

The State of South Carolina

Reg. 4812



Office of the Attorney General

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ATTORNEY GENERAL

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February 23, 1995

David R. Bushyager
City Administrator
City of Bishopville
Post Office Box 388
Bishopville, South Carolina 29010

RE: Informal Opinion

Dear Mr. Bushyager:

By your letter of February 13, 1995, to Attorney General Condon, you have requested an opinion as to whether an individual may serve concurrently on a municipal election commission and as a voluntary fireman with the Bishopville City Fire Department without contravening the dual office holding prohibitions of the South Carolina State Constitution. You have also advised that the individual's mother works for the City as a police dispatcher. On behalf of the City, you wish to verify that there is no conflict or impropriety if the individual should be appointed to the municipal election commission.

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 on previous occasions that a member of a county or municipal election commission would be considered an office holder for dual office

Mr. Bushyager
Page 2
February 23, 1995

holding purposes. See, for example, Op. Att'y Gen. dated February 8, 1991, a copy of which is enclosed herewith.

Similarly, this Office has previously advised, based on recent amendments to the State Constitution, that a volunteer fireman, as a member of a lawfully and regularly organized fire department, would not fall within the dual office holding restrictions of the Constitution. Enclosed is a copy of Op. Att'y Gen. dated June 28, 1990, so concluding.

Based on the foregoing, it is the opinion of the undersigned attorney that one who would serve on a municipal election commission and as a volunteer fireman at the same time, assuming he is serving with a lawfully and regularly organized fire department, would not incur dual office holding problems.

The fact that the individual's mother is a police dispatcher with the same city does not play a part in dual office holding questions. If you have questions of an ethical nature, you may wish to contact the State Ethics Commission for advice. I am not aware of an inherent problem which would arise with respect to this prospective appointment, otherwise. The only other consideration would be any policies of the City of Bishopville which might affect appointments of persons whose relative may be employed by the City; of course, you would be in the best position to determine applicability of any such policies.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

Enclosures