

1982 WL 189415 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 7, 1982

\*1 Mr. J. William Taylor  
Town Administrator  
Post Office Box 111  
Cheraw, South Carolina 29526

Dear Mr. Taylor:

You have requested the opinion of this Office on the question of whether the dual office holding provisions of the South Carolina Constitution prohibit a member of the Cheraw Town Council from also serving as a volunteer Captain of the Cheraw Fire Department. The prohibition to which you refer is found in [Article XVII, § 1A of the South Carolina Constitution](#) and provides that ‘. . . no person shall hold two offices of honor and profit at the same time.’ For this provision to be contravened, a person must concurrently 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 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, 266 S.E.2d 51 \(1980\)](#).

Utilizing these criteria, this Office has consistently held that members of town councils hold offices within the meaning of the dual office holding prohibition. [See, e.g., Op. dated August 4, 1978, to Robert E. Leek \(copy enclosed\)](#). As for volunteer firemen, this Office has expressed the opinion that these positions do not involve an exercise of the sovereign power of the State and, therefore, are not offices. [See, 1969 Op. Att’y. Gen. 2791; Op. dated February 9, 1981 to William Griggs; and Op. dated January 8, 1980, to Elza Spradley \(copies enclosed\)](#).

Although there does not appear to be a dual office holding problem in the situation which you have presented, I direct your attention to [§ 5-7-180 of the Code of Laws of South Carolina, 1976, as amended](#). That statute prohibits a mayor or councilman of a municipality from holding any other municipal office or municipal employment while serving the term for which he was elected. A ‘municipality’ is defined in [§ 5-1-20 of the Code of Laws of South Carolina, 1976, as amended](#), as any city or town which has been issued a certificate of incorporation or township which has been created by act of the General Assembly. This Office has previously issued an opinion concluding that volunteer firemen are municipal employees within the prohibition of this section. [See, Op. dated August 8, 1979 to J. M. McLendon \(copy enclosed\)](#). Furthermore, that opinion noted that potential conflicts of interest might arise if councilmen were allowed to serve as volunteer firemen. Therefore, if the Town of Cheraw is a municipality, which I assume that it is, its town councilmen would be prohibited by the statute cited above from serving as volunteer firemen.

Very truly yours,

Helen T. Zeigler  
Assistant Attorney General

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