



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

December 13, 1995

The Honorable Carole C. Wells, Chairman
Spartanburg County Legislative Delegation
Room 1210, 366 North Church Street
Spartanburg, South Carolina 29303

RE: Informal Opinion

Dear Representative Wells:

By your letter of December 7, 1995, to Attorney General Condon, you have sought an opinion as to whether it would constitute dual office holding for a sheriff's deputy to serve as a commissioner of the Board of Fire Control of the Croft Fire District.

Article XVII, Section 1A of the South Carolina 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 on numerous occasions that one who serves as a deputy sheriff would be considered an office holder for dual office holding purposes. See, as an example of those opinions, the enclosed opinion dated June 11, 1992; see also Ops. Att'y Gen. dated January 8, 1986; September 24, 1982; March 6, 1979; and others. Thus, it must be determined whether service on the Board of Fire Control of the Croft Fire District would constitute an office for dual office holding purposes.

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The Croft Fire District was created pursuant to Act No. 879 of 1960 following a favorable referendum.¹ Section 4 of that act established a Board of Fire Control for the District, the board to be composed of three members appointed by the Governor upon recommendation of a majority of the Spartanburg County Legislative Delegation to serve six-year terms. The members are to serve without pay. Section 5 of that act establishes the duties and powers to be exercised by the members of the board, including the purchasing of equipment, selecting sites or places to keep equipment, providing and selecting drivers and volunteer firemen, procuring and supervising the training of the firemen, upkeep of the equipment, promulgating rules and regulations, and borrowing funds for the benefit of the district.

Analysis of other fire district boards of fire control reveals that members of those boards have been considered officers for purposes of dual office holding. See, as examples, Ops. Att'y Gen. dated January 19, 1994 (member of Cherokee Springs Board of Fire Control would be an office holder); September 18, 1986 (member of Chester County Board of Fire Control would be an office holder); November 18, 1983 (member of Monarch Fire Department Board of Trustees would be considered an office holder); May 18, 1983 (member of Piedmont Rural Fire District Board of Fire Control would be considered an office holder); and November 30, 1963 (commissioner of the Converse Area Fire District would be considered an office holder). There appears to be no reason to treat any differently a member of the Croft Fire District Board of Fire Control. Thus, I am of the opinion that a member of that board would also be considered an officer for dual office holding purposes.

Based on the foregoing, I am of the opinion that one who would serve simultaneously as a deputy sheriff and as a member of the Board of Fire Control of the Croft Fire District would most probably contravene the dual office holding prohibitions of the South Carolina Constitution.

This letter is an informal opinion only. It has been written by a designated Senior Assistant Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion. I trust that it has satisfactorily responded to your inquiry and that you will advise if clarification or additional assistance should be needed.

¹Act No. 879 of 1960 was amended by Act No. 177 of 1961 as to matters not relevant herein.

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With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Senior Assistant Attorney General

Enclosure