

October 2, 2007

M. Scott Wilson, Acting Chief of Police
Prosperity Police Department
Post Office Box 36
Prosperity, South Carolina 29127

Dear Chief Wilson:

We received your letter inquiring as to whether a conflict of interest would arise if a police chief or a police officer were to serve as clerk of court for a municipal court. In addition, you wish to know whether a police officer “may perform any of the duties required of the Clerk of Court for a Municipal Court.” You add:

The former Police Chief and his predecessors performed some or all of these duties When I became Acting Chief of Police, I advised I did not wish to perform these duties. A few months later administrative staff members such as the Clerk Treasurer began performing most of these duties. I was recently advised by my Town Administrator that I would need to take on these duties in the same manner the past Chief of Police had done with the exception that I would not receive any money and may not send in the Uniform Traffic Citations to the SCDMV as required.

Law/Analysis

In your letter, you include a list of duties generally performed by the clerk of court in question. According to your letter, these duties include:

Prepare dockets, writs, processes and proceedings of the court
Prepare bench warrants
Complete discharges from jail

- Prepare jury summons and jury trial lists from the jury pool
- Send out NRVC letters
- Log case dispositions
- Expungement of Records
- Transmitting warrants to General Sessions Clerk of Court
- Perform other clerical duties relating to the proceedings of court as the judge shall direct
- Maintaining court records
- Entering Traffic Summons into the computer
- Account for all Uniform traffic citations and send them to SCDMV
- Draft Ismail letters, Orders Correcting Conviction Record
- Issuing Continuance letters
- Handling Preliminary Hearing Requests

Based on these duties, you inquire as to whether a municipality's police chief or a police officer may perform these duties either as a municipal court clerk or in his or her capacity as a police officer. We find an opinion issued by this Office in 2002 instructive as to the nature of municipal clerk of court's position. Op. S.C. Atty. Gen., July 25, 2002. In that opinion, we considered whether a conflict of interest arises when a municipal clerk of court performs the duties of a victim's advocate as part of his position as a municipal court clerk. We explained:

A clerk of court, when performing the duties of clerk, is an arm of the court itself. The municipal court is part of the unified judicial system created by Article V of the State Constitution. The court is constitutionally required to remain "neutral and detached" in the performance of its exclusively criminal functions, such as the issuance of warrants.

Id. (citations omitted). Thus, we concluded that a municipal court clerk, as an arm of a municipal court, "must maintain the appearance of neutrality." Id. Therefore, we advised against the same individual serving as both a municipal court clerk and as a victim's advocate. Id.

It is our understanding that municipal police officers often serve as prosecutors against those being tried on charges before a municipal court. Furthermore, even if the municipality employs an attorney to prosecute charges, municipal police officers often are witnesses in such cases. Because municipal courts possess criminal jurisdiction, an apparent conflict could arise due to the police officer's need to prosecute or testify at municipal court hearings. Under these circumstances, an individual may not be able to act as a neutral and detached arm of the court with regard to his or her role as clerk of court or in executing the duties of the clerk of court if the individual is also serving

as a police officer for the same municipality. Thus, we strongly advise that a municipal police officer not serve as or perform the functions of the clerk of court for the municipality in which he serves, as the possibility of an apparent conflict of interests is almost unavoidable.

With regard to situations in which one individual serves as both a police officer and as a municipal clerk of court, we find it necessary to point out the potential for a violation of the dual office holding prohibition contained in the South Carolina Constitution. Article XVII, section 1A of the South Carolina Constitution (Supp. 2006) 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.” In order 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).

According to the Supreme Court’s decision in Richardson v. Town of Mount Pleasant, 350 S.C. 291, 566 S.E.2d 523 (2002), municipal police officers are considered officers for purposes of dual office holding. Furthermore, in several opinions, this Office addressed whether or not an individual serving as a municipal clerk of court is considered an officer. Ops. S.C. Atty. Gen., October 15, 2003 (Town of Perry Clerk of Court); September 12, 2003 (Mauldin Clerk of Court); July 25, 2002 (Westminister Clerk of Court); August 18, 1981 (municipal clerks of court in general). In each of these opinions, we determined that one holding such a position holds an office for purposes of dual office holding. Id. Thus, if the same individual holds both the position of a municipal police officer and a municipal clerk of court, this individual is likely in violation of the dual office holding provision under article XVII, section 1A of the State Constitution. However, our determination is based on the fact that the individual is actually holding both positions and not just performing the duties of the clerk of court as part of the fulfillment of his duties as a police officer. See Op. S.C. Atty. Gen., July 25, 2002.

Conclusion

Considering that municipal police officers generally prosecute or are witnesses for the prosecution of cases before a municipal court, we find a police officer’s service as a municipal clerk of court or the performance of the duties of a municipal clerk of court likely creates the appearance of a conflict of interest and should be avoided. Additionally, we are compelled to point out that if

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a municipal police officer also serves in the position of a municipal clerk of court, such service appears to run afoul of the constitutional prohibition on dual office holding.

Very truly yours,

Henry McMaster
Attorney General

By: Cydney M. Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:

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