



ALAN WILSON
ATTORNEY GENERAL

July 13, 2022

Rob Stamper
301 South Poplar Avenue
Andrews, SC 29510

Dear Mr. Stamper:

You have requested an opinion from this Office regarding whether you can serve simultaneously as a member of a town council and as the town's Fire Chief.

LAW/ANALYSIS

In order to answer your question, we must review both the South Carolina Constitution and the South Carolina Code of Laws. The South Carolina Constitution prohibits dual office holding:

No 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, § 1A (emphasis added).

In a prior opinion, we determined that “[b]ecause article XVII, section 1A specifically exempts members of ‘regularly organized fire department[s]’ from the dual office holding prohibition,” holding the positions of Fire Chief or Assistant Fire Chief “would not constitute an office for purposes of dual office holding.” Op. S.C. Atty. Gen., 2006 WL 3877514 (Dec. 28, 2006). Therefore, it is our opinion that service as a member of a town council and as a fire chief of a volunteer fire department would not be a violation of the Constitutional prohibition against dual office holding.

However, statutory law must also be considered. Section 5-7-180 provides that “[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.” S.C. Code Ann. § 5-7-180 (1976 Code, as amended). In a prior opinion, we determined that section 5-7-180 “is, in part, designed to address the common law principle that one cannot be both master and servant at the same time.” Op. S.C. Atty. Gen., 2013 WL 5921571 (Sept. 9, 2013). Of particular concern here is

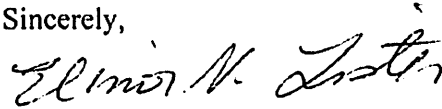
Rob Stamper
Page 2
July 13, 2022

section 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.” S.C. Code Ann. § 5-7-200(a) (1976 Code, as amended). Pursuant to section 5-7-200(a), “a violation of section 5-7-180 constitutes grounds for forfeiture of the office of mayor or councilman of a municipality.” Op. S.C. Atty. Gen., 2012 WL 1036294 (March 20, 2012).

CONCLUSION

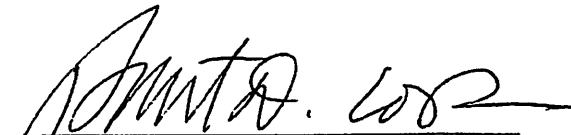
While service as a member of a town council and as the town’s fire chief does not violate the Constitutional prohibition against dual office holding, it would be a violation of section 5-7-180 and would most likely constitute grounds for forfeiture of the office of councilman.

Sincerely,



Elinor V. Lister
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General