



ALAN WILSON
ATTORNEY GENERAL

March 29, 2011

Mr. Cecil W. Rorie
P.O. Box 369
Jefferson, SC 29718

Dear Mr. Rorie:

As an “advanced state constable” licensed by SLED, you have inquired as to whether you may simultaneously serve as a town or county council member without jeopardizing your constable commission. I am interpreting your question as raising the issue of whether such service would violate the dual office provisions of the South Carolina Constitution.

Article XVII, Section 1A of the State Constitution (Supp. 2007) 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 a notary public. (emphasis added). To contravene this provision, a person concurrently must hold two offices having duties that involve the exercise of some portion of the sovereign power of the State. Sanders v. Belue, 78 S.C. 171, 58 S.E. 762 (1907). Furthermore, our courts recognize other relevant considerations such as whether a statute, or other authority, establishes the position, proscribes the position’s duties or salary, or requires qualifications or an oath for the position. State v. Crenshaw, 274 S.C. 475, 477, 266 S.E.2d 61, 62 (1980).

In numerous opinions, this Office has determined that a position on a town or city council is an office for purposes of dual office holding. *E.g.*, Ops. S.C. Att’y Gen. (June 11, 2008; October 7, 2006; November 5, 2003). Similarly, positions on county councils also qualify as offices for purposes of dual office holding. Ops. S.C. Att’y Gen. (June 25, 2010; March 7, 2008; January 18, 2006; November 2, 2005; March 18, 2004). Accordingly, clearly should you serve as a town or county council member, this position would be considered an office.

However, as noted above, Article XVII, Section 1A of the South Carolina Constitution specifically exempts constables from the dual office holding prohibition. Further, section 8-1-130 of the South Carolina Code (Supp. 2010) provides: “Any member of a lawfully and regularly organized fire department, county veterans affairs officer, **constable**, or municipal judge serving as attorney for another city is not considered to be a dual officeholder, by virtue of serving in that capacity, for the purposes of the Constitution of this State.” (emphasis added). Thus, as we have concluded in prior opinions, those holding state constable commissions are exempt from the prohibition on dual office holding. Ops. S.C. Att’y Gen. (March 4, 2009; December 15, 2003; May 2, 1989). Therefore, it is our opinion that your


Mr. Rorie
Page 2
March 29, 2011

service on city or town council while simultaneously serving as a state constable does not violate the dual office holding prohibition of the South Carolina Constitution.

Conclusion

A position on town or county council constitutes an office for purposes of dual office holding. However, because state constables are exempt from the dual office holding prohibition, your simultaneously serving as a town or county council member and a state constable not does violate article XVII, Section 1A of the South Carolina Constitution.

Very truly yours,


Elizabeth Ann L. Felder
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General