



ALAN WILSON  
ATTORNEY GENERAL

October 4, 2018

The Honorable Josiah Magnuson, Member  
South Carolina House of Representatives  
304D Blatt Building  
Columbia, SC 29201

Dear Representative Magnuson:

You have requested an opinion from this Office regarding dual office holding. In your opinion request, you state:

A special purpose district<sup>1</sup> established by an act of the General Assembly is located within House District 38, and a question arose that necessitated my request today of an opinion from your office. Here is a summary of the situation:

- The special purpose district provides fire protection, suppression, and medical first response service to unincorporated areas of two counties and a municipality of one of those counties.
- A city council position has opened within the city served by the special purpose district.

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<sup>1</sup> Our Office has described a "special purpose district" as follows:

Special purpose districts perform a governmental function. Ops. Atty. Gen., March 11, 1982. They, like counties, municipalities and school districts, are considered political subdivisions of the state. Ops. Atty. Gen., March 18, 1996. In an opinion, dated February 15, 1995, we noted that "[w]hile South Carolina case law does not contain a complete and concise definition of the term 'political subdivision,' characteristics 'which are generally regarded as distinctive of a political subdivision are that it exists for the discharging of some function of local government, that it has a prescribed area and that it possesses authority for subordinate self-government by officers selected by it.'" Quoting, McClanahan v. Cochise College, 540 P.2d 744 (1975).

Op. S.C. Atty. Gen., 2003 WL 21043485, at \*1 (Mar. 12, 2003).

-The deputy fire chief has expressed interest in running for the city council seat.

-The deputy fire chief in the special purpose district is a part-time job.

-The city council of the municipality has no governing authority over the fire department, and the fire department receives nothing from the municipality.

We will provide each of your questions with our answers to them below.

**LAW/ANALYSIS:**

1. If the deputy fire chief ran for and won the city council seat, would his service in both positions violate the state's prohibition on dual office holding?

Dual office holding is provided for in the South Carolina Constitution, which states:

[n]o person may hold two offices of honor or profit at the same time, but any person holding another office may at the same time be an officer in the militia, member of a lawfully and regularly organized fire department, constable, or a notary public ... The limitation above set forth does not prohibit any officeholder from being a delegate to a constitutional convention.

S.C. Const, art. XVII § 1 A (emphasis added).

The South Carolina Supreme Court explains that an “office” for dual office holding purposes is:

“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.” Sanders v. Belue, 78 S.C. 171, 174, 58 S.E. 762, 763 (1907), “In considering whether a particular position is an office in the constitutional sense, it must be demonstrated that “[t]he power of appointment comes from the state, the authority is derived from the law, and the duties are exercised for the benefit of the public.” Willis v. Aiken County, 203 S.C. 96, 103 26 S.E.2d 313, 316 (1943). “The powers conferred and the duties to be discharged with regard to a public office must be defined, directly or impliedly, by the legislature or through legislative authority ...” 63C Am Jur.2d Public Officers and Employees § 5 (2009).

Segars-Andrews v. Judicial Merit Selection Commission, 387 S.C. 109, 691 S.E.2d 453 (2010).

Other relevant considerations for an office are:

whether the position was created by the legislature; whether the qualifications for appointment are established; whether the duties, tenure, salary, bond, and oath are prescribed or required; whether the one occupying the position is a representative of the sovereign; among others.

Op. S.C. Atty. Gen., 2013 WL 3243063 (June 17, 2013) (quoting State v. Crenshaw, 274 S.C. 475, 478, 266 S.E.2d 61, 62 (1980)).

Our Office has concluded that a city council member holds an office for dual office holding purposes.<sup>2</sup> As a result of the State Constitution providing that a “member of a lawfully and regularly organized fire department” is excluded from holding an office,<sup>3</sup> we have determined that “members of a fire department, in their capacity as fire chief, assistant fire chief, or firefighters” are exempted “from the dual office holding prohibition” and that even “service as a volunteer firefighter does not constitute an office.” Op. S.C. Atty. Gen., 2012 WL 3142775 (July 19, 2012); Op. S.C. Atty. Gen., 2012 WL 1036294 (March 20, 2012). Accordingly, we believe that service as both a city council member and as a deputy fire chief would not be a violation of the Constitutional prohibition against dual office holding.

2. If so, upon the election results being certified, would he then have to determine which position to hold to comply with state law?

Our conclusion in response to Question 1 that there would be no dual office holding violation is dispositive of this question.

3. If not, would he be free to hold both positions?

As stated above, it is our opinion that service as both a city council member and as a deputy fire chief would not be a violation of the Constitutional prohibition against dual office holding. However, you may wish to contact the State Ethics Commission to confirm that there are not any conflicts of interest. Our Office defers to the Ethics Commission on ethical issues since it was given authority by the Legislature to interpret and issue opinions pertaining to the Ethics Act. See S.C. Code Ann. § 8-13-320(11) (1976 Code, as amended).

4. If he needed to resign as deputy fire chief, would he be allowed to work as a paid firefighter in that department? Would he be allowed to work as a paid fire fighter in any department in South Carolina? If not, would he be able to work as a paid firefighter in a nearby jurisdiction in another state?

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<sup>2</sup> See Op. S.C. Atty. Gen., 2018 WL 1160089, at \*1 (Feb. 21, 2018) (quoting Op. S.C. Atty. Gen., 2013 WL 5291571 (September 9, 2013)) (“[t]his Office has advised on numerous occasions that a member of a town or city council holds an office for purposes of the constitutional prohibition against dual office holding.”)

<sup>3</sup> S.C. Const, art. XVII § 1 A, supra.

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We believe that the deputy fire chief would not be required to resign from the fire department under the dual office holding provision of the State Constitution if he won the city council seat. The State Ethics Commission can advise you if there are any ethical issues which might require his resignation from the fire department.

**CONCLUSION:**

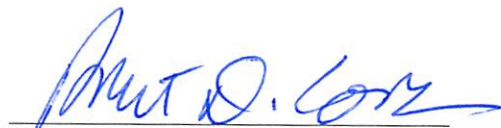
In conclusion, we believe that an individual can serve as both deputy fire chief of a special purpose district and as a member of a city council without violating the State Constitutional prohibition against dual office holding. However, you may wish to contact the State Ethics Commission to confirm that there are not any conflicts of interest.

Sincerely,



Elinor V. Lister  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Solicitor General