



HENRY McMASTER  
ATTORNEY GENERAL

September 10, 2010

Kenneth E. Gaines, Esquire  
Columbia City Attorney  
Post Office Box 667  
Columbia, South Carolina 29202

Dear Mr. Gaines:

In a letter to this office you stated the following:

[t]he position of Chief of Police for the City is currently filled by an interim Police Chief. The City is exploring the possibility of contracting with the Richland County Sheriff to act as a management consultant to lead the City of Columbia Police Department. The Sheriff's management contract will be for a limited term and is not contemplated to be a permanent arrangement. The Police Department will continue to exist, but the position of Police Chief would not be filled. Instead, the full, complete and entire responsibility for law enforcement within the City would be turned over to and...(be)...performed by the Sheriff. The Mayor and City Council are seeking...(an)...opinion as to whether the performance of those duties pursuant to a management contract would constitute dual office holding in violation of the State Constitution.

...Clearly, if the City attempted to also appoint the Sheriff as Police Chief, that would constitute dual office holding. Here, the Sheriff would not hold the official position of Police Chief, but would exercise all of the authority and duties of that office pursuant to a management contract. Under those circumstances, would such an arrangement violate the prohibition against dual office holding?

According to an email from Sheriff Lott, he will hold only the office of Sheriff. Pursuant to a contract with the City of Columbia he would provide leadership and management of the Columbia Police Dept. as a consultant. He would not occupy or hold the position of Police Chief or any other appointed position with the City.

Article XVII, Section 1A of the South Carolina 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 offices which have

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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 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). In Sanders, supra, it was further stated that "...one who merely performs the duties required of him by persons employing him under an express contract or otherwise, though such persons be themselves public officers, and though the employment be in or about a public work or business, is a mere employee." 58 S.E. at 763.

As you point out in your letter, Article VIII, Section 13 of the State Constitution authorizes counties and municipalities to provide by agreement for the joint administration of any function and exercise of powers, and the sharing of costs. Such provision was cited in an opinion of this office dated May 17, 1978 as authorizing a sheriff's department to contract with a municipality to provide police protection. There is also statutory authorization for agreements to share law enforcement responsibilities. See, e.g., S.C. Code Ann. §§ 5-7-30, 17-13-45, 23-1-215 and 23-20-10 et seq.

A prior opinion of this office dated August 25, 2006 stated as follows:

[p]rior opinions of this office have recognized that a sheriff is the chief law enforcement officer of a county. See: Ops. dated April 20, 2006 and March 8, 1989. As noted in a prior opinion of this office dated March 1, 2005, a sheriff's jurisdiction encompasses his entire county. An opinion of this office dated November 6, 1992 stated that

[t]he general law in this State presently requires a sheriff and his deputies to patrol their county and provide law enforcement services to its citizens. Such is consistent with...(his)...status as the chief law enforcement officer of a county.

Another opinion of this office dated July 9, 1998 similarly commented that "since the sheriff is a county officer, his authority extends over the entire county and includes all...(political subdivisions)...within his county." An opinion dated May 17, 2001 determined that "...the sheriff would technically have jurisdiction (concurrent with the municipal police department) over any violation of state law occurring within the municipality." See also: S.C. Code Ann. § 23-13-70 (duty of deputy sheriffs to patrol the entire county).

As to a sheriff's law enforcement obligations regarding a municipality, an opinion of this office dated May 20, 1996 indicated that a sheriff "...as a county official, is not generally considered to be obligated to provide specific service within a municipality, but is authorized to offer contract law enforcement service to a municipality." An earlier opinion of this office dated May 17, 1978 had similarly concluded that a

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sheriff's department could contract with a municipality to provide police protection stating that

[t]here are currently no state statutes which would prevent...(a)... sheriff's department from offering contract law enforcement services to municipalities within...(that same county)...The ability of political subdivisions to enter into an agreement for the joint administration, responsibility and sharing of the costs of services with other political subdivisions is granted by Article VIII, Section 13 of the South Carolina Constitution and Section 6-1-20...I believe reading these above sections in conjunction enables an incorporated municipality to enter into a contractual arrangement with a county to provide law enforcement services to a municipality...There are currently no state statutes which would preclude a municipality from making an appropriation in its budget for payment of law enforcement services to the county general fund with later disbursement to the sheriff's department.

The previously referenced opinion dated November 6, 1992 quoting another prior opinion of this office dated April 11, 1985 stated that

...while a county and county officials are not as a general matter obligated to perform services within the corporate limits of a city, the General Assembly has provided by statute for municipal residents to contract for county services in certain situations. Section 4-9-40 of the Home Rule Act authorizes a county to "perform any of its functions, furnish any of its services within the corporate limits of any municipality, situated within the county, by contract with any individual, corporation or municipal governing body, subject always to the general law and the Constitution of this State regarding such matters."

That opinion concluded that

...while a sheriff, as chief law enforcement officer of a county is statutorily obligated to patrol his county, which presumably would include a municipality within that county, a sheriff, as a county official, is not generally considered to be obligated to provide specific services within a municipality. However, a sheriff could contract law enforcement services to a municipality.

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The referenced opinion dated August 25, 2006 citing such opinion stated that “[i]t is clear, therefore, that a sheriff may contract with a municipality to provide law enforcement services to that municipality.”

This office in an opinion dated August 28, 2003 recognized that pursuant to S.C. Code Ann. § 4-25-25 “[a] municipality may contract with any other municipality in the county or the county governing body to employ the municipal judge of the other municipality or a magistrate to preside over its court.” The opinion recognized that as to an individual who served simultaneously as a municipal judge in one jurisdiction and as a magistrate or municipal judge in a separate jurisdiction, there would be a violation of the dual office holding provision. The opinion stated that

[h]owever, the dual office holding provision of the State Constitution is not violated where the individual in question acts under the authority of Section 4-25-25 of the Code of Laws and presides over the municipal court within the same county solely on a contract basis. This Office has concluded on several occasions that “the mere assignment of additional duties to an already-existing office would not create a second office.”

See also: Ops. Atty. Gen. dated January 25, 1991 (“...the situation whereby a magistrate or municipal judge is employed by contract to preside over a different municipal court does not result in the magistrate or municipal judge being considered as having been appointed to another office. Instead,... “ additional powers and duties are annexed” to the original office. Therefore, in circumstances where there is contractual employment, as opposed to a separate appointment, the dual office holding prohibition is avoided.”).

Another opinion of this office dated June 11, 1993 dealt with the question of whether an assistant solicitor could serve as an appointed city attorney without violating the dual office holding prohibitions of the State Constitution. While recognizing that the position of assistant solicitor constitutes an office for dual office holding purposes, the matter of whether the position of city attorney as described in the request letter also constituted an office for such purposes was ambiguous. However, that opinion is useful in its determination that for purposes of the situation addressed, the position of city attorney was determined to be that of an independent contractor rather than an office holder. It was referenced that

[a] review of the ordinance reveals much latitude in the employment of an attorney. The attorney may be elected or retained. A written contract is entered into, with the scope of the work and fees to be paid, described therein. No specific term is specified; no oath is required by the ordinance. The attorney will advise the mayor and council, draft ordinances and instruments, represent city officials, and appear on behalf of the City in legal proceedings. The ordinance contemplates that more than one attorney may be retained; in this instance, we understand that the attorney in question will not prosecute criminal cases on behalf of the City, that another attorney may be retained for that purpose.

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An opinion of this office dated January 7, 1985 dealt with the question of the legality of a county council to delegate to its chairman certain county administrative duties. In examining the question, the issue of possible dual office holding was raised. However, the opinion, noting that a separate position of administrator was not created inasmuch as the council member was performing his administrative duties by virtue of his position as chairman of county council, determined that the duties were, practically speaking, performed *ex officio*. It was noted that the State Supreme Court has held that where an officer is performing additional duties by virtue of his holding one office, dual office holding provisions are not contravened. See: Ashmore v. Greater Greenville Sewer District, 211 S.C. 77, 44 S.E.2d 88 (1977). As a result, the opinion concluded that it was doubtful whether the situation in question constituted dual office holding.

Consistent with the above, in the opinion of this office, it would not be a violation of this State's constitutional prohibition against dual office holding for the Richland County Sheriff to enter into a management contract with the City of Columbia to turn over the full, complete and entire responsibility for law enforcement within the City of Columbia to the Sheriff. Again, the Sheriff would not separately hold any official position as Police Chief or any other appointed position with the City but instead would exercise all of the authority and duties of the office of Police Chief pursuant to a management contract. As understood by this office, the Sheriff's contract would be to provide leadership and management of the Columbia Police Department as a consultant. Thus, such management contract would not bestow upon the Sheriff a separate office, but would simply assign additional law enforcement duties to him. Such conclusion is consistent with the long-standing opinions of this office.

If there are any questions, please advise.

Very truly yours,

Henry McMaster  
Attorney General



By: Charles H. Richardson  
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Deputy Attorney General