



ALAN WILSON
ATTORNEY GENERAL

May 6, 2016

The Honorable Harvey S. Peeler, Jr.
Senator, District No. 14
Post Office Box 142
Columbia, South Carolina 29202

Dear Senator Peeler:

You have requested the opinion of this Office as to whether service as a council member for the Cherokee County Council and as a member of the Macedonia Fire District Board would violate our State's constitutional prohibition of dual office holding. Based on the analysis below, we believe that it would.

Law/Analysis

Article XVII, Section 1A of the South Carolina Constitution states that “[n]o person may hold two offices of honor or profit at the same time . . .” with the exception that individuals serving as officers in the militia, a member of a lawfully and regulated organized fire department, constable, or notary public may hold an additional office. A person not falling into this exception would violate the dual office holding prohibition by concurrently serving in two offices “involving an exercise of some part of the sovereign power [of the State], either small or great, in the performance of which the public is concerned. . . .” Sanders v. Belue, 78 S.C. 171, 174, 58 S.E. 762, 763 (1907). It has been said that the public policy behind the dual office holding prohibition is “to prevent public officials from acting in circumstances in which their personal interests conflicts with the public whose interest they have been elected to represent.” 63C Am. Jur. 2d Public Officers and Employees § 63 (2014) (citing Dykeman v. Symond, 54 A.D.2d 159, 388 N.Y. S.2d 422 (NY 4th Dep’t 1976)).

In considering whether a particular position is an office in the constitutional sense, South Carolina courts look to whether “[t]he power of appointment comes from the state, the authority is derived from the law, and the duties are exercised for the benefit of the public.” Willis v. Aiken County, 203 S.C. 96, 103, 26 S.E.2d 313, 316 (1943). More specifically, our Supreme Court has clarified that the criteria to be considered includes “whether the position was created by the legislature; whether the qualifications for appointment are established; whether the duties, tenure, salary, bond and oath are prescribed or required; whether the one occupying the position is a representative of the sovereign; among others.” State v. Crenshaw, 274 S.C. 475, 478, 266 S.E.2d 61, 62 (1980). However, it has also been determined that “no single criteria is conclusive” and it is not “necessary that all the characteristics of an officer or officers be present.” Id. (citing 67 C.J.S. Officers § 8(a) (1978)).

On several occasions, this Office has concluded that a member of county council holds an office for dual office holding purposes. See, e.g., Op. S.C. Att’y Gen., 2004 WL 736935 (March 18, 2004); Op. S.C. Att’y Gen., 2003 WL 21040129 (Feb. 26, 2003); Op. S.C. Att’y Gen., 1999 WL 626654 (July 26, 1999); Op. S.C. Att’y Gen., 1997 WL 419947 (June 27, 1997); Op. S.C. Att’y Gen., 1994 WL 738181 (Dec. 7, 1994); Op. S.C. Att’y Gen., 1985 WL 259212 (Aug. 20, 1985). Accordingly, we turn to whether a member of the Macedonia Fire District Board (“the Board”) would also be an office holder for purposes of dual office holding.

The Board was created by Act 1043 of 1970. Act No. 1043, 1970 S.C. Acts 2349. Its members are appointed by the Governor upon recommendation of a majority of the county legislation delegation and serve for six year terms. Id. at 2351. Furthermore, the powers given to the board include the purchasing and responsibility over the upkeep, maintenance, and repairs of fire-fighting equipment; selecting volunteer firemen; promulgating rules and regulations concerning equipment use; and borrowing up to twenty thousand dollars in taxes. Id.; Act No. 318, 1971 S.C. Acts 427-28.

In prior opinions of this Office, we have concluded that members of such boards hold an office within the meaning of the dual office holding prohibition. See Op. S.C. Att’y Gen., 2003 WL 23138212 (Dec. 19, 2003) (finding Commissioner of the Holly Springs Volunteer Fire District are office holders); Op. S.C. Att’y Gen., 1994 WL 50438 (Jan. 19, 1994) (concluding Commissioner of the Whitney Area Fire District are office holders); Op. S.C. Att’y Gen., 1986 WL 289838 (Sept. 18, 1986) (stating that members of the Chester County Board of Fire Control are office holders); Op. S.C. Att’y Gen., 1983 WL 182060 (Nov. 18, 1983) (concluding that members of the Board of Trustees for the Monarch Fire Department are office holders); Op. S.C. Att’y Gen., 1963 WL 12128 (Nov. 30, 1963) (finding members of the Board of Fire Control of the Converse Area Fire District are office holders). As such, it is our opinion that service as a member of the Macedonia Fire District Board would likewise constitute an office for purposes of dual office holding analysis.

Conclusion

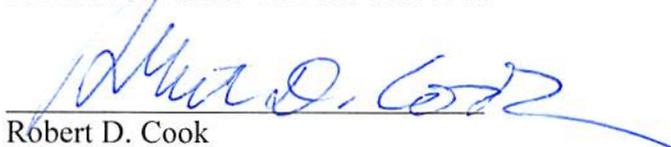
Based on the above analysis, it is our opinion that service as a council member for the Cherokee County Council and as a member of the Macedonia Fire District Board would violate the dual office holding prohibition of the South Carolina Constitution.

Very truly yours,



Anne Marie Crosswell
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General