

1983 WL 181819 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 28, 1983

\*1 Mr. Nicholas P. Sipe  
Executive Director  
S.C. Alcoholic Beverage Control Commission  
1205 Pendleton Street  
Columbia, South Carolina 29201

Dear Mr. Sipe:

You have requested the opinion of this Office on the question of whether a person holding a constable's commission and serving as Captain of a County Rural Fire Department would be in violation of the dual office holding provisions of the South Carolina Constitution.

It is provided in [Article XVII, § 1A of the South Carolina Constitution](#) that ‘. . . no person shall hold two offices of honor or profit at the same time.’ For this provision to be contravened, a person concurrently must hold two public offices which have duties involving an exercise of some portion of the sovereign power of the State. [Sanders v. Belue, 78 S.C. 171 \(1907\)](#). Other relevant considerations are whether statutes, or other such authority, establish the positions, prescribe its tenure, duties or salary, or require qualifications or an oath for the position. [State v. Crenshaw, 266 S.E.2d 61 \(1980\)](#).

This Office has previously concluded on a number of occasions that persons holding constable's commissions are officers for dual office holding purposes. See, 1973 Op. Att'y. Gen. No. 3455; 1968 Op. Att'y. Gen. No. 2555; Opinion dated October 27, 1977 (copies enclosed).

The Board of Rural Fire Control for Lee County is established pursuant to Act No. 332 of the 1961 Acts and Joint Resolutions and is empowered, inter alia, to select volunteer firemen to man the fire fighting equipment in the County. Section 4 of that Act authorizes the firemen to ‘direct and control traffic at the scene of any fire in a rural area of the county and enforce the laws of this State relating to the following of fire apparatus, the crossing of fire hose and interfering with firemen in the discharge of their duties in connection with a fire in a like manner as prescribed for the enforcement of such laws by peace officers.’ (emphasis provided) Since these firemen are given certain law enforcement powers when attending fires, they would most probably be considered office-holders for dual officeholding purposes. See, 1964 Op. Att'y. Gen. to Mr. Blackwood (copy enclosed). Although this Office has concluded in the past that a volunteer fireman does not hold an office, there is no indication in that opinion that the fireman under consideration was given any authority such as that quoted above.

Based on the foregoing, it is the opinion of this Office that a person holding a state constable's commission and serving concurrently as captain of the Lee County Rural Fire Department would probably be in violation of the dual office holding provisions of the South Carolina Constitution.

Very truly yours,

Helen T. Zeigler  
Assistant Attorney General

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