carolina Constitution and §5-7-180 would be contravened if you were to serve as a member of Springfield Town Council and as police chief of the Town (whether or not compensated) at the same time. There may be an additional problem, as well, if you are employed in a capacity at the Savannah River Site which requires commissioning pursuant to S.C. Code Ann. §23-7-10 as a special state constable.

The Honorable Steven V. Morrone  
Page 3  
June 12, 1995

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 Attorney General nor officially published in the manner of a formal opinion.

With kindest regards, I am

Sincerely,



Patricia D. Petway  
Senior Assistant Attorney General

Enclosure