



ALAN WILSON
ATTORNEY GENERAL

May 19, 2011

The Honorable Jackie E. Hayes
South Carolina House of Representatives, District 55
333-D Blatt Building
Columbia, South Carolina 29211

Dear Representative Hayes:

We received your letter requesting an opinion of this Office concerning dual office holding. You asked whether a person may hold the office of Chief of Police of a municipality in Dillon County and also serve as a member of the Dillon County School Board. This Office has addressed the question of whether police chiefs and members of a school board are considered officers for purposes of dual office holding in several prior opinions. This opinion is based on those prior opinions and relevant law.

Law/Analysis

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, member of a lawfully and regularly organized fire department, constable, or 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). "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).

This Office has advised on many occasions that a police officer or police chief would be considered an office holder for dual office holding purposes. See, Ops. S.C. Atty. Gen., October 14, 2010; February 4, 1994; November 2, 1994; September 8, 1992. Moreover, in Edge v. Town of Cayce, 187 S.C. 171, 197 S.E. 216 (1938), the South Carolina Supreme Court concluded that a chief of police was a public officer. Further, we have also determined numerous times that members of county school boards hold offices within the meaning of the dual office holding

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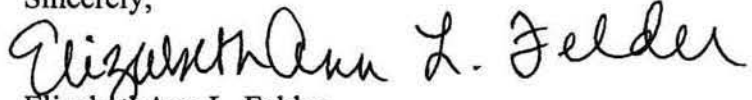
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provision. See, Ops. S.C. Atty. Gen., September 3, 2010; December 12, 2007; June 16, 2006; January 29, 1997; July 31, 1992; September 24, 1982. Moreover, in a prior opinion of this Office dated September 8, 1992, we opined that simultaneous service as a police officer and a member of a school board would most probably be considered dual office holding.

Conclusion

Consistent with our prior opinions, it is the opinion of this Office that simultaneously holding the positions of a police chief and a member of the Dillon County School Board would constitute dual office holding in contravention of Article XVII, Section 1A of the South Carolina Constitution.

Sincerely,



Elizabeth Ann L. Felder

Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook

Deputy Attorney General