

1979 WL 43044 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 5, 1979

***1 Re: Richard E. Luther—Dual Office Holding**

James R. Metts
Sheriff
Lexington County Sheriff's Department
521 Gibson Road
Lexington, South Carolina 29072

Dear Sheriff Metts:

You recently have asked the opinion of this Office on whether the holding by a person of the positions of security officer with the Crafts-Farrow State Hospital and auxiliary police officer with the Lexington County Sheriff's Department constitutes dual office holding.

[Article XVII, § 1A of the South Carolina Constitution](#) states that ‘. . . no person shall hold two offices of honor and profit at the same time.’ Also see Article VI, § 3. Thus, it is necessary to determine if each of the positions identified in your correspondence are offices within the meaning of [Article XVII, § 1A](#). An office within this provision is one which is ‘charged by law with duties involving an exercise of some part of the sovereign power, either small or great, in the performance of which the public is concerned, and which are continuing and not occasioned or intermittent . . .’ [Sanders v. Roche](#), 78 S.C. 171 (1907).

The position of security officer noted in your correspondence is provided for by § 44-11-79, Code of Laws of South Carolina, 1976, and states:

The Mental Health Commission may authorize the superintendents to employ suitable persons to act as marshals to keep intruders off and prevent trespass upon State mental health facilities. The marshals employed, in so far as State mental health facilities are concerned, shall be vested with all the powers and charged with all the duties of police officers generally. They may eject trespassers. They may without warrant arrest persons guilty of disorderly conduct or of trespass on State mental health facilities and have them tried in any court of competent jurisdiction. [Emphasis Added]

The provisions of this statute are sufficient to constitute the position of security officer as an office within the meaning of [Article XVII, § 1A](#), as above-discussed.

Authorization for the appointment and for the powers and duties of reserve police officers is found in § 23-28-10, et seq., Code, supra. Pursuant thereto, these officers are given police powers and duties and function as law enforcement officers on a regular, although part-time, basis. This makes the position of reserve police officer an office within the meaning of [Article XVII, § 1A](#), as above-discussed.

Based on the foregoing reasons, it is the opinion of this Office that the holding at the same time of the offices of security officer with the Crafts-Farrow State Hospital and reserve police officer with the Lexington County Sheriff's Department would contravene the provision of the South Carolina Constitution prohibiting dual office holding.

Sincerely,

James M. Holly
State Attorney

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