

1981 WL 158143 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 11, 1981

\*1 The Honorable D. N. Holt

c/o Mr. Francis K. Sullivan  
Executive Secretary  
Charleston County Legislative Delegation  
Post Office Box 487  
Charleston, South Carolina

Dear Representative Holt:

You have asked the opinion of this Office on whether a person may concurrently be a member of a municipal council and the St. Paul's Fire District Commission.

[Article XVII, § 1A of the South Carolina Constitution](#) states that ‘. . . no person shall hold two offices of honor and profit at the same time.’ Also see Article VI, § 3. 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 \(1907\)](#). Other criteria such as tenure, salary, oath, etc., also may be relevant. [State v. Crenshaw](#), South Carolina Supreme Court, Op. No. 21189, 4-9-80.

It previously has been established that membership on a municipal council is an office within the meaning of the aforementioned constitutional provisions. [Darling v. Brunson, 94 S.C. 207 \(1913\)](#); [State v. Coleman, 54 S.C. 289 \(1899\)](#); Op. Atty. Gen., No. 4490, 1975-1976. A review of the acts creating the St. Paul's Fire District Commission and providing it with specific duties and powers confirms that membership on the Commission also constitutes an office within the meaning of the constitutional provisions. Act No. 440, Acts and Joint Resolutions, 1949; Act No. 362, Acts and Joint Resolutions, 1975.

Having determined that the positions noted in your correspondence are offices within the meaning of [Article XVII, § 1A](#), this opinion next must consider the impact of this provision if the two offices were concurrently being held by one person.

If a person continues to hold an office within the meaning of [Article XVII, § 1A](#) on the date he enters another such office, he is deemed to have vacated the former office. However, the person may continue to perform the duties of the previously obtained office as a *de facto* officer until a successor is duly selected to complete his term of office. [Walker v. Harris, 170 S.C. 242 \(1933\)](#); [Dove v. Kirkland, 92 S.C. 313 \(1912\)](#); [State v. Coleman, 54 S.C. 282 \(1898\)](#); [State v. Butz, 9 S.C. 156 \(1877\)](#).

Based on the foregoing, it is the opinion of this Office that the concurrent membership by one person on a municipal council and the St. Paul's Fire District Commission would violate the dual office holding provisions in the South Carolina Constitution. Sincerely,

James M. Holly  
Assistant Attorney General

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