

1974 S.C. Op. Atty. Gen. 271 (S.C.A.G.), 1974 S.C. Op. Atty. Gen. No. 3858, 1974 WL 21359

Office of the Attorney General

State of South Carolina

Opinion No. 3858

September 13, 1974

***1 A Magistrate's Constable may serve as Superintendent of Water Works without violating the dual officeholding provision of the State Constitution.**

Attorney at Law
Mount Pleasant, S. C.

You have requested a ruling as to whether an individual holding both the positions of Magistrate's Constable and Superintendent of Water Works of Sullivan's Island would be in violation of the prohibitions against dual office holding of the state constitution.

In order for there to be a violation of dual office holding, the individual concerned must hold two positions qualifying as 'office'. Generally, in order to be an 'office' a position must entail the discretion to dispense some measure of the sovereign power of the state or have strong influence over its dispensation. Employees, working under restrictions and having little involvement in policy formulation generally do not qualify as officers.

It appears that the Superintendent of Water Works for the Town of Sullivan's Island performs chiefly maintenance duties. He is not involved in policy making for the town, exercises no sovereign power, and has little control over the allocation and expenditure of public funds. He is hired by the council and serves at its pleasure. It is, therefore, my opinion that he is an employee in his position of Superintendent of Public Works and not an 'officer'. This being the case, retention of both the Magistrate's Constable position and that of Superintendent of Water Works for the Town of Sullivan's Island would not constitute dual office holding.

Huston S. Davis
Assistant Attorney General

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