

1982 WL 189260 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 20, 1982

\*1 The Honorable Herbert C. Granger  
Member  
House of Representatives  
Post Office Box 11867  
407 Blatt Building  
Columbia, South Carolina 29211

Dear Representative Granger:

You have asked the opinion of this Office on several questions regarding the Board of Trustees of the Fireman's Insurance and Inspection Funds. I will respond to them in the order in which you posed them to me.

(1) As we understand it, your first question concerns whether a person concurrently holding positions as a commissioner of the Gantt Fire, Sewer and Police District and a trustee for a Fireman's Insurance and Inspection Fund would be in violation of the provisions in the South Carolina Constitution prohibiting dual office holding. For these provisions 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 (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](#), 266 S.C.2d 61 (1980).

A review of Act No. 855 of 1954 whereby the Gantt Fire, Sewer and Police District was created (then called the Gantt Water and Sewer District) reveals that the commissioners of this District are endowed with suffipowers to be considered officeholders under the South Carolina Constitution. These duties and powers of these commissioners are enumerated in Section 3 of the Act and are the kinds of functions that this Office has previously found to involve an exercise of the sovereign power of the State.

In regard to trustees for Fireman's Insurance and Inspection Funds in unincorporated communities, these positions are provided for in [Section 38-57-30, of the South Carolina Code of Laws, 1976](#), which delineates their method of appointment and term of office. They are empowered pursuant to [Section 38-57-170 of the 1976 Code](#), as amended, to receive monies from the County Treasurer derived from a 1% tax assessed against foreign insurance companies. [See](#), Sections 38-57-110 through 38-5-170. They are further given the discretion to determine how the funds are to be spent and whether the criteria for their disbursement has been met. [See](#), Section 38-57-210. The performance of these functions involves in exercise of the sovereign power of the State and leads to the conclusion that trustees of Firemen's Insurance and Inspection Funds hold offices under the provisions of the South Carolina Constitution prohibiting dual office holding. Based on the foregoing, it is the opinion of this Office that the dual office holding provisions of the South Carolina Constitution prohibit a commissioner of the Gantt Fire, Sewer and Police District from also serving as a trustee of the Firemen's Insurance and Inspection Funds in unincorporated communities.

\*2 (2) The second question that you pose is whether a fireman or volunteer fireman would be eligible to serve as a trustee under [Section 38-57-30](#). There is nothing in the statutory provisions for Firemen's Insurance and Inspection Funds that would prohibit firemen from serving as trustees, and I can find no general statute creating these positions such that they might be considered offices for dual office holding purposes. This practice would not appear to violate the proscription against a person acting both as master and servant since the trustees of the Firemen's Insurance and Inspection Funds are not the employers of the firemen and exercise no authority or control over them. [See, McMahan v. Jones](#), 94 S.C. 362, 77 S.E. 1022 (1913); and

[Farmer v. Ryder Truck Lines, Inc.](#), 266 S.E.2d 922, 245 Ga. 734 (1980). Any specific conflict of interest questions that you might have in regard to this inquiry should be directed to the State Ethics Commission.

(3) Your third question is whether a fire chief of a fire department may appoint trustees under [Section 38-57-30](#). It appears that [Section 38-57-30](#) allows appointments to the board of trustees of the firemen's insurance and inspection fund to be made only by the County Treasurer upon recommendation by a majority of the legislative delegation of the county or counties in which such community is located. There is no authority in this statutory provision for a fire chief to make these appointments.

(4) The fourth question that you pose is whether elected commissioners of a fire and sewer district in an unincorporated community may appoint trustees or appoint themselves as trustees under [Section 38-57-30](#). Again, as indicated in my response to question 3, the only person with the authority to appoint members to the boards of trustees for firemen's insurance and inspection funds is the county treasurer on a recommendation by a majority of the legislative delegation. Therefore, elected commissioners of fire and sewer districts may not appoint trustees of the Firemen's Insurance and Inspection Funds in unincorporated communities.

I hope this has answered all of your questions. Please do not hesitate to contact me if you need any further assistance in this matter.

Very truly yours,

Helen T. Zeigler  
Staff Attorney

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