

1980 WL 120587 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 8, 1980

*1 Elza S. Spradley, Jr.
Fire Chief
Town of Batesburg
Batesburg, South Carolina 29006

Dear Mr. Spradley:

You have asked the opinion of this Office on whether a member of the Commission of Public Works for the Town of Batesburg concurrently may serve as the volunteer fire chief of the Town.

[Article XVII, § 1A of the South Carolina Constitution](#) provides that ‘ . . . no person shall hold two offices of honor and profit at the same time.’ For this provision to be violated, a person concurrently must hold two offices which have duties involving an exercise of some part of the sovereign power of the State. [Sanders v. Belue, 78 S.C. 171 \(1907\)](#).

Previous opinions by this Office have concluded that Commissioners of Public Works are public officers within the meaning of [Article XVII, § 1A](#). Opinion to Mayor Zimmie Mason, Town of City View, dated August 4, 1969; opinion to Mayor Cody Owns, Town of Whitmire, dated May 2, 1974 [copies enclosed]. Also see Sections 5-13-210 to 5-13-270, Code of Laws of South Carolina, 1976.

The provision of fire departments for municipalities is contained in Chapter 25, Title 5 of the Code. Although municipalities with populations less than 5,000, like Batesburg, are authorized to equip and control a fire department, the statutory provisions establishing the position of chief of a municipal fire department and setting forth his duties are not applicable to such municipalities. Sections 5-25-10, 5-25-20, 5-25-110. Thus, it appears that the position of volunteer fire chief of the municipality of Batesburg is not a public office within the meaning of [Article XVII, § 1A](#). Rather, it appears to be a position involving the occasional gratuitous rendition of fire protection services. See, Sanders v. Belue, supra; Opinion to Representative David S. Taylor, dated December 17, 1969 (copy enclosed).¹

In addition to the above, my review of Title 5 of the Code has not revealed any provisions prohibiting a member of the Commission of Public Works from serving as the volunteer fire chief of a fire department in a municipality with less than 5,000 persons.

Based on the foregoing, it is the opinion of this Office that a member of the Commission of Public Works for the municipality of Batesburg may serve concurrently as the volunteer fire chief of the municipal fire department.

Sincerely,

James M. Holly
State Attorney

Footnotes

- 1 If the Town of Batesburg has ordinances creating the position of fire chief and conferring certain duties or powers thereon, a different conclusion may be reached. Therefore, please advise me should such ordinances exist.

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