

1984 S.C. Op. Atty. Gen. 188 (S.C.A.G.), 1984 S.C. Op. Atty. Gen. No. 84-74, 1984 WL 159881

Office of the Attorney General

State of South Carolina

Opinion No. 84-74

July 3, 1984

*1 Mr. Charles D. Peace
28 Crescent Street
Lyman, South Carolina 29365

Dear Mr. Peace:

You have requested the opinion of this office as to whether it would be a violation of the dual office holding provisions of the South Carolina Constitution for a person to serve simultaneously as a state constable and as a correctional officer at a state prison.

[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).

This office has previously determined that the position of state constable is an office for dual office holding purposes. [See](#), 1982 [Op. Atty. Gen.](#), dated March 25, 1982 (copy enclosed).

This Office has never rendered an opinion on whether a correctional officer would hold an office under the dual office holding provision of the Constitution. While no statute creates the position, a statute does permit the employment of such persons necessary for the conduct of the prison system. [See](#), [Section 24-1-110, Code of Laws of South Carolina \(1976\)](#).¹ A correctional officer receives a salary. His tenure is not specifically provided for, though the absence of this factor is not determinative. [See](#), 67 C.J.S. [Officers](#), § 8; [Alvey v. Brigham](#), 286 Ky. 610, 150 S.W.2d 935 (1941). Although the powers and duties of a correctional officer are not specified generally, the South Carolina Code, in Section 24-1-280, does provide the following: Employees of the South Carolina Department of Corrections, while performing their officially assigned duties relating to the custody, control, transportation or recapture of any inmate within the jurisdiction of the Department, or any inmate of any jail, penitentiary, prison, public work, chain gang, or overnight lockup of the State or any political subdivision thereof not within the jurisdiction of the Department, shall have the status of peace officers anywhere in the State in any matter relating to the custody, control, transportation or recapture of such inmate. [Emphasis added.]

A ‘peace officer’ is generally defined as a ‘person designated by public authority to keep the peace and arrest persons guilty or suspected of crime.’ [Vandiver v. Endicott](#), 215 Ga. 250, 190 S.E.2d 775, 777 (1959). [Cf.](#), [Ferraro v. City School District of City of Schenectady](#), 69 Misc. 2d 800, 331 N.Y.S.2d 490 (1972) (a peace officer is an individual vested with some portion of the sovereign functions of government, to be exercised by him for the benefit of the public, such powers enduring at the pleasure of the creating power, whose tenure is not transient, occasional, or incidental). Considering the general definition of a peace officer, the specific grant of power by Section 241280 of the Code, and the correctional officer's day-to-day duty of preserving law and order as well as enforcing the law within the correctional system, clearly a correctional officer has been delegated a portion of the sovereign power of the State.

*2 Considering all of the criteria discussed above, it is the opinion of this Office that a correctional officer would serve as a public officer for dual office holding purposes. See also, [Veal v. State, 58 Tex. Cr. 340, 125 S.W. 919 \(1910\)](#) (a convict guard is a civil, or public, officer).

Based on the foregoing, one who would serve simultaneously as a correctional officer and as a state constable would most probably violate the dual office holding provisions of the Constitution of South Carolina.

Sincerely,

Patricia D. Petway
Assistant Attorney General

Footnotes

- 1 [Section 24-1-110](#) provides the following:
The duty of the Commissioner shall extend to the employment and discharge, with the approval of the Board [State Board of Corrections], of such persons as may be necessary for the efficient conduct of the prison system.
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