



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

January 8, 1996

Jonathan R. Hendrix, Esquire
Attorney, Town of Batesburg-Leesville
Post Office Box 1263
Lexington, South Carolina 29072

RE: Informal Opinion

Dear Mr. Hendrix:

By your letter of December 8, 1995, to Attorney General Condon, you have sought an opinion to follow up on my informal opinions of December 6, 1995, relative to the Mayor of Batesburg-Leesville or members of the Town Council serving simultaneously as a volunteer fireman for the Town. You are now inquiring as to whether a leave of absence from the fire department would take away the necessity for the council members or Mayor to either resign from office or resign from the fire department. You state your understanding that the fire department's policies and procedures manual does provide for a leave of absence, which leave would be reviewed every ninety days but does not otherwise have a limitation on it.

The opinions of December 6, 1995, concluded that a mayor or member of the municipal council of the Town of Batesburg-Leesville would be prohibited from serving as volunteer firemen during the term for which they were elected, by operation of S.C. Code Ann. §§5-7-180 and 5-13-40(a), for the reasons stated therein.

The concept of a "leave of absence" from employment has been succinctly summarized in 63A Am.Jur.2d Public Officers and Employees §180:

The term "leave of absence" does not mean a permanent separation from employment. Rather, it signifies a temporary absence from duty with an intention to return, during which time remuneration is suspended. The

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relationship of public employer and public employee would therefore continue during the period of leave except for suspension of his obligation to carry out the duties of his work and the compensation therefor.

It is clear that the relationship of employer-employee would continue should a public employee take a "leave of absence," according to this summarization of the law.

An act which cannot be done directly cannot be done indirectly. State ex rel. Edwards v. Osborne, 193 S.C. 158, 7 S.E.2d 526 (1940); Lurey v. City of Laurens, 265 S.C. 217, 217 S.E.2d 226 (1975); Westbrook v. Hayes, 253 S.C. 244, 169 S.E.2d 775 (1969). Having concluded that a mayor or member of council under the council-manager form of municipal government could not serve as a volunteer fireman for the municipality during the term for which he was elected (i.e., a direct act), I am also of the opinion that the same individuals could not take a "leave of absence" during the term for which he or they were elected, as the same result would indirectly be achieved in that the employment status would not be totally severed.

Therefore, in response to the question which your most recent letter has raised, I am of the opinion that taking a "leave of absence" would not solve the problems identified in my opinions of December 6, 1995.

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.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Senior Assistant Attorney General