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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

September 21, 2004

The Honorable J. Roland Smith
Member, House of Representatives
183 Edgar Street
Warrenville, South Carolina 29851

Dear Representative Smith:

In a letter to this office you questioned the law enforcement status of Mr. Jason Usry who worked part-time with the Burnetttown Police Department and is employed with Wackenhut Services at the Savannah River nuclear facilities. In particular, you asked whether Mr. Usry could continue to hold a law enforcement commission as a Burnetttown police officer or whether the dual office holding provision of the State Constitution would prevent him from serving as such while working for Wackenhut. It is my understanding that certain individuals employed by Wackenhut serve as private security guards or hold commissions as special State constables pursuant to S.C. Code Ann. Section 23-7-30 et seq. (Supp. 2003).

Article XVII, Section 1A of the State Constitution provides that "no person may hold two offices of honor or profit at the same time ...," with exceptions specified for an officer in the militia, a member of a lawfully and regularly organized fire department, a constable, or a notary public. 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, 58 S.E. 762 (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, 274 S.C. 475, 266 S.E.2d 61 (1980).

This office has repeatedly held that an individual serving as a police officer in this State holds an office for dual office holding purposes of the State Constitution. See: Ops. Atty. Gen. dated July 31, 2000; June 12, 1995; February 4, 1994. See also: Richardson v. Town of Mount Pleasant, 350 S.C. 291, 566 S.E.2d 523 (2002) (municipal police officer was not a constable so as to be exempt from constitutional provisions prohibiting dual office holding). Similarly, this office concluded in an opinion dated August 12, 1991 that an individual serving as a private security guard would hold an office for dual office holding purposes. See also: Ops. Atty. Gen. dated May 14, 1986; March 11, 1983; and January 28, 1975.

As to individuals employed by Wackenhut who hold commissions as special State constables, in its decision in Richardson v. Town of Mount Pleasant, supra, the State Supreme Court recognized

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the exemption in the State Constitution for constables preventing them from being considered an officer for dual office holding purposes. Specifically included in the category of "constable" for purposes of the dual office holding provision of the State Constitution were those special state constables whose jurisdiction is "limited to the lands and premises acquired by the United States government...in Aiken, Allendale and Barnwell counties." See: Section 23-7-40. Therefore, if Mr. Usry was to have obtained a commission as a special state constable in association with his duties at Wackenhut at the Savannah River plant, he would not be considered as holding an office in that position for purposes of the prohibition on dual office holding.

I have been informed, however, that Mr. Usry does not hold a commission as a special State constable nor is he licensed as a private security guard. An individual with Wackenhut specifically informed me that Mr. Usry is employed in a separate division with no law enforcement authority. Therefore, based upon such understanding of such employment, in my opinion Mr. Usry could continue to serve as a part-time law enforcement officer with the Burnettown Police Department.

With kind regards, I am,

Very truly yours,



Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



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