

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

July 23, 1993

The Honorable D. N. Holt, Jr., Chairman
Charleston County Legislative Delegation
2 Courthouse Square, Room 307
Charleston, South Carolina 29401

Dear Representative Holt:

By your letter of July 14, 1993, you have asked whether an individual may serve simultaneously on the Board of Trustees, James Island Firemen's and Inspection Fund, and as a member of the Town of James Island Zoning Board of Adjustment without contravening the dual office holding prohibitions of the state Constitution.

Article XVII, Section 1A of the state Constitution provides that "no person may hold two offices of honor or profit at the same time ...," with exceptions specified for an officer in the militia, member of a lawfully and regularly organized fire department, constable, or a notary public. 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, 58 S.E. 762 (1907). Other relevant considerations are whether statutes, or other such authority, establish the position, prescribe its tenure, duties or salary, or require qualifications or an oath for the position. State v Crenshaw, 274 S.C. 475, 266 S.E.2d 61 (1980).

This Office has advised that one who would serve as a trustee for a firemen's insurance and inspection fund would be considered an office holder for dual office holding purposes. See Ops. Atty. Gen. dated February 8, 1993 (as to the James Island Fire Department) and April 20, 1982, copies enclosed.

We have also advised on numerous occasions that one who would serve on a municipal or county zoning board of adjustment would be considered an office holder for dual office holding purposes. See Ops. Atty. Gen. dated January 8, 1991; March 10, 1975; and March 29, 1985 (copies enclosed).

*Respectfully,
T. Travis Medlock*

The Honorable D. N. Holt, Jr.

Page 2

July 23, 1993

Thus, based on the foregoing, one who would serve simultaneously in both positions would most probably contravene the dual office holding prohibitions of the state Constitution.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/an
Enclosures

REVIEWED AND APPROVED BY:

Robert D. Cook

Robert D. Cook
Executive Assistant for Opinions