

1984 S.C. Op. Atty. Gen. 252 (S.C.A.G.), 1984 S.C. Op. Atty. Gen. No. 84-109, 1984 WL 159916

Office of the Attorney General

State of South Carolina

Opinion No. 84-109

August 29, 1984

*1 The Honorable Derwood L. Aydlette, Jr.

Member

House of Representatives

608-B Harborview Road

Charleston, South Carolina 29412

Dear Representative Aydlette:

In a letter to this Office you referenced the situation involving Mr. Jimmy Green, an employee of the North Charleston public Service Commission, who desires to offer for the position of commissioner of the James Island Public Service District. In the letter from Mr. Green to you, a copy of which you forwarded to this Office, reference was made to [Section 6-11-93, Code of Laws of South Carolina](#), 1976, as amended. Such statute provides that '(n)o person who serves on the governing body of any public service district or special purpose district shall receive compensation on any two such districts at the same time.'¹ In light of such provision you have asked whether Mr. Green can run for a position on the James Island Public Service District Commission if he does not accept any compensation and are there any prohibitions against an employee of one public service district serving on the commission of another public service district. In responding to your question I am treating the matter as to whether Mr. Green could serve on the particular commission if he does not accept any compensation. The matter of whether he could run for the position would not be responsive to the question of whether he could serve on the commission.

Pursuant to [Section 6-11-91, Code of Laws of South Carolina](#), 1976, as amended, governing bodies of public service districts may be compensated. As to Mr. Green's question concerning whether he could refuse compensation if elected, it has been stated that:

'(a)s a general rule, where the compensation of a public officer is established by law, he cannot accept less . . .'² 67 C.J.S., Officers, Section 237, p. 753. See also: 63A Am.Jur.2d Public Officers and Employees, Sections 466-467, pp. 1010-1012.

In [Salley v. McCoy](#), 182 S.C. 249, 189 S.E. 196 (1936) in the order of the circuit judge reported by the State Supreme Court it was stated that:

'(w)ith practical uniformity the Courts have held that a contract whereby a public officer agrees to accept some other compensation for his services than that provided by law, whether it be more or less or whether the comparative value be uncertain, is against public policy and, therefore, void.' 182 S.C. 249 at 281.

In [Brown v. State Department of Military Affairs](#), 386 Mich. 194, 191 N.W.2d 347 (1971), the Supreme Court of Michigan stated that:

'(s)alaries of public officers which are established by law are not determined by contract or agreement between the parties . . . A waiver of statutory salary by a public officer is void and against public policy.' 191 N.W.2d 347 at 350-351.

While the above general authority appears to indicate that a public official may not refuse an established salary, there have been no recent decisions of the State Supreme Court commenting on the question. Therefore, this Office cannot advise that in every instance a public official would be prevented from waiving his salary. However, in construing [Section 6-11-93, supra](#), and its

mandate against individuals receiving compensation from two public service districts at the same time, it appears that if the General Assembly had intended such prohibition to be easily avoided, such would have been stated. Therefore, in responding to the narrow question of whether the referenced salary could be refused, in light of the general authority cited above and the absolute prohibition of [Section 6-11-93](#), *supra*, it appears that Mr. Green would be prevented from refusing the salary. However, again, the above response is provided only as to the circumstances outlined in your letter and this Office makes no comment generally as to the right of public officials to waive established salaries in other circumstances.

*2 Inasmuch as Mr. Green would be prevented from refusing the salary from the James Island Public Service District if elected, he could not serve on such commission and be employed by another public service district simultaneously. If there are any questions concerning the above, please advise.

Sincerely,

Charles H. Richardson
Assistant Attorney General

Footnotes

1 [Section 6-11-93](#) was included in the provisions of Act No. 515 of 1980. The title to such Act states that such was 'An Act To Authorize The Governing Bodies Of Public Service Districts And Special Purpose Districts To Fix Or Change The Compensation Or Other Benefits For Members Of Such Governing Bodies And To Provide That No Such Member Shall Receive Compensation From Two Such Districts At The Same Time.' Therefore, while [Section 6-11-93](#) prohibits receiving compensation 'on any two such districts at the same time', it is clear from the title to Act No. 515 that receiving dual compensation from two districts is prohibited. Generally, the title to an Act may aid in interpreting legislative intent. [University of South Carolina v. Elliott](#), 248 S.C. 218, 149 S.E.2d 433 (1966).

2 Generally,
'... the acceptance of an amount less than his compensation ... (by a public officer) ... does not represent a waiver, estoppel, or an accord and satisfaction, precluding him from subsequently claiming the compensation.' *Id.*
Such reason has served as a basis for the policy against permitting the waiver of the statutory salary by a public officer. In addition, it has been observed that to permit a candidate for office to promise to accept less or no compensation if elected could tend to establish an 'auction method' for choosing a public officer whereby a candidate could 'purchase' an election by making the most extravagant bid. *See: Sparks v. Boggs*, — Ky. —, 339 S.W.2d 480 (1960).

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