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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

December 15, 2003

The Honorable Ralph E. Putnam
Senior Administrative Judge, City of Greenville
Municipal Court
Post Office Box 488
Greenville, South Carolina 29602

Dear Judge Putnam:

In a letter to this office you indicated that you serve as the Senior Administrative Judge for the City of Greenville. You questioned whether you may also receive a commission as State constable. I am interpreting your question as raising the issue of whether holding both provisions would violate the dual office holding provisions of the South Carolina Constitution.

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, member of a lawfully and regularly organized fire department, constable or a notary public. S.C. Code Ann. Section 8-1-130 (Supp. 2002) provides that

(a)ny member of a lawfully and regularly organized fire department, county veterans affairs officer, constable, or municipal judge serving as 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). As stated in an opinion of this office dated July 17, 1996 for the dual office holding provision to be contravened, an individual must concurrently hold two positions having duties involving an exercise of some portion of the sovereign power of the State. 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.

This office has concluded in prior opinions that a municipal judge is an office holder for dual office holding purposes. See: Ops. Atty. Gen. dated September 11, 2003; June 22, 1998. However, this office has also determined that Article XVII, Section 1A and Section 8-1-130 of the Code specifically excludes holders of a constable's commission from considerations of dual office holding for purposes of the State Constitution. See: Ops. Atty. Gen. dated April 14, 1993 and May 2, 1989. Therefore, as a municipal judge, you would not contravene the State constitutional provisions on dual office holding by accepting a State constable's commission.

Sincerely,

Charles H. Richardson
Senior Assistant Attorney General