

05-5953 February



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

June 13, 1996

Don Parris, Fire Chief
City of Gaffney
Post Office Box 2109
Gaffney, South Carolina 29342

RE: Informal Opinion

Dear Chief Parris:

By your recent letter of the Office of Attorney General Condon, you have requested an opinion as to whether you may serve as Fire Chief of the City of Gaffney and also as a reserve police officer at the same time without violating the dual office prohibitions of the South Carolina Constitution. You have also advised that you are a Certified Fire Marshal, for inspection duties.

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).

As stated in the preceding paragraph, the Constitution exempts from dual office holding those persons who are members of a lawfully and regularly organized fire department. Thus, by operation of the Constitution, your position as Fire Chief would not be considered an office for dual office holding purposes. See Op. Att'y Gen. dated January 19, 1994 (copy enclosed).

Don Parris, Fire Chief

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This Office has advised on numerous occasions that a reserve police officer would be considered an officer for dual office holding purposes. See Ops. Att'y Gen. dated June 5, 1979 and April 14, 1993 (copies enclosed).

Finally, this Office has advised previously that one who is certified by the State Fire Marshal pursuant to S.C. Code Ann. §23-9-30 as a Fire Marshal would be considered an office holder for dual office holding purposes. See Ops. Att'y Gen. dated February 25, 1992 and October 24, 1986 (copies enclosed).

Based on the foregoing, I am of the opinion that you may serve as Fire Chief and as a Certified Fire Marshal without dual office holding problems. If, however, you were to serve also as a reserve police officer at the same time you hold the other two positions and certifications, you would most probably violate 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.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Senior Assistant Attorney General

Enclosures