



ALAN WILSON  
ATTORNEY GENERAL

July 1, 2011

The Honorable Mike Forrester  
Member, House of Representatives  
287 Creekridge Drive  
Spartanburg, South Carolina 29301

Dear Representative Forrester:

Our Office received your opinion request letter dated June 21, 2011. You asked whether one who has been deemed unable to work and is presently drawing 100% disability from the Veterans Administration would be eligible to be appointed as the Spartanburg County Veterans Affairs Officer. You explained that the Spartanburg County Veterans Affairs Officer is a paying position. Additionally, you informed us that the individual in question was diagnosed with Post Traumatic Stress Disorder (PTSD) and was awarded 100% disability with total occupational and social impairment. You also specifically ask if the individual is not eligible for employment what the reason for denial would be. After initial research on the issue of whether one with 100% disability may hold such an office, we have concluded that the fact that one is disabled may not affect his ability to accept an appointment to a particular office. However, if he were to accept the appointment, this Office cannot make a determination as to how his acceptance of the position would affect his disability benefits.

#### **Law/Analysis**

For clarity, this letter will separately address the two issues at hand, distinguishing between the physical disability and the disability benefits. The first issue is one of the individual's physical disability. The law is well established that one's disability does not make him ineligible for an appointment to an office such as the State Veteran Affairs Office. There are many examples, past and present, state and federal, where individuals with disabilities have been found eligible to hold an office.

Among many other examples, in an opinion of this Office dated July 21, 2003, we addressed whether a county councilman who was involved in an automobile accident, leaving him in a coma, would be eligible to retain his position as councilman. We concluded as follows:

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There are certain constitutional and statutory provisions which relate to the removal of public officials, such as county council members for, among other things, incapacity . . . "[o]fficers shall be removed for incapacity, misconduct, or neglect of duty . . . ."

[However, this Office could] find no statutory authority which would allow for temporarily replacing the councilman in this circumstance.

Op. S.C. Atty. Gen., July 21, 2003.

The second issue is one of the individual's disability benefits. While one's physical disability does not make him ineligible for an office, this Office cannot make a determination as to how his acceptance of the position would affect his disability benefits. Evaluating how this individual's disability benefits would be affected if he were to accept the appointment is beyond the scope of this Office. We cannot make such a determination regarding the status of one's disability classification or benefits.

"[I]nvestigations and determinations of facts are beyond the scope of an opinion of this Office and are better resolved by a court." See, Op. S.C. Atty. Gen., April 6, 2006.

Although this Office cannot make such a factual determination as required when evaluating disability benefits, we can provide you with caselaw that may be relevant to the analysis. For example, in Smith v. SC Dept of Mental Health, 329 S.C. 485 (1997), the Court of Appeals explains that "[i]n accordance with the mandate of S.C. Code Section 42-9-260, regulations 67-504 and 67-507 set forth the procedure for suspending or terminating workers' compensation benefits . . . Disability is presumed to continue until the employee is able to return to work without restriction for fifteen calendar days."

However, in McCollum v. Singer Co., 300 S.C. 103 (1989), the Court of Appeals stated that "evidence that the claimant has been able to earn occasional wages or perform certain kinds of gainful work does not necessarily rule out a finding a total disability or require that it be reduced to partial."

Our Office issued an opinion on July 9, 1975 where we explained as follows:

Our Supreme Court, in the case of Stewart v. Pioneer Pyramid Life Insurance Co., 177 S. C. 132, 180 S. E. 889, considered the term as it relates to insurance contracts and stated:

**'We have held that 'what amounts to a total disability is a relative matter, and depends largely upon the circumstances of each case, and upon the occupation and employment in which the person insured is engaged' (McCutchen v. Insurance Co., 153 S. C. 401, 151 S. E. 67, 80); that the phrase is not to be literally construed, but that a person is 'deemed totally disabled when he is no**

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longer able to do his accustomed task, and such work as he has only been trained to do, and upon which he must depend for a living' (Taylor v. Insurance Co., 106 S. C. 356, 91 S. E. 326, 327.)'

Op. S.C. Atty. Gen., July 9, 1975 (emphasis added).

### Conclusion

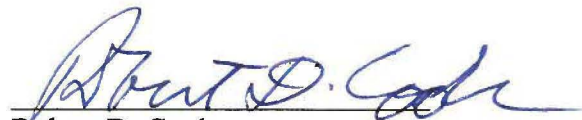
Consistent with well established law, it is the opinion of this Office that the fact that one is disabled would not affect his eligibility to be appointed to a particular office. However, the fact that he receives payment as an employee may cause issue with his receipt of disability benefits, an analysis that is beyond the scope of this Office. In other words, a physical disability does not render a person ineligible to hold public office. See, Op. S.C. Atty. Gen., July 21, 2003. A decision as to appointment would be up to the delegation.

Sincerely,



Leigha Blackwell Sink  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Deputy Attorney General