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April 20, 1994

The Honorable Gloria Ruvo
Commissioner, Belvedere Fire District
204 Hampton Avenue
Belvedere, South Carolina 29841

Dear Commissioner Ruvo:

By your letter of March 25, 1994, you advised that a vacancy exists on the governing body of the Belvedere Fire District. You wish to know whether a part-time employee of the Aiken County Auditor's Office could be appointed to fill the vacancy for the unexpired portion of the term. You very kindly enclosed documentation as to the position in question, which we appreciated.¹

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).

The Belvedere Fire District was apparently created pursuant to S.C. Code Ann. § 6-11-10 et seq. (1976). Commissioners of the district are elected for six year terms. § 6-11-60 (commissioners "hold office" for a period of six years; initial members have "terms of office" for two, four, and six years). The commissioners serve "without emolument." § 6-11-90; but see § 6-11-91. Powers and duties of the commissioners are specified in

¹ The vacancy will be filled by the procedure authorized in S.C. Code Ann. § 6-11-80 (1976): "In the event of any vacancy on the commission the remaining members of the commission shall elect a commissioner to fill the unexpired term."

The Honorable Gloria Ruvo
Page 2
April 20, 1994

§§ 6-11-100 (general powers and duties), 6-11-130 (power of condemnation), 6-11-140 (establishment of rates), 6-11-180 (issuance of bonds), 6-11-270 (levy and collection of taxes), and others. These duties clearly involve an exercise of a portion of the sovereign power of the State. Thus, one who serves on the governing body of the Belvedere Fire District would be considered an officer for dual office holding purposes.

An individual under consideration to fill the unexpired portion of the term remaining of the vacant position on the governing body is an employee of Aiken County in the Auditor's Office, on a part-time basis. The individual is a Field Auditor and has duties and responsibilities relative to the valuation of real and personal property according to the job description, though we understand his work to deal with personal property only; he is also to review complaints and attempt to settle disputes, testify before the Tax Review Board, and perform related duties. He is paid a salary. There is no indication that the individual was required to take an oath.

With regard to the position of Field Auditor, I can locate no statute which creates the position, establishes qualifications therefor, prescribes the duties or responsibilities thereof, or otherwise deals with the position. Because many of the indicia of an office are lacking with respect to this position, it is our opinion that this position is probably not an office. See also Op. Att'y Gen. dated June 21, 1993, copy enclosed.

Based on the foregoing, it is our opinion that one who would serve on the governing body of the Belvedere Fire District could most probably also serve as a part-time Field Auditor in the Aiken County Auditor's Office. As to questions of ethics or conflict of interest, we observe that you have already corresponded with the State Ethics Commission; because that agency exclusively advises on and interprets questions arising under the State's ethics laws, we are not in a position to comment on their response.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/an
Enclosure

REVIEWED AND APPROVED BY:

Robert D. Cook

Robert D. Cook
Executive Assistant for Opinions