



The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON  
ATTORNEY GENERAL

February 26, 1996

Mr. Wayne Adams  
Edgefield County Administrator  
215 Jeter Street  
Edgefield, South Carolina 28924

RE: Informal Opinion

Dear Mr. Adams:

By your letter to the Office of Attorney General Condon dated February 9, 1996, you have requested an opinion as to the interpretation of the master-servant principle of common law as it applies to a member of a county council who is also a county employee.

I would advise that the Office of the Attorney General has issued a number of opinions to the effect that the common law principle of master and servant would be violated if an individual were to serve on a city or county council (master) and simultaneously be employed by the same political subdivision (servant). Enclosed are copies of Ops. Att'y Gen. dated November 4, 1970; March 3, 1978; May 15, 1989; November 21, 1973; and May 21, 1984, further discussing the master-servant relationship. These opinions have not been subsequently superseded or overruled; thus, they remain the opinion of the Office. The long-standing policy of this Office precludes our rendering a new opinion where the issue has been previously addressed and the prior opinion has not been overruled or superseded.

I would highlight the language of several of the opinions. In the opinion dated November 21, 1973, the issue was the service of the police dispatcher on the Town Council of that municipality; former Attorney General McLeod opined:

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Whether the dispatcher is a police officer or not, he is still an employee of the Town, and, in my opinion, cannot serve as a member of the Town Council while he is an employee of the Town. This would result in the creation of a master-servant relationship which the law does not permit.

Similarly, in the opinion dated March 3, 1978, then Assistant Attorney General Karen LeCraft Henderson (now Judge, Court of Appeals, D.C. Circuit) opined as to a county employee serving on that county's council:

I think, however, that a Berkeley County employee paid by county funds cannot be elected to the Berkeley County Council because such a combination would violate the master-servant relationship. See, *McMahan v. Jones*, 94 S.C. 362 (1913). ... Of course, he may run for the office and, if successful, he may serve as a member but he cannot continue his county employment.

Finally, in the opinion dated May 15, 1989, this Office examined the situation whereby a member of Calhoun County Council might also serve as executive director of the Calhoun County Development Board. While the opinion was inconclusive in that all facts necessary to reach a conclusion were not known by this Office, the common law principles were discussed therein, with the following observation:

Applying these common law principles to your question, it may well be that a master-servant situation, and thus a conflict of interest, may exist. For this reason, it is suggested that the relationship of the executive director of the Calhoun County Development Board to Calhoun County, with respect to personnel policies and practices, and to Calhoun County Council be further explored [to make certain that the common law principle is not violated].

These previously issued opinions appear to more than adequately respond to your inquiry. If it is felt that these opinions do not offer sufficient guidance (particularly since opinions of the Attorney General do not carry the force of law), consideration might be given to filing a declaratory judgment action in the Court of Common Pleas to resolve the issue with finality.

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.

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With kindest regards, I am

Sincerely,

*Patricia D. Petway*

Patricia D. Petway  
Senior Assistant Attorney General

Enclosures