

1973 WL 26602 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 9, 1973

\*1 Harris DeLoach  
City Attorney  
P. O. Box 1022  
Hartsville, S. C. 29550

Dear Mr. DeLoach:

You have requested that this office advise you as to whether an individual may hold office as City Councilman when he is employed by the South Carolina Employment Security Commission and he additionally serves as Assistant Fire Chief being paid an annual salary plus additional compensation per each fire call.

The individual in question was elected to the Hartsville City Council January 1, 1971, to take office February 1, 1971, for a term of four years. During his term of office, the City of Hartsville adopted the Council-Manager form of government as set forth in Section 47-591 et. seq., Code of Laws of South Carolina 1962.

Section 47-699.23 sets forth the qualifications for councilmen, one of which is that councilmen shall hold no other public office or public employment with the city, county or state . . . As the individual in question is employed by the State, he is disqualified pursuant to the preceding statute, and under the provisions of Section 47-699.25 his office is deemed to have become vacant, and a special election is authorized pursuant to Section 47-699.26.

An act was passed August 3, 1972, which provides for the election of mayor and councilmen in the City of Hartsville should Hartsville adopt the Council-Manager form of government. This act states in pertinent part,

The City of Hartsville upon adopting the Council-Manager form of government shall have six councilmen, three of whom shall be elected from the City at large in the manner provided by law for a term of four years each and three of whom shall be present members of the Hartsville City Council whose terms of office expire January 31, 1975 and who shall serve for a term of two years each.

The 1972 act thus provides that the existing councilmen, one of whom is the individual in question, shall continue in office for a term of two years after the adoption of the Council-Manager form of government. This act, however, does not conflict with, nor does it supersede Section 47.699.23 supra, which sets forth the qualifications of councilmen. If the individual was not previously qualified the 1972 act does not institute new qualifications and he would remain disqualified. It is, therefore, the opinion of this office that the individual in question being employed by the South Carolina Employment Security Commission is not qualified to serve on the Hartsville City Council.

It is the further opinion of this office that the position of City Councilman and Assistant Fire Chief are contrary to the dictates of public policy as expressed in the case of [McMahan v. Jones](#) 94 S.C. 362, 77 S.E. 1022 which states: 'no man in the public service should be permitted to occupy the dual position of master and servant.'

I trust that this has been sufficient in answer to the question which you posed. If we can be of any further assistance, please do not hesitate to call or write.

Very truly yours,

**\*2** Timothy G. Quinn  
Senior Assistant Attorney General

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