

1979 WL 43509 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 8, 1979

*1 J. M. McLendon, Esquire
Marion City Attorney
Post Office Box 1096
Marion, SC 29571

Dear Mr. McLendon:

You have requested an opinion from this Office as to whether or not 'volunteer' firemen are municipal employees within the prohibition against municipal employment of city councilmen contained in [Section 5-7-180, CODE OF LAWS OF SOUTH CAROLINA](#), 1976. In my opinion, the employment of city councilmen as volunteer firemen is most probably municipal employment prohibited by [Section 5-7-180](#).

In the recently decided case of Miller v. Town of Batesburg, et al., Op.No. 21010, July 25, 1979 (Smith's Advance Sheets, July 28, 1979), the South Carolina Supreme Court held that a volunteer fireman was a municipal employee subject to the mayor's power to suspend or discharge employees. After noting that each fireman was paid a nominal fee, provided with life insurance and workman's compensation coverage, and allowed to use equipment owned by the town, the Court found that:

The law would be remiss indeed if the Town of Batesburg was without authority to determine the manner in which the equipment is used and in whose hands the safety of the citizens of Batesburg is placed. It follows by force of reason that the Town of Batesburg possesses the necessary authority to determine who may serve as a member of the municipal fire department.

Finally, city councils are given control over municipal fire departments pursuant to [Section 5-25-20 of the Code](#). It is arguable, then, that a conflict of interests might arise if a city council containing active volunteer firemen among its membership were called upon to decide issues of fire department policy, employment, pay, benefits, etc. For this additional reason, it would seem that city councilmen should not act as volunteer firemen during their terms of office.

With kind regards,

Karen LeCraft Henderson
Senior Assistant Attorney General

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