The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY MCMASTER
ATTORNEY GENERAL

March 21, 2005

Ms. Margaret J. Thompson
117 Argon St.
Clemson, South Carolina 29631

Dear Ms. Thompson:

By your letter dated March 3, 2005, you have requested an opinion concerning dual office holding. In your letter, you specifically asked if a reserve officer with the Sheriff's office, who is not a commissioned constable, might simultaneously serve on the Clemson City Council. You mentioned that currently two Clemson University Police Officers simultaneously serve as councilmen and university officers. Upon review of your inquiry, this Office advises that a reserve officer may not simultaneously serve as a city councilman without violating the dual office holding prohibition.

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). Furthermore, "[O]ne who merely performs the duties required of him under an express contract or otherwise, though such persons themselves be public officers, and though the employment be in or about a public work or business, is a mere employee." *Sanders, supra*, 78 S.C. at 174.

This Office has advised on numerous occasions that a member of a city or town council would be considered an officer for dual office holding purposes. *See, Ops. S.C. Atty. Gen.*, April 12, 1998; June 12, 1995; February 4, 1994; July 23, 1993; July 24, 1991. Furthermore, this Office has advised on numerous occasions that reserve police officers are officers for purposes of dual office holding. *See, Ops. S.C. Atty. Gen.* dated February 5, 1988, May 2, 1989 and June 5, 1979.

In your letter, you allude to the fact that two Clemson University Police Officers currently serve as councilmen and university officers simultaneously and that this service has been authorized. We have previously advised that Clemson University Police Officers may serve as councilmen simultaneously without violating the dual office prohibition. See, *Ops. S.C. Atty. Gen.* October 15, 2003, February 26, 2001. The basis for our opinion was that these officers were commissioned constables, and that the position of constable falls under the exception to the dual office holding prohibition. *See, Id.*; *See also, Ops. S.C. Atty. Gen.* January 25, 1999, June 3, 1998. We reaffirm this conclusion herein.

However, you note in your letter that your position as a reserve officer is not that of a commissioned constable. As noted above, it has been our consistent opinion that a reserve police officer is an officer for dual office holding purposes.

Conclusion

In accordance with previous opinions, we reaffirm our conclusion that city councilmen as well as reserve officers are officers for purposes of dual office holding. Furthermore, a reserve officer is not a commissioned constable and therefore may not qualify for the dual office holding exception. Therefore, it is our opinion that it would be a violation of the dual office holding prohibition to simultaneously serve in both offices. Specifically, we advise that an individual may not simultaneously serve as a reserve police officer and as a councilman on the Clemson City Council without violating the dual office holding prohibition.

Very truly yours,

Robert D. Cook
Assistant Deputy Attorney General