

The State of South Carolina

467 Library



Office of the Attorney General

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June 28, 1990

The Honorable Claude Driggers  
Marlboro County Supervisor  
Post Office Box 419  
Bennettsville, South Carolina 29512

Dear Mr. Driggers:

By your letter of June 18, 1990, you have advised that Marlboro County has hired a director for its 911 Emergency System. The individual is serving as an assistant volunteer fire chief for a rural fire station. You have inquired into the possibility of a conflict of interest or dual office holding.

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).

You have not provided a written job description for the position of director of the 911 Emergency System but have provided information in your letter and by telephone. The director is hired by county council but reports to the Marlboro County Supervisor; he serves at the pleasure of council rather than a term of years. No oath is taken by the individual. He receives compensation in the form of a salary. The director is to hire and oversee employees of the 911 Emergency System and will dispatch emergency personnel when emergency calls are received. Reviewing the criteria usually present when a position is considered an office, the director of the 911 Emergency System would appear to be a county employee rather than an officer.

As a volunteer fireman and assistant fire chief for the Blenheim Fire Department, the individual receives no compensation,

The Honorable Claude Driggers

Page 2

June 28, 1990

you have advised. The recent amendments to the State Constitution have removed members of lawfully and regularly organized fire departments from dual office holding restrictions. Thus, on the basis of dual office holding, there is no problem if this individual wishes to be employed as director of the 911 Emergency System.

You have also advised that the employees of the 911 Emergency System will dispatch rescue squads, fire departments, and law enforcement officials to emergency situations in Marlboro County. Already in place are various districts in the county, the boundaries of which are already mapped out, in which a particular fire department or rescue squad would provide services. If a fire call coming in to the 911 Emergency System were from the district served by the Blenheim Fire Department, dispatching that fire department would be a ministerial matter for whoever received the call. Should the director of the System be on duty with the county when a call for his department came in, he would not leave his duty with the county to answer the fire call as a volunteer fireman. You have further advised that the director would not be in a policy-making position with respect to his fire department.

Based on the information provided to this Office, we are of the opinion that a conflict of interest would not be present generally. The State Ethics Act would not be a consideration either, since the individual does not appear to be in a position to make decisions of a financial sort; see Section 8-13-410 et seq. of the South Carolina Code of Laws as to activities covered by the Ethics Act and actions to be taken thereunder. Of course, an opinion of this Office cannot possibly foresee all possible situations which could arise and thus we caution that our conclusions above are based on the general information stated above. Should the individual be faced with a potential conflict, assistance should be sought from the Marlboro County Attorney or the State Ethics Commission (if the Ethics Act should be involved).

With kindest regards, I am

Sincerely,

*Patricia D. Petway*

Patricia D. Petway  
Assistant Attorney General

PDP/an

REVIEWED AND APPROVED BY:

*Robert D. Cook*

Robert D. Cook  
Executive Assistant for Opinions