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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

December 19, 2003

The Honorable Joseph G. Mahaffey
Member, House of Representatives
P. O. Box 1147
Lyman, South Carolina 29365

Dear Representative Mahaffey:

In a telephone call to this office you questioned whether an individual may serve as a deputy sheriff and as Commissioner of the Holly Springs Volunteer Fire District. You indicated that you were referring to whether holding both positions would violate the dual office holding provisions of the State Constitution. According to my review, the Holly Springs Volunteer Fire District was the new name provided by Act No. 890 of 1976 for the Piedmont Rural Fire District in Spartanburg County which was created by Act No. 551 of 1971.

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). 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 has held on numerous occasions that the position of deputy sheriff is an office for dual office holding purposes. See: Ops. Atty. Gen. dated December 13, 1995, June 11, 1992, and January 8, 1986. Prior opinions of this office have also held that various district boards of fire control would be offices for purposes of the dual office holding prohibition. See: Ops. Att'y Gen. dated January 19, 1994 (member of Cherokee Springs Board of Fire Control would be an office holder); September 18, 1986 (member of Chester County Board of Fire Control would be an office holder); November 18, 1983 (member of Monarch Fire Department Board of Trustees would be considered an office holder); and November 30, 1963 (commissioner of the Converse Area Fire District would be considered an office holder). There appears to be no reason to treat any differently a commissioner of the Holly Springs Volunteer Fire District. The exception for a "member of a lawfully and regularly organized fire department" would not apply to a member of a fire district

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board. Therefore, I am of the opinion that a member of that board would also be considered an officer for dual office holding purposes. As a result, holding both positions of deputy sheriff and commissioner of the Holly Springs Volunteer Fire District would violate the constitutional prohibition on dual office holding.

With best wishes, I am,

Very truly yours,

A handwritten signature in black ink, appearing to read "Charles H. Richardson", with a long horizontal flourish extending to the right.

Charles H. Richardson
Senior Assistant Attorney General