



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

June 24, 1996

Wayne Adams
Edgefield County Administrator
Post Office Box 663
Edgefield, South Carolina 29824

RE: Informal Opinion

Dear Mr. Adams:

By your letter of June 20, 1996 to the Office of Attorney General Condon, you have sought an opinion as to whether an individual employed as Emergency Preparedness Director for Edgefield County, who also is co-coordinator of the E911 office, may offer for election to and serve as Mayor of the Town of Johnston without contravening the dual office holding prohibitions of the South Carolina Constitution. You also inquired about whether a master-servant relationship would exist.

Article XVII, Section 1A of the South Carolina 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 as mayor of a municipality would be considered an office holder for dual office holding purposes. See as examples of those numerous opinions, Ops. Atty Gen. dated November 2, 1994; July 28, 1993; June 21, 1993; August 14, 1992; and many more. Without question, the Mayor

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of the Town of Johnston would be considered an office holder. Thus, it must be determined whether the position held with the County of Edgefield would be considered an office.

You have forwarded a copy of the job description of the Emergency Preparedness Director. I first observe that no statute or ordinance seems to have created the position; no oath appears to be required for the holder of the position; and no specific tenure (such as a term of years) is provided. The individual is compensated as a county employee. The job description contains no qualifications to be met by the holder. The job description provides for the following duties:

Serves during emergency as the Chief of Staff for the County Administrator. His normal daily role is to act on behalf of the County Administrator to build local readiness for operations in both peace time and war time emergencies. This includes taking the lead in community wide emergency preparation, such as development of local government emergency plans and an Emergency Operations Center (a protected site from which key local officials can control emergency operations), including staffing of the Emergency Operations Center; assistance to police, fire, and other departments with radiological defense and other training needs; plus other work needed for emergency readiness, such as developing a warning system, preparing public fall-out shelters for use if needed, and arranging for involvement of private sector manpower and resources in the operation of emergency government.

You have further advised that as co-coordinator of the E911 office, the individual handles technical aspects of radio operations and serves as a general planning advisor.

Reviewing the criteria usually present in an office, as discussed in the second paragraph of this letter, it would appear that the position of Emergency Preparedness Director of the County of Edgefield, even when coupled with the duties of co-coordinator of the E911 system, would be a position of employment rather than an office. In that respect, the following from Sanders v. Belue, *supra*, is apposite:

[O]ne who merely performs the duties required of him by persons employing him under an express contract or otherwise, though such persons be themselves public officers, and though the employment be in or about a public work or business, is a mere employee.

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Id., 78 S.C. at 174. Because the position would not be considered an office, but rather employment, the individual could serve as Mayor of the Town of Johnston and continue with his employment in the described position without running afoul of the dual office holding prohibitions of the South Carolina Constitution.

There would be no master-servant relationship in this instance. Such a relationship is based on common law rather than statutory law and is described 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... .

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 March 3, 1978 and May 21, 1984. The Mayor of the Town of Johnston has no supervisory power, control, removal or disciplinary authority, or the like over the position held by the employee of Edgefield County; therefore, no master-servant relationship exists.

You asked to be advised of any other possible considerations relative to this situation. I would advise that no state law imposes restrictions on a county employee offering for election to some office; some political subdivisions have rules on political activity of their employees, however. If federal funding is involved in the position of employment, consideration of the federal Hatch Act may be necessary; this Office does not provide advice on application of the federal law but instead refers inquirers to the Office of the Special Counsel, United States Merit Systems Protection Board, in Washington, D.C. For any ethical considerations about the individual serving in both capacities, as well as advice on campaign practices (not using public time or resources, etc., for campaigning and the like), I would refer the individual to the State Ethics Commission.

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 it has satisfactorily responded to your inquiry.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Senior Assistant Attorney General