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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

February 9, 2004

The Honorable John D. Hawkins
South Carolina Senate, District 12
606 Gressette Senate Building
Post Office Box 142
Columbia, South Carolina 29202

Dear Senator Hawkins:

Thank you for your recent request for advisory opinion from this Office concerning dual office holding. You have attached a correspondence from a concerned constituent who has been denied the opportunity to continue his service as a reserve police officer as the result of his taking a job as a full-time hospital security guard. The constituent was told that he could not "work with a SLED card and work under the Academy certification at the same time." You have asked for the opinion of this Office on the matter.

Law/Analysis

Article XVII, Section 1A of the South Carolina Constitution provides that "no person may hold two offices of honor or profit at the same time ..." with exceptions specified for an officer in the militia, member of a lawfully and regularly organized fire department, constable, or notary public. For this provision to be contravened, a person concurrently must hold two 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 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 advised on numerous occasions that both reserve police officers and private security guards are officers for purposes of dual office holding. See, as representative of those numerous opinions, Ops. S.C. Atty. Gen. dated February 5, 1988, May 2, 1989 and June 5, 1979 (reserve officer); May 14, 1986, March 11, 1983, and January 28, 1975 (private security guards). More importantly, we specifically advised in an opinion dated August 12, 1991 (copy attached), that a person who simultaneously serves as a private security guard and a reserve police officer would clearly violate the dual office holding prohibition of the South Carolina Constitution, overruling a previous opinion (dated September 12, 1980) which indicated that such concurrent service may be permissible. We are aware of no recently enacted law which would alter the August 12, 1991

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opinion. This Office has also distinguished the exceptions found in the "moonlighting" statute, S.C. Code Ann. Section 23-24-10, from the situation presented here. See Op. S.C. Atty. Gen. dated September 24, 1985 (advising that SLED should not register a law enforcement officer as a private detective or private security guard). Based on the foregoing, this Office advises that an individual who works as both a full-time, licenced security guard and a reserve police officer would do so in violation of the state constitution's prohibition on dual office holding.

Please do not hesitate to contact me if you have any further questions.

Very truly yours,

A handwritten signature in black ink, appearing to read "R. Cook", written over the typed name.

Robert D. Cook
Assistant Deputy Attorney General