



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
 ATTORNEY GENERAL

December 27, 2002

Mr. Chadwick Hutchins
 180 Boat Drive
 Chesnee, South Carolina 29323

Dear Mr. Hutchins:

You have asked for our opinion as to whether a person who serves simultaneously as a magistrate's constable and a Reserve Police Officer for the City of Chesnee is dual office holding in contravention of the South Carolina Constitution. Your specific question is whether you can keep your position as constable and also be a reserve police officer.

Law / Analysis

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, member of a lawfully and regularly organized fire department, constable, or a notary public. For this provision to be contravened, a person concurrently must hold two 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 advised on numerous occasions that a reserve police officer would be considered an officer for dual office holding purposes. See Op. Atty. Gen., dated June 5, 1979 and April 14, 1993.

Thus, the issue is whether a magistrate's constable is also an officer for purposes of this constitutional provision. This issue was recently addressed by the South Carolina Supreme Court in Richardson v. Town of Mount Pleasant, 350 S.C. 291, 566 S.E.2d 523 (2002). There, the Court interpreted the meaning of the term "constable" for purposes of Article XVII, Section 1A of the Constitution. As noted above, Art. XVII, §1A exempts inter alia the position of "constable" from the dual office prohibition contained therein.

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In Richardson, the court rejected the argument that a municipal police officer constituted a "constable" for purposes of Art. XVII, §1A. In doing so, the Court commented upon the position of a magistrate's constable as follows:

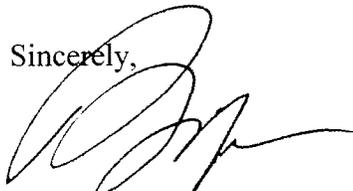
[U]nder current South Carolina law . . . the office which most nearly meets Black's [Law Dictionary] and Blackstone's definitions of constable is that of "magistrate's constable." See generally South Carolina Code Annotated, Title 22, Chapter 9. Magistrate's constables have county - wide authority, . . . are authorized to serve . . . and execute process and make returns, . . . and to levy executions and serve attachments. Constables must attend circuit court when required by the sheriff, . . . and while there are deemed "officers of the court" bound to "perform the appropriate duties and services assigned them by the sheriff and the presiding judge."

Thus, the Court clearly commented in dicta that a magistrate's constable is encompassed within the term "constable" for purposes of the exceptions to the dual office holding provision in the Constitution.

Accordingly, it is our opinion that simultaneously holding the positions of magistrate's constable and reserve police officer do not constitute dual office holding under the South Carolina Constitution.

Of course, this Office makes no comment as to the policy considerations of an individual occupying both the positions of magistrate's constable and reserve police officer. Typically, the two positions would be compatible with each other. However, such a determination would be up to the magistrate and the chief of police involved.

Sincerely,



Robert D. Cook
Assistant Deputy Attorney General