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The State of South Carolina



Office of the Attorney General

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September 19, 1994

Walter H. Sanders, Jr., Esquire
117 Main Street
Fairfax, South Carolina 29827

Dear Mr. Sanders:

By your letter of September 7, 1994, you have sought the opinion of this Office as to whether an individual could concurrently serve as the part-time municipal judge for the Town of Fairfax and undertake contract legal work for the Town of Fairfax. Your concern is with respect to the dual office 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 previously advised that one who would serve as a part-time municipal judge would be considered an office holder for dual office holding purposes. Enclosed is a copy of Op. Atty. Gen. No. 84-11, so concluding.

As to undertaking legal work for the Town of Fairfax, you have advised that such would be by contract. The attorney would not be paid a retainer but would be hired as the need arises on a case by case basis. The attorney would not have any obligations to appear, advise, or prosecute in municipal court.¹ Based on the reasoning of an opinion

¹ See S.C. Code Ann. § 14-25-15 (1993 Cum. Supp.)

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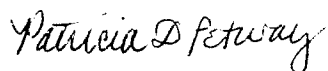
of this Office dated June 11, 1993 (copy enclosed), it would appear that the attorney would be an independent contractor rather than an office holder.

Based on the foregoing and within the context of dual office holding prohibitions of the state Constitution, we are of the opinion that the part-time municipal judge for the Town of Fairfax could also contract legal work on a case by case basis for the Town of Fairfax, as described above.

There are other considerations, such as the Canons of Judicial Conduct and the Rules of Professional Conduct, which could affect the above-described undertaking. I would strongly encourage you to check with the Judicial Standards Commission and/or the Advisory Committee on Standards of Judicial Conduct as to application of relevant canons and also the Ethics Advisory Committee of the South Carolina Bar as to application of the Rules of Professional Conduct.

With kindest regards, I am

Sincerely,



Patricia D. Petway
Assistant Attorney General

PDP/an
Enclosures

REVIEWED AND APPROVED BY:



Robert D. Cook
Executive Assistant for Opinions