

1974 WL 27971 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 24, 1974

***1 Re: Dual Officeholding**

Mr. William Jackson
6951 Parkinson Drive
Columbia, South Carolina 29204

Dear Mr. Jackson:

You have inquired whether you would be in violation of the dual officeholding prohibition of the State Constitution should you accept an appointment as a magistrate's constable while remaining in the employment of the East Richland County Public Service District as Assistant Director in charge of the Maintenance and Inspection Division.

The Constitution of South Carolina (1895), as amended, Article 17, § 1A, provides that ' . . . no person shall hold two offices of honor or profit at the same time.' A magistrate's constable is an officer within the meaning of this provision. 1966 Ops. Atty. Gen., #2066, p. 159.

You would not offend Article 17, § 1A by accepting the appointment, however, since your position with the Public Service District is a public employment rather than a public office. This distinction was made in the leading case of [Sanders v. Belue](#), 78 S.C. 171, 58 S.E. 762 (1907). There it was held:

One who 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 occasional or intermittent, is a public officer. Conversely, one who merely performs the duties required of him by persons employing him under an express contract or otherwise, though such persons be themselves public officers, and though the employment be in or about a public work or business, is a mere employee.

I hope this information satisfactorily answers your inquiry.

Very truly yours,

Wade S. Kolb, Jr.
Staff Attorney

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