

4769 Luluway

The State of South Carolina



Office of the Attorney General

T. TRAVIS MEDLOCK
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211
TELEPHONE: 803-734-3970
FACSIMILE: 803-253-6283

February 25, 1992

Carter H. Jones, Chief of Department
Clarendon County Fire District
P. O. Box 1330
Manning, South Carolina 29102

Dear Chief Jones:

You state that you are employed as Fire Chief or Fire Marshal of the Clarendon County Fire District and that you serve as a fire fighter when not performing administrative duties as Fire Marshal. You also indicate that you wish to offer as a candidate for mayor of an incorporated town in which you have no responsibility and ask whether holding both positions would violate the dual office holding provision of State Constitution. You have provided a copy of the Clarendon County ordinance which established the Clarendon County Fire Department which our Office had occasion to review in 1986. It appears no substantial amendments have been made.

Pursuant to Article XVII Section 1A of the South Carolina Constitution "...no person may hold two Offices of honor or profit at the same time ... (except) an officer in the militia, member of a lawfully and regularly organized fire department, constable or a notary public." A public officer has been defined as

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 ...

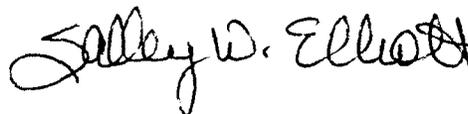
Sanders v. Belue, 78 S.C. 171, 58 S.E. 762, 763 (1907). Other relevant indicia include whether statutes or other authority establish the position, prescribe its duties, tenure, salary, and bond or require oath or qualifications. State v. Crenshaw, 274 S.C. 475, 266 S.E.2d 61 (1980).

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This Office has opined numerous times that an individual who serves as mayor of a municipality would hold an office for dual office holding purposes. See Op. Atty. Gen. dated September 21, 1989 and opinions cited therein. This Office also, by opinion dated October 24, 1986, has concluded that the duties of the State Fire Marshal inhere in the Clarendon County Fire Marshal, and that the Deputy Clarendon County Fire Marshal, if certified by the State Fire Marshal, would hold an office for the purposes of the dual office holding prohibition. Op. Atty. Gen. dated October 24, 1986. The opinion relied upon the specification by statute of applicable duties and the exercise of the sovereign power of the State by the Deputy County Fire Marshal as arson investigator certified by the State Fire Marshal, namely "investigating origins of fires, inspecting buildings or premises, requiring conformance with fire codes, subpoenaing witnesses, (and) taking testimony ...". The General Assembly has amended the applicable constitutional provision since the issuance of this opinion so as to exempt from the dual office holding provisions members of organized fire departments. However, it is the opinion of this Office that, aside from your duties as the chief of the Clarendon County Fire District, if you are certified by and exercise the powers and duties of the State Fire Marshal within your fire district then, for the reasons set forth in the October 24, 1986 opinion, you would most probably be deemed to hold an office for dual office holding purposes.

I am enclosing a copy of the October 24, 1986 opinion for your review. Please contact me if additional information is needed.

Sincerely,



Salley W. Elliott
Assistant Attorney General

SWE/an
Enclosure

REVIEWED AND APPROVED BY:



Robert D. Cook
Executive Assistant for Opinions