



ALAN WILSON  
ATTORNEY GENERAL

October 31, 2017

The Hon. Laura G. Kneece  
Newberry County Coroner's Office  
550 Wilson Road  
Newberry, SC 29108

Dear Coroner Kneece:

We received your opinion request regarding dual office holding. The following opinion sets out our understanding of your question and our response.

**Issue** (as quoted from your letter):

Would holding the position of Deputy Coroner and being a board member of [the] Rescue Squad Board be considered Dual Office Holding?

**Law/Analysis:**

It is the opinion of this Office that a court most likely would hold that simultaneously holding the positions of deputy coroner and board member of the Newberry County Board of Rescue Squads (the "Board") would constitute dual office holding for purposes of the South Carolina Constitution. Based on our follow-up phone conversation, it appears that in practice, the Newberry County Board of Rescue Squads typically operates in a purely advisory role. But the Board nevertheless retains some sovereign power under the ordinances which create and empower it as a board of Newberry County.

The South Carolina Constitution prohibits any persons from holding two offices of honor or profit simultaneously. S.C. Const. art XVII, § 1A. As this Office set out in a 2009 opinion,

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, but any person holding another office may at the same time be 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). "One who is charged by law with duties involving an exercise of some part of the sovereign power, either small or great, in the performance of which the public is concerned, and which are continuing, and not occasional or intermittent, is a public officer." *Id.*, 58 S.E. 762, 763. 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).

*Op. S.C. Att'y Gen.*, 2009 WL 3208462 (September 1, 2009). In a 2012 opinion, our Office noted that "[w]e have concluded on numerous occasions that a coroner or deputy coroner holds an office for purposes of dual office holding." *Op. S.C. Att'y Gen.*, 2012 WL 4836949 (October 2, 2012) (internal citations omitted). Accordingly, a deputy coroner may not hold another office of honor or profit without violating the dual office holding prohibition of the South Carolina Constitution. *See id.*

By way of background, our Office has noted on more than one occasion that certain individual rescue squads did not constitute public bodies. For example, a 2009 opinion of this Office noted that the Williamston Rescue Squad was a nonprofit corporation operating as an independent contractor on behalf of the county and concluded that it "should not be considered a quasi-governmental agency for the purposes of the [Setoff Debt Collection] Act." *Op. S.C. Att'y Gen.*, 2009 WL 280550 (February 5, 2009). Additionally, a 1991 prior opinion of this Office noted that "the Fort Mill Rescue Squad is an eleemosynary corporation" distinct from the town and county. *Op. S.C. Att'y Gen.*, 1991 WL 634926 (January 10, 1991). Our Office has not located any prior opinions which conclude that membership of a local rescue squad is an office for purposes of the dual office holding prohibition of the South Carolina Constitution.

Unlike these individual rescue squads, however, the Newberry County Board of Rescue Squads is a county board which is established by ordinance as an exercise of Home Rule by the Newberry County Council. Newberry County, S.C., Code of Ordinances § 33.01 (2002). The ordinance reads:

As authorized by the provisions of S.C. §§ 4-9-170 and 4-9-30(6), and by the provisions of the Home Rule Act, Act No. 692, the 1975 Acts and Joint Resolutions of the General Assembly, Newberry County Council abolished the Newberry County Library Board, Recreation Commission, Board of Rescue Squads, and 911 Advisory Committee on October 9, 2002 and reconstituted all of the boards as county boards except for the 911 committee which is no longer active. Newberry County Council appoints members of the boards and commissions as specified [in other sections of the ordinance].

*Id.* (emphasis added). This ordinance is codified in the Newberry County, S.C. Code of Ordinances in Chapter 33, which is titled "County Organizations." *See id.* The subsequent codified sections of that ordinance go on to provide for the operations of those boards and include both general powers and certain provisions which are specific to particular boards. For example, § 33.02(E) specifically provides:

No rescue squad shall operate as an official rescue squad of Newberry County until each proposed member has received the training required by the Board of Rescue Squads and by applicable state or federal law, until the necessary equipment has been identified and made available for use by the proposed rescue squad and until necessary insurance coverage has been arranged for the proposed members and the equipment to be utilized, pending approval by County Council, until money has been budgeted for its operation, and until County Council has taken final action, by resolution or by ordinance, to officially approve and recognize the proposed rescue squad as a rescue squad of Newberry County.

Newberry County, S.C., Code of Ordinances § 33.02(E) (2014). Members of the Board of Rescue Squads are appointed by the County Council for specific terms, and the ordinance prescribes certain qualifications in terms of residency and membership on a rescue squad. § 33.02(A). Two at-large members of the Board are appointed by the County Council based upon recommendations of the Board. *Id.* A later section titled "General Powers, Duties, and Proscriptions" sets out powers held by all boards constituted under § 33.01, including the Board of Rescue Squads. Newberry County, S.C., Code of Ordinances § 33.04 (2002). Those expressed or implied powers include the power to acquire, dispose of, or mortgage real or personal property on behalf of the county and with County Council's approval; to "set its own time and schedule of meetings;" to submit budget requests to the county; to expend funds and contractually bind the county provided all procurement policies are followed; and to "perform the other functions and duties as required by [law], or as assigned by Newberry County Council." *Id.* The ordinances are silent as to whether board members must take an oath or provide a bond to serve. *Id.* While board members serve without pay<sup>1</sup>, the ordinances contemplate possible employment of persons by these various boards and provide for hiring and other personnel management policies. *Id.* Additionally, the ordinances provide that "members . . . shall be required to remove themselves from discussion and/or voting on any issue which may constitute a conflict of interest," and requires members to "adhere to any and all state regulations and statutes concerning conflict of interest of public bodies." *Id.* (emphasis added). Moreover, no

---

<sup>1</sup> County Council is given the authority to establish reimbursement for mileage and necessary expenses incurred in the performance of official business or a per diem fee. Newberry County, S.C. Code of Ordinances § 33.04(F), (G) (2014).

member of the County Council may serve on these boards, and no member of any of these boards may "serve concurrently as a member of any other county-appointed board or commission," although no explicit reason is given for either prohibition. *See id.*; *see also* § 33.01(D).

Based on the Rescue Board's creation by ordinance, power to use taxpayer funds, and oversight by the County, it is the opinion of this Office that a court most likely would hold that membership on the Newberry County Board of Rescue Squads, as the Board is presently organized and empowered, constitutes an office of honor or profit for dual office holding purposes. *See Op. S.C. Att'y Gen.*, 1981 WL 157862 (July 13, 1981). Unlike in prior opinions of this Office which addressed local rescue squads organized as nonprofit corporations, the Board in this case is an extension of the County created by ordinance, a legislative act of the Newberry County Council. Newberry County, S.C., Code of Ordinances § 33.01 (2002). Moreover, our State's Supreme Court has stated that:

It is well settled that when interpreting an ordinance, legislative intent must prevail if it can be reasonably discovered in the language used. *Fairfield Ocean Ridge, Inc. v. Town of Edisto Beach*, [294 S.C. 475, 366 S.E.2d 15 (1988)]. An ordinance must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers. *Spartanburg Co. D.S.S. v. Little*, 309 S.C. 122, 420 S.E.2d 499 (1992). In construing ordinances, the terms used must be taken in their ordinary and popular meaning. *Citizens for Lee County v. Lee County*, 308 S.C. 23, 416 S.E.2d 641 (1992).

*Charleston County Parks and Recreation Com'n v. Somers*, 319 S.C. 65, 67-68, 459 S.E.2d 841, 843 (1995). We believe that the Newberry County ordinances which create the Board reflect a legislative intent to delegate a portion of the sovereign power to the Board especially considering the ability to request and use taxpayer funds. *See id.* We also consider the specific power of the Board to set mandatory training requirements for rescue squads before they are eligible for county approval. Newberry County, S.C., Code of Ordinances § 33.02(E) (2014). Our Office understands that in practice, the Board typically only offers advice which the local rescue squads are not bound to follow. However, the fact remains that Section 33.02(E) reads: "No rescue squad shall operate as an official rescue squad of Newberry County until each proposed member has received the training required by the Board of Rescue Squads and by applicable state or federal law." *Id.* The patent legislative intent here is to delegate to the Board the discretionary power to set training requirements in addition to state law. *See Charleston County Parks and Recreation Com'n.* We reiterate that this power is not advisory or ministerial, but is instead a delegation of discretionary authority. Where a county ordinance applies the force of law to the discretionary decisions of a county Board to specify the training qualifications of rescue squads,

it cannot be said that membership on that Board is a purely advisory position even if in practice it operates as one. *See Op. S.C. Att'y Gen.*, 2003 WL 22378700 (October 8, 2003) (opining that the power to set rules and regulations and to "determine whether the applicants for admission to the practice of law . . . possess the necessary legal knowledge for admission" amounted to "quasi-legislative and quasi-judicial powers [which] invoke an exercise of some portion of the sovereign power").

Additionally, membership on the Board carries many of the traditional indicia of an office. *See State v. Crenshaw*, 274 S.C. 475, 266 S.E.2d 61 (1980). As noted above, the Board is created by ordinance, and those ordinances "establish the position, prescribe its tenure, duties or salary, [and] require qualifications . . . for the position," as contemplated in *State v. Crenshaw*. *See id.*; *see also* Newberry County, S.C. Code of Ordinances § 33.04 (2014). Moreover, the Board has a duty to undertake "other functions and duties . . . assigned by Newberry County Council," and has an implicit power to perform those duties. *See* § 33.04(D).

While we have not opined on a County Board of Rescue Squads in the past, one prior opinion of this Office concluded that membership on the Abbeville County Emergency Medical Services Commission constituted an office in part because the ordinance which created it delegated to it many of the powers which are present here. *See Op. S.C. Att'y Gen.*, 1990 WL 599172 (February 6, 1990). Those powers included:

making by-laws; establishing policies and procedures for operation of the emergency medical services (subject to approval by county council); acquiring real estate and equipment to be used in operation of facilities; reviewing or auditing financial records of the rescue squads relative to tax funds; making recommendations as to appointment of the EMS director; receiving, reviewing, and approving budget requests from the rescue squads and the EMS director for submission to county council; delegating (as specified in the ordinance) certain investigatory powers; and requiring that all emergency/ambulance service providers be licensed by the Commission.

*Id.* (emphasis added). We concluded that "[s]uch activities (particularly the establishing of policies and procedures, investigatory powers, auditing, and licensing) would appear to involve an exercise of a portion of the sovereign power of the State." *Id.* While the powers described in this 1990 opinion do not correlate exactly with the powers of the Newberry County Board of Rescue Squads, there is a substantial overlap. *See id.*; *cf.* Newberry County, S.C. Code of Ordinances § 33.04 (2014). Taken together, we believe that these powers are indicia of an office as described in *State v. Crenshaw*. 274 S.C. 475, 266 S.E.2d 61.

This conclusion that membership on the Board constitutes an office is reinforced by the efforts of the enabling ordinances to prevent abuse of that position. As noted above, the ordinances provide that "members . . . shall be required to remove themselves from discussion and/or voting on any issue which may constitute a conflict of interest," and requires members to "adhere to any and all state regulations and statutes concerning conflict of interest of public bodies." Newberry County, S.C. Code of Ordinances § 33.04 (2014); *see also* § 33.01(D). (emphasis added). Moreover, no member of the County Council may serve on these boards, and no member of any of these boards may "serve concurrently as a member of any other county-appointed board or commission." *See id.*; *see also* § 33.01(D). Although no explicit reason is given for either prohibition, at a minimum we believe that this reflects a legislative intent to preserve public trust in the independence and integrity of the decisions made by the Board. *See Charleston County Parks and Recreation Com'n*, 319 S.C. 65, 67-68, 459 S.E.2d 841, 843 (1995) ("An ordinance must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers."). Of course, an ordinance could apply the same prohibitions to a purely advisory body. But when viewed in the context of the other powers of the Board, we believe a court most likely would construe these restrictions as evidence of a legislative intent to create a constitutional office. *See id.*

Finally, we note that the Board of Rescue Squads is created by the same ordinance which creates and empowers both the Newberry County Library Board and Recreation Commission, and gives all three boards many of the same powers as an exercise of Home Rule power. Newberry County, S.C., Code of Ordinances § 33.01 (2002); *see also* S.C. Code Ann. §§ 4-9-170 & 4-9-30(6) (1986 & Supp. 2016). While not dispositive of this question, we also note that our Office has opined on several prior occasions that certain library boards and recreation commissions constitute offices for dual office holding purposes. *See, e.g., Op. S.C. Att'y Gen.*, 1995 WL 805869 (November 28, 1995) (opining that the Charleston County Library Board of Trustees constituted an office); *see also Op. S.C. Att'y Gen.*, 1997 WL 87948 (January 29, 1997) (opining that the Charleston County Park and Recreation Commission constituted an office), *but see Op. S.C. Att'y Gen.*, 1991 WL 633080 (December 3, 1991) (concluding that the City of Charleston Recreation Commission did not constitute an office because its duties were only advisory). We do not explore this line of reasoning further both because we believe the law set out above is dispositive of this question, and because the conclusion would be redundant.

#### **Conclusion:**

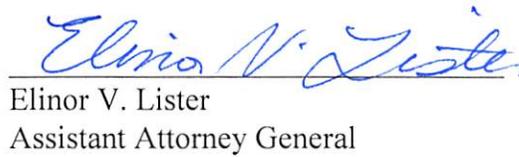
For these reasons, we opine that simultaneously holding the positions of deputy coroner and board member of the Newberry County Board of Rescue Squads would constitute dual office holding for purposes of the South Carolina Constitution. This opinion should not be construed to conclude that membership on a local rescue squad organized as a nonprofit constitutes an office,

The Hon. Laura G. Kneece, Coroner  
Page 7  
October 31, 2017

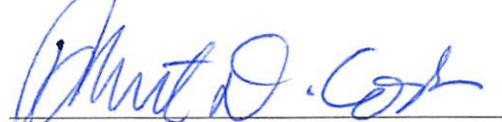
absent additional facts. Our opinion here is focused squarely on the powers of a particular county board which, in our opinion, has been clothed with sovereign powers of the state.

Sincerely,

  
David S. Jones  
Assistant Attorney General

  
Elinor V. Lister  
Assistant Attorney General

REVIEWED AND APPROVED BY:

  
Robert D. Cook  
Solicitor General