

## The State of South Carolina



## Office of the Attorney General

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January 31, 1992

Robin D. Rucker, Chief  
Wagener Police Department  
P. O. Box 408  
Wagener, South Carolina 29164

Dear Chief Rucker:

In a letter to this Office you questioned whether an individual employed as a sergeant with Wackenhut Services at the Savannah River nuclear facilities could serve as a commissioned law enforcement officer for the Town of Wagener or as a reserve law enforcement officer for the Town. You stated that the individual in question was commissioned pursuant to Section 23-7-10 of the Code as a special State constable.

Article XVII, § 1A of the South Carolina Constitution provides that "... no person shall hold two offices of honor or profit at the same time." For this provision to be contravened, a person concurrently must hold two public 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 positions. State v. Crenshaw, 274 S.C. 475, 266 S.E.2d 61 (1980).

In 1989 Article III, Section 24, Article VI, Section 3 and Article XVII, Section 1A of the State Constitution relating to dual office holding were amended to provide that the prohibition is not applicable to "constables" who hold another office. This Office has interpreted such provision as

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being applicable only to individuals appointed by the Governor pursuant to Section 23-1-60 of the Code as state constables. See: Opins. of the Atty. Gen. dated May 2, 1989 and January 31, 1989. Consistent with such prior opinions, an individual appointed pursuant to Section 23-7-10 of the Code would remain an officer for dual office holding purpose.

In State v. Crenshaw, supra, police officers were determined to be officers for dual office holding purposes. Therefore, it would be a conflict with the dual office holding provisions of the State Constitution for an individual appointed as a special State constable pursuant to Section 23-7-10 to also be a commissioned law enforcement officer for a municipality.

In opinions dated February 5, 1988 and May 2, 1989 this Office determined that an individual who serves as a reserve police officer, a position authorized by Sections 23-28-10 et seq. of the Code, would also hold an office for dual office holding purposes. Therefore, it similarly would be a conflict with the dual office holding provisions of the State Constitution for an individual appointed as a special State constable pursuant to Section 23-7-10 to also serve as a reserve police officer.

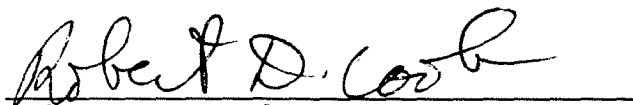
With kind regards, I am

Very truly yours,

  
Charles H. Richardson  
Assistant Attorney General

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REVIEWED AND APPROVED BY:

  
Robert D. Cook  
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