



HENRY McMASTER
ATTORNEY GENERAL

December 5, 2008

Chief Billy Gibson
Anderson County Fire Protection Commission
210 McGee Road
Anderson, South Carolina 29625

Dear Chief Gibson:

In a letter to this office you questioned whether a member of the Anderson County Fire Protection Commission may also serve as a member of the Anderson County Council.

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 ..." with exceptions specified for an officer in the militia, a member of a lawfully and regularly organized fire department, a constable, or a notary public. For this provision to be contravened, a person concurrently must hold two 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 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 in prior opinions has concluded that a member of a fire commission board is an officer for dual office holding purposes. See: Ops. Atty. Gen. dated March 3, 2004; January 19, 1994; December 29, 1983. In particular, this office in a prior opinion dated February 3, 1975 specifically indicated that a member of the Anderson County Fire Protection Commission would hold an office for dual office holding purposes. A member of "a lawfully and regularly organized fire department", a position not considered an office for dual office holding purposes, is distinguishable from a member of a county fire protection commission. See: Op. Atty. Gen. dated March 3, 2004. In numerous other opinions, this office has also advised that a member of a county council holds an office for dual office holding purposes. See, e.g., Ops. Atty. Gen. dated March 7, 2008, January 18, 2008; November 2, 2005; March 14, 2004.

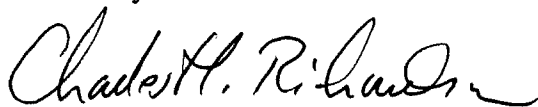
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Accordingly, in the opinion of this office, a member of the Anderson County Fire Protection Commission could not serve simultaneously on the Anderson County Council without violating the dual office holding prohibition of the State Constitution.

If there are any questions, please advise.

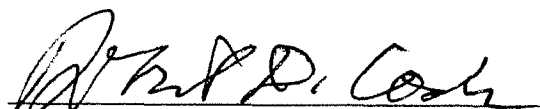
Very truly yours,

Henry McMaster
Attorney General



By: Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General