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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

April 8, 1996

The Honorable John T. James
Commission Chairperson
South Greenville Fire District
8305 Augusta Road
Pelzer, South Carolina 29669

RE: Informal Opinion

Dear Mr. James:

By your letter of March 22, 1996, to Attorney General Condon, you have sought an opinion as to the following question:

In a fire district, may a commissioner also be employed by the fire district as secretary/treasurer?

You have advised that one of the newly elected commissioners of the South Greenville Fire District is employed by the Fire District as secretary/treasurer. She began in this position over ten years ago and held this position when she was elected. You further advised that someone at the Greenville County Voter Registration Office told her that he could run for commissioner and remain employed by the Fire District. You have questioned whether she may serve as a commissioner and at the same time be employed by the Fire District.

I observe first that the South Greenville Area Fire District was created by a favorable referendum pursuant to Act No. 67 of 1965, as amended by Act No. 593 of 1994. The enabling legislation does not address the specific question which you have raised. The issue does appear to be one involving common law, however.

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Having an employee of the Fire District on the governing body of the Fire District 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 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. Att'y Gen. dated May 21, 1984; May 15, 1989; March 3, 1978; January 19, 1994; and others.

The South Carolina Supreme Court in McMahan v. Jones, 94 S.C. 362, 77 S.E.2d 1022 (1913), declared the 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, when their own duties are being prescribed and their compensation fixed? It requires only a moment's reflection to see that the positions

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are utterly inconsistent, and ought not to be held by the same persons. Propriety, as well as public policy, forbids it.

If it can 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 the discretion, individually and collectively, of a commission of five members,--not three,--in the administration 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 if an employee (secretary/treasurer) of a fire district were to serve on the governing body of the fire district, the common law principle concerning the master-servant relationship would be contravened, as the governing body would have the right to hire and fire the incumbent of that position and fix the compensation of that position. In so opining, I would point out that the master-servant relationship would not have prevented the individual from offering for election to the governing body; the problem did not arise until the employee was elected to the governing body and began to so serve.

Your letter mentions possible ethics questions. This Office respectfully defers questions regarding ethics matters to the State Ethics Commission; you may wish to contact that agency in the event you believe there may be ethics questions to be addressed. Thus, the foregoing addresses only the common law master-servant relationship.

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