

The State of South Carolina



Office of the Attorney General

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June 11, 1992

The Honorable Carole C. Wells
Chairman, Spartanburg County
Legislative Delegation
Room 1210, 366 North Church Street
Spartanburg, South Carolina 29303

Dear Representative Wells:

By your letter of June 3, 1992, you asked for the opinion of our Office as to whether an individual may serve simultaneously as a deputy sheriff and as a member of the North Spartanburg Fire District Commission without contravening the dual office holding prohibitions of the state Constitution.

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 as advised on numerous occasions that a deputy sheriff would hold an office for dual office holding purposes. See Ops. Atty. Gen. dated January 8, 1986 (copy enclosed); September 24, 1982; March 6, 1979; and many more.

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Similarly, this Office has previously advised that a member of the governing body of the North Spartanburg Area Fire and Rescue Department (North Spartanburg Fire Department) would be considered an office holder. Enclosed is a copy of an opinion dated June 4, 1986, so concluding.

Based on the foregoing, it is our opinion that a deputy sheriff who would serve simultaneously as a member of the governing body of the North Spartanburg Area Fire and Rescue Department would most probably contravene the dual office prohibitions of the state Constitution.

With kindest regards, I am

Sincerely,

Patricia D. Petway
Patricia D. Petway
Assistant Attorney General

PDP/an
Enclosures

REVIEWED AND APPROVED BY:



Robert D. Cook
Executive Assistant for Opinions