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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

January 28, 2004

The Honorable Maggie W. Glover
Senator, District No. 30
P. O. Box 142
Columbia, South Carolina 29202

Dear Senator Glover:

You seek an opinion "in reference to a question concerning dual employment." Your question is as follows:

[c]an a State of South Carolina Transport Police Officer, also be able to teach driving defense courses at Florence Darlington Technical College on a contract basis? I need to know if this would be acceptable or if it would be considered dual employment.

Law / Analysis

Article XVII, Section 1A of the State 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 not addressed the question of whether a Transport Police Officer is an officer for dual office holding purposes. S.C. Code Ann. Section 58-23-1120 bestows upon the Transport Police the "exclusive authority in this State for the enforcement of the commercial motor vehicle carrier laws, which include Federal Motor Carrier Safety Regulations, Hazardous Material Regulations, and size and weight laws and regulations." It is our understanding that a Transport Police officer holds a constable's commission as a basis for law enforcement authority. If so, these individuals would not be considered "officers" for dual office holding purposes. See, Art. XVII, § 1A.

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However, we do not need to reach the issue of whether a Transport Police officer holds an office for dual office holding purposes. In an opinion dated April 21, 1971 (Op. No. 3121), we concluded that instructors at Technical Centers do "not come within the constitutional or the case law prohibition [against dual office holding], as the position of an instructor is primarily that of an employee, rather than that of a State officer." Moreover, if the individual in question teaches at TEC pursuant to a contract, such individual would not, for that reason as well, hold an office for dual office holding purposes. Accordingly, we see no dual office holding prohibition involved in the situation presented by you.

In terms of any other prohibition, the individual would need to consult with the Department of Public Safety to determine whether such teaching position or contract is in any way prohibited by that agency's internal policies or by applicable state rules or regulations.

In conclusion, it is our opinion that simultaneously holding the position of State Transport Police officer and teaching at Florence-Darlington TEC pursuant to contract is not violative of the dual office holding prohibitions contained in the South Carolina Constitution.

Very truly yours,



Robert D. Cook
Assistant Deputy Attorney General

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