



ALAN WILSON
ATTORNEY GENERAL

February 20, 2020

Wesley Vorberger, Esq.
General Counsel
Greenville County Sheriff's Office
4 McGee Street
Greenville, SC 29601

Dear Mr. Vorberger:

You have requested an opinion from this Office regarding "issues arising from the recently formed Greenville County Multi-Jurisdictional Drug Enforcement Unit ("DEU")." Specifically, you state the following:

The DEU was established in March 2019 under a mutual-aid agreement ("Agreement") between the Greenville County Sheriff's Office ("GCSO") and various municipal police departments in Greenville County. See Agreement (attached); cf. S.C. Code § 23-20-30.

Under the Agreement, the GCSO and various police departments aligned their resources to "provide a more comprehensive approach to combat trafficking in narcotics and dangerous drugs and other related crimes in Greenville County; and to provide a more effective use of public resources." See Agreement at 1. The Agreement states that each participating entity will provide at least one law enforcement officer to the DEU, making up the vast majority of the DEU's manpower. The DEU is controlled by a Governing Board (made up of chief executive officers from each participating entity) and managed by a Commander employed by the Thirteenth Circuit Solicitor's Office. Under the terms of the Agreement, law enforcement officers serving in the DEU have countywide jurisdiction to investigate crimes and enforce county ordinances and state laws. The countywide law enforcement jurisdiction is recognized by the Sheriff at a formal swearing-in ceremony, after which a commission is provided to the DEU member.

By way of illustration, the City of Fountain Inn provides a full-time police officer to work in the DEU. Under the Agreement, that officer would work during his normal 40 hour workweek for the city, and still be paid by the city, notwithstanding his full-time work in the DEU. While maintaining his position as a municipal police officer, the officer would be sworn-in to his position on the DEU, commissioned by the Sheriff, and have countywide law enforcement jurisdiction – concurrent with his ongoing law enforcement jurisdiction in the City of Fountain Inn. In sum, he would work throughout the county, assisting the DEU carry out its missions and operations.

This arrangement under the Agreement raises two main questions regarding the operation of the DEU and the Sheriff's role in conferring countywide jurisdiction:

- (1) Does serving as both a municipal police officer as well as a sworn and commissioned member of the DEU (as effectuated by the Sheriff) violate the South Carolina Constitution's prohibition on dual-office holding? See S.C. Const. Art. VI, § 3.
 - a. Is serving on a joint-task force or unit established by a mutual-aid agreement considered a separate "office" for the purposes of the dual office holding prohibition?
 - b. If a dual-office issue is present, what effect would serving on the DEU have on a municipal police officer's initial commission to serve his municipality?
- (2) Is a mutual-aid agreement between a municipality and the GCSO – in and of itself and without any additional commission by the Sheriff – sufficient to confer countywide law enforcement jurisdiction on a municipal police officer operating under the terms

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of the agreement? See S.C. Const. Art. VIII, § 13;
S.C. Code §§ 23-20-20, -30.

LAW/ANALYSIS:

We will begin with your question regarding dual office holding. Dual office holding is provided for in the South Carolina Constitution:

[n]o person may hold two offices of honor or profit at the same time, but any person holding another office may at the same time be an officer in the militia, member of a lawfully and regularly organized fire department, constable, or a notary public . . . The limitation above set forth does not prohibit any officeholder from being a delegate to a constitutional convention.

S.C. Const., art. XVII § 1A. See also S.C. Const., art. VI § 3.

The South Carolina Supreme Court explains that an “office” for dual office holding purposes is:

“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.” Sanders v. Belue, 78 S.C. 171, 174, 58 S.E. 762, 763 (1907), “In considering whether a particular position is an office in the constitutional sense, it must be demonstrated that “[t]he power of appointment comes from the state, the authority is derived from the law, and the duties are exercised for the benefit of the public.” Willis v. Aiken County, 203 S.C. 96, 103 26 S.E.2d 313, 316 (1943). “The powers conferred and the duties to be discharged with regard to a public office must be defined, directly or impliedly, by the legislature or through legislative authority . . .”63C Am Jur.2d Public Officers and Employees § 5 (2009).

Segars-Andrews v. Judicial Merit Selection Commission, 387 S.C. 109, 691 S.E.2d 453 (2010).

Other relevant considerations for an office are:

whether the position was created by the legislature; whether the qualifications for appointment are established; whether the duties, tenure, salary, bond, and oath are prescribed or required; whether the one occupying the position is a representative of the sovereign; among others.

Op. S.C. Atty. Gen., 2013 WL 3243063 (June 17, 2013) (quoting State v. Crenshaw, 274 S.C. 475, 478, 266 S.E.2d 61, 62 (1980)).

Several of our prior opinions assist with answering your question. In a previous opinion, Op. S.C. Atty. Gen., 2010 WL 3896166 (Sept. 10, 2010), this Office addressed whether it would constitute dual office holding if the Richland County Sheriff entered into a contract with the City of Columbia to manage its police department. After a lengthy analysis of our State Constitution and laws as well as the prior opinions of this Office, we concluded:

[i]n the opinion of this office, it would not be a violation of this State's constitutional prohibition against dual office holding for the Richland County Sheriff to enter into a management contract with the City of Columbia to turn over the full, complete and entire responsibility for law enforcement within the City of Columbia to the Sheriff. Again, the Sheriff would not separately hold any official position as Police Chief or any other appointed position with the City but instead would exercise all of the authority and duties of the office of Police Chief pursuant to a management contract. As understood by this office, the Sheriff's contract would be to provide leadership and management of the Columbia Police Department as a consultant. Thus, such management contract would not bestow upon the Sheriff a separate office, but would simply assign additional law enforcement duties to him. Such conclusion is consistent with the long-standing opinions of this office.

Id. at 4.

In the September 10, 2010 opinion, we considered another opinion of this Office dated January 7, 1985. In the January 7, 1985 opinion, Op. S.C. Atty. Gen., 1985 WL 259106 (Jan. 7, 1985), the issue was whether it would be dual office holding if a county council delegated certain of the county's administrative duties to its chairman. We concluded:

As we understand it, Georgetown County Council has not created a separate position of administrator. The council member performs his administrative duties by virtue of his position as chairman of County Council. The duties are, practically speaking performed ex officio and are inherent in the office of county councilman under the council form of government. See, Section 4-9-310. In such instances, where an officer is performing additional duties by virtue of his holding one office our Supreme Court has concluded that the dual office holding provision is not contravened. Ashmore v. Greater Greenville Sewer District, 211 S.C. 77, 44 S.E.2d 88

(1977). Based upon this reasoning, we seriously doubt that a court would conclude that the situation in question constituted dual office holding.

Id. at 4.

This Office has further discussed the meaning of “ex officio” as defined by the Ashmore case in a November 18, 2014 opinion:

[w]e find it pertinent to note despite the prohibition on dual office holding, our Supreme Court found this prohibition generally does not apply when the individual in question holds one office in an ex officio capacity. In Ashmore v. Greater Greenville Sewer District, 211 S.C. 77, 92, 44 S.E.2d 88, 95 (1947) the Court stated:

The rule here enforced with respect to double or dual office holding in violation of the constitution is not applicable to those officers upon whom other duties relating to their respective offices are placed by law. A common example is ex officio membership upon a board or commission of the unit of government which the officer serves in his official capacity, and the functions of the board or commission are related to the duties of the office.

The Court then explained the term ex officio means “by virtue of his office.” Id. (internal quotations omitted). Thus, if membership on a board or committee is ex officio, or by virtue of the person’s office, it does not constitute an office for dual office holding purposes.

Op. S.C. Atty. Gen., 2014 WL 6705712 at 3 (Nov. 18, 2014) (citing Op. S.C. Atty. Gen., May 27, 2004; July 18, 1989).

At first glance, it would appear to be a violation of the constitutional prohibition against dual office holding for a municipal police officer to act as a DEU officer. However, it is our opinion that it does not constitute dual office holding because they are not separate offices. The Agreement between the GCSO and the municipal police departments requires each participating law enforcement agency to “provide a minimum of one full-time narcotic enforcement officer” to the DEU. Agreement at 2. According to your letter, the law enforcement officers provided by the participating agencies constitute the vast majority of the DEU’s manpower. Therefore, a municipal police officer performs the duties and exercises the authority of a DEU officer by

virtue of his position as a narcotics enforcement officer for the municipal police department. He is merely performing additional duties for the DEU relating to the duties he performed for the municipal police department.

Additionally, the Agreement provides that a municipal police officer works as a DEU officer during his regular forty hour work week for the city, remains an employee of the city, and receives a salary from the city. Agreement at 3. This proves that a municipal police officer and a DEU officer are not separate offices.

We will now address your second question regarding whether a mutual aid agreement is sufficient to confer countywide law enforcement jurisdiction on a municipal police officer operating as a DEU officer. This Office has previously stated that “[a]ny agreement cannot grant law enforcement officers any additional jurisdictional authority other than that specifically granted by statute.” Op. S.C. Atty. Gen., 2005 WL 774129 at 4 (Mar. 1, 2005). Pursuant to the Law Enforcement Assistance and Support Act,¹ which provides for mutual aid agreements, “[t]he officers of the law enforcement provider have the same legal rights, powers, and duties to enforce the laws of this State as the law enforcement agency requesting the services.” S.C. Code Ann. § 23-20-40(E) (1976 Code, as amended). Since the DEU was created “to provide a more comprehensive investigative approach to combat trafficking in narcotics and dangerous drugs and other related crimes in Greenville County,”² we believe that the Greenville County Sheriff’s Office is the “law enforcement agency requesting the services” referred to in section 23-20-40(E). Therefore, DEU officers have the same legal rights, powers, and duties to enforce State laws as the Greenville County Sheriff’s office.

A sheriff’s office has countywide jurisdiction:

Prior opinions of this office have recognized that a sheriff is the chief law enforcement officer of a county. See: Ops. dated April 20, 2006 and March 8, 1989. As noted in a prior opinion of this office dated March 1, 2005, a sheriff’s jurisdiction encompasses his entire county. An opinion of this office dated November 6, 1992 stated that

[t]he general law in this State presently requires a sheriff and his deputies to patrol their county and provide law enforcement services to its citizens. Such is consistent with...(his)...status as the chief law enforcement officer of a county.

Op. S.C. Atty. Gen., 2006 WL 2593080 at 1 (Aug. 25, 2006).

¹ S.C. Code Ann. § 23-20-10 et seq. (1976 Code, as amended).

² Agreement at 1.

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Since the Greenville County Sheriff's Office has countywide jurisdiction, DEU officers operating under the terms of the Agreement also have countywide jurisdiction. We therefore believe that an additional commission from the Sheriff is not necessary.

CONCLUSION:

It is our opinion that it does not constitute dual office holding if a municipal police officer acts as a Greenville County Multi-Jurisdictional Drug Enforcement Unit ("DEU") officer because they are not separate offices. A municipal police officer performs the duties and exercises the authority of a DEU officer by virtue of his position as a narcotics enforcement officer for the municipal police department. He is merely performing additional duties for the DEU relating to the duties he performed for the municipal police department. Because a municipal police officer works as a DEU officer during his regular forty hour work week for the city, remains an employee of the city, and receives a salary from the city, these positions are not separate offices.

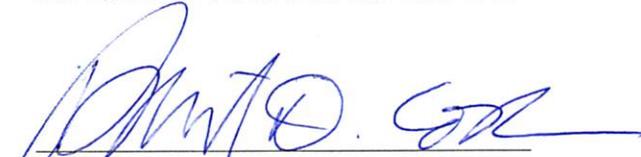
We do not believe that an additional commission from the Sheriff is necessary for DEU agents operating under the terms of the mutual aid agreement to have countywide jurisdiction. Pursuant to statute, S.C. Code Ann. § 23-20-40(E) (1976 Code, as amended), DEU officers have the same legal rights, powers, and duties to enforce State laws as the Greenville County Sheriff's Office, who requested their services. Since the Greenville County Sheriff's Office has countywide jurisdiction, DEU officers operating under the terms of the mutual aid agreement also have countywide jurisdiction.

Sincerely,



Elinor V. Lister
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General