



HENRY McMASTER  
ATTORNEY GENERAL

March 4, 2009

The Honorable Robert Garner  
Member, Union City Council  
400 Gage Avenue  
Union, South Carolina 29379

Dear Councilman Garner:

We understand from your letter that you desire an opinion of this Office on dual office holding. You informed us that you recently were elected to the Union City Council (“City Council”) and wish to obtain a state constable’s commission as a retired police officer. Thus, you wish to know whether you “have the ability to get a state constables commission as a retired officer now that [you] are on City Council?”

### **Law/Analysis**

Article XVII, section 1A of the South Carolina Constitution (Supp. 2007) prohibits a person from holding “two offices of honor or profit at the same time, but any person holding another office may at the same time be an officer in the militia, member of a lawfully and regularly organized fire department, constable, or a notary public.” (emphasis added). To contravene this provision, a person concurrently must hold two offices having duties that involve the exercise of some portion of the sovereign power of the State. Sanders v. Belue, 78 S.C. 171, 174, S.E. 762, 763 (1907). Furthermore, our courts recognize other relevant considerations in determining whether an individual holds an office, such as, whether a statute, or other such authority, establishes the position, proscribes the position’s duties or salary, or requires qualifications or an oath for the position. State v. Crenshaw, 274 S.C. 475, 477, 266 S.E.2d 61, 62 (1980).

In numerous opinions, this Office determined a position on a town or city council is an office for purposes of dual office holding. Ops. S.C. Atty. Gen., June 11, 2008; October 7, 2006; November 5, 2003. Thus, we must consider whether obtaining a state constables commission as a retired police officer is an office.

Article XVII, section 1A of the South Carolina Constitution, as cited above, specifically states that constables are exempt from the prohibition on dual office holding. In addition, section 8-1-130 of the South Carolina Code (Supp. 2008) provides: “Any member of a lawfully and regularly organized fire department, county veterans affairs officer, constable, or municipal judge serving as

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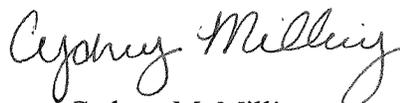
attorney for another city is not considered to be a dual officeholder, by virtue of serving in that capacity, for the purposes of the Constitution of this State.” (emphasis added). Thus, as we concluded in prior opinions, those holding state constable commissions are exempt from the prohibition on dual office holding. Ops. S.C. Atty. Gen., December 15, 2003; May 2, 1989. Therefore, we do not believe your acceptance of a state constable’s commission as a retired officer while continuing to serve on City Council runs afoul of article XVII, section 1A of the South Carolina Constitution.

### Conclusion

A position on City Council constitutes office for purposes of dual office holding. However, because service as a state constable is exempt from the prohibition on dual office holding, we do not believe serving simultaneously in these two positions would violate article XVII, section 1A of the South Carolina Constitution.

Very truly yours,

Henry McMaster  
Attorney General



By: Cydney M. Milling  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Deputy Attorney General