



ALAN WILSON  
ATTORNEY GENERAL

March 5, 2012

Mark Keel, Chief  
State Law Enforcement Division  
P.O. Box 21398  
Columbia, SC 29221-1398

Dear Chief Keel:

We received your letter requesting an opinion of this office regarding the Mayor of the Town of Norway ("Mayor"). By way of background, you state that Mayor has appointed himself "Chief Constable" of the Town of Norway pursuant to Town of Norway ordinances.<sup>1</sup> You inform us Mayor asserts that he has authority to supervise the Town of Norway's Law Enforcement Department as "Chief Constable," while at the same time serving as mayor. Given the background provided, you ask whether or not Mayor can appoint himself and serve as "Chief Constable" of the Town of Norway and, if so, can he be compensated as mayor at the same time by the Town of Norway.

#### Law/Analysis

The situation you describe implicates several laws prohibiting public officials from operating under a conflict of interest. One involves the master-servant relationship. A conflict of interest exists when one individual is both master and servant. The master-servant relationship is based on common law and may be summarized as follows:

[A] conflict of interest exists where one office is subordinate to the other, and subject in some degree to the supervisory power of its incumbent, or where the incumbent of one of the offices has the power of appointment as to the other office, or has the power to remove the incumbent of the other or to punish the other. Furthermore, a conflict of interest may be demonstrated by the power to regulate the compensation of the other, or to audit his accounts.

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<sup>1</sup>Upon information and belief, Norway Town Code 13.101 states: "[t]he Law Enforcement Dept. shall consist of a Chief Constable, to be appointed by the Mayor, and such constables and employees as may be appointed by the Town Council, upon recommendation of the chief." [Emphasis added]. Further, Norway Town Code 13.102 provides that "[t]he Chief Constable shall supervise the Law Enforcement Dept. and shall be responsible for security of business establishments and any other matters of public safety and law enforcement as directed by the Council. . . ."

Op. S.C. Atty. Gen., February 19, 2003 [quoting Op. S.C. Atty. Gen., January 19, 1994]. The 2003 opinion further states that “[t]raditionally, a master-servant role arises when an individual serves as an employee for the same body to which he or she serves as an officer.” Another opinion of this office dated April 4, 2006, added:

[i]t is not the performance, or the prospective right of performance, of inconsistent duties only that gives rise to incompatibility, but the acceptance of the functions and obligations growing out of the two offices. . . . The offices may be incompatible even though the conflict in the duties thereof arises on but rare occasions. . . . In any event, the applicability of the doctrine does not turn upon the integrity of the officeholder or his capacity to achieve impartiality. . . .

Moreover, the South Carolina Supreme Court in McMahan v. Jones, 94 S.C. 362, 77 S.E. 1022 (1913), considered the propriety of a public commission charged with the management of a Confederate veterans’ infirmary hiring two commission members as employees of the infirmary. In holding that the employment of the two commission members by the commission was illegal, the Court stated:

[n]o man in the public service should be permitted to occupy the dual position of master and servant; for, as master, he would be under the temptation of exacting too little of himself, as servant; and as servant, he would be inclined to demand too much of himself, as master. There would be constant conflict between self-interest and integrity.

Id., 77 S.E. at 1022. We have thus recognized that when such a master-servant conflict exists, a public official is prohibited from serving in both roles. See Ops. S.C. Atty. Gen., July 19, 2006; February 19, 2003. We see no reason to alter our opinion in this regard.

Traditionally, a master-servant conflict arises when an individual serves as an employee for the same body to which he or she serves as an officer. For example, a fireman cannot simultaneously serve as a commissioner for the fire district where he is employed. Op. S.C. Atty. Gen., October 9, 1995. In an opinion of this office dated May 21, 2004, we discussed whether a member of a municipality’s council may also be employed by the municipality as a maintenance worker. After concluding that such simultaneous service did not constitute dual office holding, we discussed whether such service also created a conflict of interest inherent in the master-servant relationship. Considering the authority cited above, we stated:

[a] master-servant conflict would exist where an employee of the town also serves as a member of town council, even if, as you have indicated, that the council member in question does not vote on the budget or any issue affecting direct compensation for his employment. There are a wide range of other matters related to town employees dealt with by the town council on a regular basis that would inevitably result in the type of conflict described in McMahan v. Jones, supra, where “self-interest and integrity” frequently compete. Examples which immediately come to mind are the setting of policies and duties for town employees, as well as considering contracts for the municipality

that may be either beneficial or detrimental to the councilmember's status as a town employee.

In addition to the 2004 opinion, we note other opinions of this office concluding that employment of a member of a municipality's council or its mayor by the municipality creates a master-servant conflict of interest. See, e.g., Ops. S.C. Atty. Gen., October 2, 1995; August 4, 1986; May 21, 1984; November 21, 1973.

In another opinion of this office, dated March 26, 1999, we addressed whether a master-servant conflict arose when an employee of a county department of social services was elected to the county board of education. We acknowledged that "[t]he situation raised in your opinion request does not represent the typical master-servant problem." However, we considered the fact that the site of the individual's employment is one of the school district's high schools, a portion of his salary is funded by the school district, he is supervised in some degree by the high school's principal, and that he serves at the pleasure of the school district. In addition, we noted that conceivably the individual may be placed in the position of having to determine his own job status, regulate his compensation, and terminate the school district's contract with department of social services. Accordingly, we advised that a court would likely find the individual's service in both capacities in violation of common law master-servant principles.

In our review of the Norway Town Code, it appears to us that the situation you describe involves a master-servant conflict. Further, we understand from the South Carolina Secretary of State that the Town of Norway operates under a mayor-council form of government. Chapter 9 of Title 5 of the South Carolina Code sets forth this form of municipal government. Section 5-9-30 gives a mayor in the mayor-council form of government the specific power to appoint, suspend, and remove all municipal employees and appointive administrative officers. Because the "Chief Constable" clearly serves at the pleasure of Mayor, we therefore advise that a court may find Mayor's service as "Chief Constable" creates a master-servant conflict of interest.

Further, the participation by Mayor, a public official, in a decision affecting his economic interest by appointing himself "Chief Constable" pursuant to the Norway Town Code could result in a violation of the Ethics, Government Accountability, and Campaign Reform Act of 1991 (the "Ethics Act"). See S.C. Code Ann. §§8-13-100 et seq. In particular, §8-13-735 provides that:

. . . no person who serves at the same time:

- (1) on the governing body of a state, county, municipal, or political subdivision board or commission; and
- (2) as an employee of the same board or commission or in a position subject to the control of that board or commission may make or participate in making a decision that affects his economic interests.

Thus, even if a court does not find a master-servant conflict in this instance barring Mayor's service in both positions, we believe his service in both positions is subject to the Ethics Act.<sup>2</sup>

Our analysis does not end with an examination of the master-servant relationship. South Carolina authority clearly states it would be contrary to public policy for Mayor to select himself as "Chief Constable." Specifically, in Bradley v. City Council of City of Greenville, 212 S.C. 389, 46 S.E.2d 291, 295 (1948), the South Carolina Supreme Court held that, "[i]n the absence of constitutional or statutory provision it is, as said in 42 Am.Jur. 955, Public Officers, Sec. 97, 'contrary to public policy to permit an officer having an appointment power to use such power as a means of conferring an office upon himself, or to permit an appointing body to appoint one of its own members.' " Based on the information provided

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<sup>2</sup>Further, §8-13-700 establishes the law against using an official position for financial gain, and explains that any potential conflict of interest must be disclosed:

(A) No public official, public member, or public employee may knowingly use his official office, membership, or employment to obtain an economic interest for himself, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated. This prohibition does not extend to the incidental use of public materials, personnel, or equipment, subject to or available for a public official's, public member's, or public employee's use which does not result in additional public expense.

(B) No public official, public member, or public employee may make, participate in making, or in any way attempt to use his office, membership, or employment to influence a governmental decision in which he, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated has an economic interest. A public official, public member, or public employee who, in the discharge of his official responsibilities, is required to take an action or make a decision which affects an economic interest of himself, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated shall:

(1) prepare a written statement describing the matter requiring action or decisions and the nature of his potential conflict of interest with respect to the action or decision. . . .

(4) if he is a public official, other than a member of the General Assembly, he shall furnish a copy of the statement to the presiding officer of the governing body of any agency, commission, board, or of any county, municipality, or a political subdivision thereof, on which he serves, who shall cause the statement to be printed in the minutes and require that the member be excused from any votes, deliberations, and other actions on the matter on which the potential conflict of interest exists and shall cause the disqualification and the reasons for it to be noted in the minutes. . . .

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in your letter, Mayor's appointing himself as "Chief Constable" pursuant to the Norway Town Code is contrary to the public policy of this State.

In addition, Mayor's appointment of himself as "Chief Constable" of the Town of Norway violates other laws. As previously noted, the Town of Norway has a mayor-council form of government. See §§5-9-10 *et seq.* We note, however, that §5-9-10 refers to chapter 7 of Title 5 to supplement the provisions contained in Chapter 9. This provision states that, "[e]xcept as specifically provided for in this chapter, the structure, organization, powers, duties, functions and responsibilities of municipal government under the mayor-council form shall be as prescribed in Chapter 7." Accordingly, we refer to §5-7-180, which provides as follows:

[e]xcept where authorized by law, no mayor or councilman shall hold any other municipal office or municipal employment while serving the term for which he was elected.

Numerous prior opinions of this office point out that this provision prevents mayors and members of town councils from being employed in other positions by their towns while in office. See, e.g., Ops. S.C. Atty. Gen., February 17, 2009; May 6, 2005; May 21, 2004; December 6, 1995; August 4, 1986; January 17, 1983; August 8, 1979; March 23, 1978.

Several opinions of this office appear to be directly on point. In an opinion dated November 2, 1994, we addressed whether a town mayor could simultaneously serve as a code enforcement officer, public officer, or chief. Without resolving the issue of whether holding these positions constituted dual office holding, we advised that "§5-7-180 would still prohibit a mayor . . . from holding other municipal office or employment during the term for which he was elected." In an opinion dated June 12, 1995, we advised that §5-7-180 would be contravened if a town council member served as police chief during the term for which he was elected. Significantly, we stated:

I am of the opinion that your declining compensation would not make a difference; you would still be exercising the sovereign power that is necessarily involved in being a police officer or chief. Compensation is only one issue. The statute is, in part, designed to address the fact that one cannot be both master (on council) and servant (police officer or chief, an employee of council) at the same time.

There is no apparent reason to depart from the interpretations of this office previously placed on §5-7-180.

Further, we are not aware of any exception having been created by the Legislature or courts of this State which would otherwise permit such service by Mayor.<sup>3</sup> Certainly, this office is without authority to create such an exception. See Op. S.C. Atty. Gen., June 12, 1995.

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<sup>3</sup>We note the language "except as otherwise provided by law" has been interpreted by this office to mean that statutory law, rather than an ordinance, is necessary to invoke this exception. See Ops. S.C. Atty. Gen., December 6, 1995; February 2, 1978.



Lastly, an additional statute we must consider is found in §5-7-200(a), which provides that:

[a] mayor or councilman shall forfeit his office if he . . . (2) violates any express prohibition of Chapters 1 to 17 [of Title 5]; . . . [Emphasis added].

In our opinion, §5-7-200(a) could be invoked where the proscription of §5-7-180 is clearly violated by Mayor holding the position of "Chief Constable" of the Town of Norway. See Op. S.C. Atty. Gen., December 5, 1995 [advising that §5-7-200(a) could be invoked if a mayor or member of town council is also a member of the volunteer fire department for the same municipality, in violation of §5-7-180].

#### Conclusion

To summarize the above, we would advise that:

1. To serve concurrently as Mayor and "Chief Constable" of the Town of Norway is prohibited by §5-7-180, which proscribes Mayor from holding any other municipal office or municipal employment (whether or not he is compensated for such position) while in office. Pursuant to §5-7-210, Mayor could be required to forfeit his office for violating §5-7-180.
2. Public policy established by the South Carolina Supreme Court in Bradley v. City of Greenville, supra, prohibits the appointment of one's self to another office or position. Mayor, who is empowered by the Norway Town Code to appoint the "Chief Constable," is, therefore, precluded from appointing himself to such position.
3. To serve concurrently as Mayor and "Chief Constable" of the Town of Norway contravenes common law master-servant principles, because the "Chief Constable" serves at the pleasure of Mayor. Moreover, this conflict of interest may violate the Ethics Act.

If you have any further questions, please advise.

Very truly yours,



N. Mark Rapoport  
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
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