

The State of South Carolina



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Office of the Attorney General

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February 6, 1986

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Dear Chief Strom:

In a letter to this Office you questioned whether an individual who is a state constable would be prohibited by the dual office holding provisions of the State Constitution from holding a bail bondsman's license issued pursuant to the newly-enacted provisions of Act 189 of 1985.

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 position. State v. Crenshaw, 274 S.C. 475, 266 S.E.2d 61 (1980).

As you are aware, this Office has previously advised that an individual holding the position of state constable with or without compensation would be holding an office for dual office holding purposes. See, e.g., Opinions dated May 17, 1984, March 20, 1983 and December 29, 1981.

Generally, the business of acting as a bail bondsman is considered as having sufficient impact on the public welfare as to authorize its regulation. See: Stephens v. Bonding Association of Kentucky, 538 S.W.2d 580 (1976); Johnson v. City of Paducah, 461 S.W.2d 357 (1970). In regulating such business, the authority to require a license to conduct the bail bonding

business is similarly recognized. City of Paducah v. Johnson Bonding Company, Inc., 512 S.W.2d 481 (1974). Pursuant to the provisions of Act No. 189, bondsmen are licensed by the State Insurance Commission. However, such licensing does not result in bondsmen being considered as officers. Generally,

a license to a person to follow any particular trade or business is not an appointment to office, nor does it confer any of the powers or privileges of a public officer; the duties to be performed are not public duties and the public has no interest in their performance or omission. 53 C.J.S. Licenses Section 2 p. 450.

Instead, a bondsman acts as an agent of a defendant for whom he posts bond. Lee v. State, 368 N.E. 1172 (1977). Moreover, instead of serving as an officer for the State, the relationship between a bondsman and the State is that of a contractual nature. U. S. v. Jackson, 465 F.2d 964 (10th Cir. 1972). Indeed, a bail bond is typically considered as a contract between a surety and the government. U. S. v. Gonware, 415 F.2d 82 (9th Cir. 1969). In addition to the fact that bondsmen are not considered to be officers, a complete review of all provisions of such Act fails to disclose any basis by which any such bondsmen licensed by the State could be construed as exercising a portion of the sovereign power of the State. As a result, it does not appear that such bondsmen should be considered to be holding an office for dual office holding purposes.

However, aside from the dual office holding consideration, it appears that another provision of Act No. 189 would prohibit a state constable from acting as a surety on a bail bond for any individual. Section 38-63-200 states:

(n)o sheriff, deputy sheriff, other law enforcement officer, judicial official, attorney, parole officer, probation officer, jailer, assistant jailer, employee of any court of this State, or other public employee assigned to duties relating to the administration of the court, may become a surety on a bail bond for any person. No person covered by this section may act as agent for any bonding company or professional bondsman, nor may have an interest, directly or indirectly, in the financial affairs of any firm or corporation whose principal

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business is acting as bondsmen. Nothing in this section prohibits any person designated above from being a surety upon the bond of his spouse, parent, brother, sister, child or descendant. (Emphasis added.)

Pursuant to Section 23-1-60 of the Code, the Governor appoints individuals as state constables "to assist in the detection of crime and the enforcement of any criminal laws of this State." Referencing such law enforcement authority, an individual appointed pursuant to such provision as a state constable would be prohibited by Section 38-63-200 from acting as a surety on a bail bond in this State.

If there are any questions, please advise.

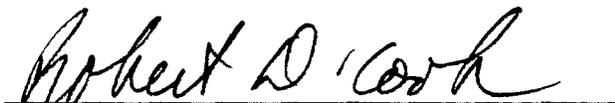
Sincerely,



Charles H. Richardson
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CHR/an

REVIEWED AND APPROVED BY:



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