



ALAN WILSON  
ATTORNEY GENERAL

October 2, 2012

The Honorable Gary Watts  
Coroner, Richland County  
P.O. Box 192  
Columbia, South Carolina 29209

Dear Coroner Watts,

We received your letter requesting an opinion of this Office regarding dual office holding. Specifically, you ask whether an instructor at the South Carolina Criminal Justice Academy (CJA) who, by virtue of that position, holds a state constable commission and is certified as a Class 3 law enforcement officer may also work part-time performing the duties of a deputy coroner. By way of background, you provide the following information:

The Richland County Coroner is considering hiring someone part-time that has numerous qualifications and extensive experience pertaining to what we do. She is a medical doctor and a forensic pathologist. She has been a death investigator for many years in other jurisdictions. Her regular full-time job for the past two years has been as an instructor at the [CJA] where she teaches forensic and crime scene investigation. She is a former City of Columbia Police Officer and a former Lexington County Sheriff Detective.

This individual is currently commissioned at the [CJA] as a Class 3 officer with State Constable commission. The Academy is her full-time job and encourages her to maintain her credentials through them in order to teach. It also recognizes the advantage of keeping her scene skills current. Director Harrell at the Academy has agreed to allow this person to possibly work part-time with the Coroner's Office. We believe the Coroner's Office and the Academy could benefit from having her employed here.

It is clear that we cannot commission her here as a Deputy Coroner since that would be in violation of the dual commission guidelines. My questions to you would be: Since she is a commissioned State Constable and would be covering Richland County, can she be employed by the Coroner as a death investigator letting her keep her current commission? Would she be able to issue reports, death certificates, etc. and perform the duties of a commissioned Deputy Coroner using a State Constable commission?

### Law/Analysis

Article XVII, § 1A of the South Carolina Constitution provides that “[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.” For a violation of this provision to occur, an individual must concurrently hold two public offices which have duties “involving an exercise of some part of the sovereign power” of the State. Sanders v. Belue, 78 S.C. 171, 174, 58 S.E.2d 762, 763 (1907). A public officer is “[o]ne who is charged by law with duties involving an exercise of some part of the sovereign power, either great or small, in the performance of which the public is concerned, and which are continuing, and not occasional intermittent, is a public officer.” Id., 58 S.E.2d at 762-63. Other relevant considerations include: “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.” State v. Crenshaw, 274 S.C. 475, 478, 266 S.E.2d 61, 62 (1980).

As indicated above, Article XVII, § 1A specifically exempts constables from the dual office holding prohibition. Thus, as we have concluded in prior opinions, state constables do not hold an office for purposes of dual office holding considerations. See, e.g., Op. S.C. Att’y Gen., 2011 WL 1444720 (March 29, 2011). Consequently, we must determine whether Article XVII, § 1A would be violated if the individual in question accepts part-time employment performing the duties of a deputy coroner while simultaneously holding a position as an instructor at the CJA with certification as a Class 3 law enforcement officer.

We first note that a position as an instructor, professor, or teacher does not, in and of itself, constitute an office. See Ops. S.C. Att’y Gen., 2004 WL 235407 (Nov. 3, 2011) (position of instructor at technical center is primarily that of employee and thus does not constitute an office); 1986 WL 289867 (June 25, 1986) (professor for state educational institution is employee rather than officer). Thus, we must determine whether the requirement that an individual be certified as a Class 3 law enforcement officer is sufficient to elevate an instructor position to an office for purposes of Article XVII, § 1A.

We have never had the occasion to specifically address whether a Class 3 law enforcement officer holds an office for dual office holding purposes. As our Supreme Court has explained, “[u]nder the common law a conservator of the peace [had] authority to make an arrest without a warrant for a misdemeanor involving a breach of the peace committed in his presence or within his view.” State v. Mims, 263 S.C. 45, 49, 208 S.E.2d 288, 290 (1974) (citation omitted); see also Prosser v. Parsons, 245 S.C. 493, 499, 141 S.E.2d 342, 345 (1965) (“At common law sheriffs, constables, and other peace officers had the power and authority to arrest without warrant felons or persons reasonably suspected of having committed a felony and also those who had committed a misdemeanor in his presence which amounted to a breach of the peace”) (citations omitted). However, this common law rule has been limited with regards to certain law enforcement officers by statute.

Here, the power and authority of Class 3 law enforcement officers has been limited by S.C. Code Regs. 38-007 which generally provides the following with regards to each level of certification:

A. Class 1 Certifications

1. Candidates for basic certification as law enforcement officers with full powers shall successfully complete a training program as approved by the Department and will be certified as Class 1-LE.
2. Candidates for basic certification as both law enforcement officers with full powers and as local detention facility officers (jailers) shall successfully complete the requirements to be certified as Class 1-LE and Class 2-LCO and will be certified as Class 1-LECO.

B. Class 2 Certifications

1. Candidates for basic certification as local detention facility officers (jailers) shall successfully complete a training program as approved by the Department and will be certified as Class 2-LCO.
2. Candidates for basic certification as correctional officers with the Department of Corrections shall successfully complete a training program as approved by the Department and will be certified as Class 2-SCO.
3. Candidates for basic certification as juvenile correction officers with the Department of Juvenile Justice shall successfully complete a training program as approved by the Department and will be certified as Class 2-JCO.

**C. Class 3 Certifications. Candidates for basic certification as law enforcement officers with limited powers of arrest or special duties shall successfully complete a training program as approved by the Department and will be certified as Class 3-SLE.**

S.C. Code Ann. Regs. 38-007 (emphasis added).<sup>1</sup>

In view of the above regulation, we noted in a 2005 opinion that although Class 3 officers undergo training at the CJA, they “are generally considered as having duties which are more limited in scope . . . than regular law enforcement officers such as deputies or State troopers.” *Op. S.C. Att’y Gen.*, 2005 WL 292231 (Jan. 25, 2005). In a prior opinion we also quoted a November 4, 2009 letter of guidance issued by the CJA to law enforcement agencies concerning certification classifications which advised as follows:

It is critical that agencies understand the differences in the types of certification classifications and training, particularly with regard to Class 3 SLE certification.

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<sup>1</sup> The South Carolina Law Enforcement Training Council is statutorily authorized to certify and train individuals to become law enforcement officers. See S.C. Code § 23-23-60 (“the council is hereby authorized to issue certificates and other appropriate indicia of compliance and qualification to law enforcement officers”); § 23-23-80 (“The South Carolina Law Enforcement Training Council is authorized to: ... certify and train qualified candidates and applicants for law enforcement officers”).

The purpose and intent of "limited-duty" training and certification, for example, is to provide a core or basic foundation of knowledge and training on which to build in order to provide sufficient, adequate and specific training with which to perform only limited powers of arrest or special duties. Class 3 SLE Limited Duty training is not equivalent to Class 1 Basic Law Enforcement Training and Limited Duty Officers are NOT trained to perform the full duties of a Class 1 LEO. Additionally, local county laws and ordinances are not taught by [CJA], and it is recommended that each county provide its own training regarding local laws, ordinances, policies and procedures.

To assist in the evaluation and determination of whether an officer is eligible for Class 3 SLE Limited Duty training and certification as opposed to Class 1 Law Enforcement training and certification, the following guidelines are offered:

Class 3 SLE officers MAY perform as the following:

- Court Room Security
- Airport Security
- Litter Control [§ 4-9-145]
- Litter and Animal Control [§ 4-9-145]
- Special Assignments, i.e., sporting events, crowd control, traffic at fairs, football games, transportation of prisoners, etc...
- Administrative officers (administrative officers, duty/desk officers)
- May supervise other officers (Class 1, 2 or 3) in the performance of administrative duties ONLY.

Class 3 SLE officers MAY NOT perform as any of the following:

- School Resource Officers [Code § 5-7-12]
- Process Servers
- County Code Enforcers (with the exception of Litter Control Officers and Litter/Animal Control Officers)
- Supervise other officers in the performance of Class 1 LE duties, Class 2 LCO, Class 2 SCO, Class I LECO duties, routine patrol duties, first-line law enforcement duties, and/or uniform patrol duties or any other duties other than those which are PURELY administrative in nature.

-Class 1 LE Officer, Class 2 LCO, Class 2 SCO, Class 1LECO, and/or Reserve Officer. - As a substitute for any other certification classification and/or beyond the scope of the limited duty training provided by [CJA].

[Emphasis in original].

Op. S.C. Att’y Gen., 2012 WL 1561867 (Apr. 19, 2012).

Although Class 3 officers do not have the same powers and duties of regular police officers such as deputies or state troopers, Class 3 officers are nonetheless certified law enforcement officers with some, albeit limited, powers of arrest. Furthermore, we have issued numerous opinions concluding that different types of law enforcement officers with varying degrees of power and responsibility hold an office in the constitutional sense. See Ops. S.C. Att’y Gen., 2012 WL 989298 (March 16, 2012) (Class 1 municipal police officer); 2012 WL 3142775 (July 19, 2012) (“individual holding law enforcement credentials who is simultaneously holding a position as a fire/arson investigator certified by the State Fire Marshal...would violate the dual office holding prohibitions of the...Constitution”); 2011 WL 380163 (Jan. 14, 2011) (reserve police officer); 2011 WL 3346425 (July 8, 2011) (state trooper); 2010 WL 3505053 (Aug. 30, 2010) (deputy sheriff); 2008 WL 903976 (March 7, 2008) (Forestry Commission law enforcement officer); 2008 WL 2614987 (June 11, 2008) (school resource officer); 2004 WL 323939 (February 9, 2004) (private security guard); 2004 WL 1297823 (June 7, 2004) (Investigator II for Office of Victim Assistance); 1999 WL 540716 (June 21, 1999) (highway patrolman); 1997 WL 255969 (April 24, 1997) (code enforcement officer); 1997 WL 255956 (April 9, 1997) (code enforcement officer for Aiken County Tax Collector’s Office); 1995 WL 803727 (Aug. 10, 1995) (“Commander Uniform Patrol” commissioned by Newberry County); 1988 WL 485225 (Feb. 5, 1988) (jailer or warden of county prison); 1980 WL 121203 (May 1, 1980) (security officer for Department of Mental Health).

Consistent with the aforementioned prior opinions of this Office generally concluding that law enforcement officers are officeholders, we conclude that a Class 3 law enforcement officer holds an office for purposes of dual office holding. Thus, the question remains whether a Class 3 law enforcement officer would contravene Article XVII, § 1A by working part-time performing the duties of a deputy coroner.

We have concluded on numerous occasions that a coroner or deputy coroner holds an office for purposes of dual office holding. See Ops. S.C. Att’y Gen., 2005 WL 100930 (Jan. 12, 2005); 2004 WL 323938 (Feb. 5, 2004); 1993 WL 720138 (June 21, 1993); 2001 WL 129342 (Jan. 22, 2001). In reaching this conclusion as to a deputy coroner, we have noted that the position is established by statute, requires an oath, and is authorized by statute to perform any of the duties of the office of coroner. See Ops. S.C. Att’y Gen., 1993 WL 720138; 1982 WL 189259 (April 20, 1982). Thus, we believe Article XVII, § 1A would be contravened if the individual in question was appointed to the position of deputy coroner while simultaneously holding a position as a CJA instructor with Class 3 law enforcement certification.

We note that if the individual in question did assume the office of deputy coroner while still holding her position as a CJA instructor certified as a Class 3 law enforcement officer, she could continue



serving in her instructor position as a *de facto* officer<sup>2</sup> until removed from that position by a court. As we explained in a recent opinion:

[I]f a person assumes the second office while still holding the first, the law dictates the result. Basically, when an officer accepts a second office, that person is deemed by law to have vacated the first office. However, the person continues to serve as a *de facto* officer until the vacancy is filled. As an officer *de facto*, any action taken as to the public or third parties would be as valid and effectual as those actions taken by an officer *de jure* unless or until a court should declare those acts invalid or remove that person from office.

Op. S.C. Att’y Gen., 2012 WL 4459271 (Sept. 13, 2012) (citations omitted).

As to your question of whether the individual in question could simply be employed by the coroner as a death investigator and perform the duties of a commissioned deputy coroner using a state constable commission, we must answer in the negative for several reasons. To the extent your question asks whether the individual in question may simply perform the duties of a deputy coroner without actually being appointed and assuming the office of deputy coroner as required by § 17-5-70,<sup>3</sup> we believe a court would find such efforts ineffective in resolving any dual office holding problems. The individual would still be performing the statutory duties of a deputy coroner and thus would hold the office as a *de facto* officer. Therefore, it is our opinion that Article XVII, § 1A would still be contravened if the individual in question simply performed the duties of a deputy coroner without formerly assuming that office. We also advise that allowing an individual who is not qualified pursuant to § 17-5-70 to perform the duties of a deputy coroner may subject the coroner to civil liability or questions regarding the legality of any actions taken by such individual as a deputy coroner.

In addition, a state constable’s commission is incompatible with the office and duties of a deputy coroner. Our Supreme Court has explained that, for purposes of Article XVII, § 1A, “[a] constable is a person who holds a state commission, is employed in such capacity by a magistrate, or otherwise meets

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<sup>2</sup> “A ‘de facto officer’ is one who has a presumptive or colorable right or title to an office, accompanied by possession or actual use of the office.” 8 S.C. Jur. Public Officers and Public Employees § 4. As defined by our Supreme Court, “a de facto officer is one who is in possession of an office, in good faith, entered by right, claiming to be entitled thereto, and discharging its duties under color of authority.” Heyward v. Long, 178 S.C. 351, 183 S.E. 145, 151 (1935).

<sup>3</sup> That section provides the following with regards to the appointment and duties of a deputy coroner:

A county coroner shall appoint one or more deputies or investigators to be approved by the judge of the circuit or by any circuit judge presiding therein, who must take and subscribe the oath prescribed by the constitution before entering upon the duties of appointment as a deputy coroner. The oath may be administered by any officer authorized to administer oaths in the county. The appointment must be evidenced by a certificate thereof, signed by the coroner, and continue at the coroner's pleasure.... [T]he coroner must always be answerable for the neglect of duty or misconduct in office of his deputy coroner. **When duly qualified, as herein required, the deputy coroner may do and perform any or all of the duties appertaining to the office of the coroner.**

§ 17-5-70 (emphasis added).

one of the statutory definitions.” Richardson v. Town of Mount Pleasant, 350 S.C. 291, 298, 566 S.E.2d 523, 527 (2002). We are not aware of any statutory definition of a constable which subsumes the office or duties of a deputy coroner.

Furthermore, the duties of a state constable are not sufficiently related to the duties of a deputy coroner to render the two compatible with each other. See Ashmore v. Greater Greenville Sewer Dist., 211 S.C. 77, 92, 44 S.E.2d 88, 95 (1947) (“The rule here enforced with respect to...dual officeholding...is not applicable to those officers upon whom other duties related to their respective offices are placed by law”). State constables appointed by the governor are law enforcement officers who generally have statewide jurisdiction and whose duties are typically ministerial. See S.C. Code § 23-1-60(A) (“The Governor may, at his discretion, appoint additional...constables...as he deems necessary to assist in the detection of crime and the enforcement of the criminal laws of this State”); Richardson, 350 S.C. at 296, 566 S.E.2d at 526 (“State constables appointed by the governor have state-wide jurisdiction”); Op S.C. Att’y Gen., 1962 WL 8896 (Dec. 27, 1962) (“Constables, like sheriffs, are ministerial officers of the law”).

On the other hand, although we have recognized that coroners and deputy coroners have some investigative duties, we have repeatedly concluded that their offices are quasi-judicial in nature and their duties are closer to that of the judicial branch than that of the executive, such as law enforcement officers.<sup>4</sup> See Ops. S.C. Att’y Gen., 1991 WL 632997 (June 27, 1991) (“The constitutional office of coroner is quasi-judicial in nature and, although some investigative duties are attached, the duties are closer to the judicial branch than that of the executive (law enforcement)”) (quoting Op. S.C. Att’y Gen., 1971 WL 22186 (Aug. 18, 1971)); 1996 WL 94018 (Feb. 12, 1996) (stating “[o]ur own Supreme Court has tended to view the duties of a coroner as primarily quasi-judicial as well”) (citing State v. Griffin, 98 S.C. 105, 82 S.E.2d 254 (1914)). Furthermore, unlike constables the jurisdiction of a coroner or deputy coroner is generally limited to the territorial limits of the county in which the coroner was elected. See, e.g., Op. S.C. Att’y Gen., 2012 WL 1385562 (April 12, 2012) (“Generally, the authority of the deputy

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<sup>4</sup> We note that the General Assembly recently enacted § 17-5-115 allowing deputy coroners to be certified as Class 3 law enforcement officers. That section provides:

(A) A person appointed by a coroner to the position of deputy coroner may, at the discretion of the coroner, attend the South Carolina Criminal Justice Academy to be trained and certified as a Class III officer.

(B) A law enforcement officer, as defined by Section 23-23-10(E)(1), who is certified by the South Carolina Law Enforcement Training Council and appointed to serve as a deputy coroner, may, at the discretion of the coroner, retain law enforcement status as a Class III officer.

(C) **The classification is limited to the deputy coroner's official duties as provided by law and does not authorize the officer to enforce the state's general criminal laws.**

§ 17-5-115 (Supp. 2011) (emphasis added). Thus, § 17-5-115 allows deputy coroners to hold ex officio certification as a Class 3 law enforcement officer without violating the constitutional prohibition against dual office holding. That section does not, however, allow a deputy coroner to hold a separate position which requires certification as a Class 3 officer.

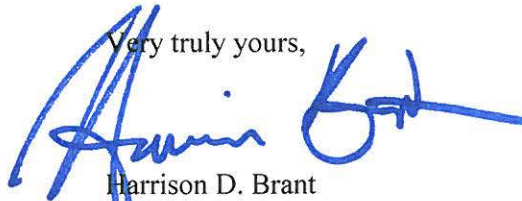
coroner is defined by the territorial limits of the county"). For the reasons stated above, we believe the office of deputy coroner is incompatible with a state constable's commission.

**Conclusion**

It is the opinion of this Office that the dual office holding prohibition of Article XVII, § 1A would be contravened if a CJA instructor certified as a Class 3 law enforcement officer accepted part-time employment performing the duties of a deputy coroner. Although a Class 3 law enforcement officers do not have the same powers and duties of regular police officers such as deputies or state troopers, they still possess some, albeit limited, powers of arrest. Based on this authority and numerous prior opinions of this Office concluding that different types of law enforcement officers with varying degrees of power and responsibility are officeholders in the constitutional sense, we believe a Class 3 law enforcement officer likewise holds an office.

In addition, prior opinions of this Office have consistently concluded that a deputy coroner holds an office for dual office holding purposes. We do not believe a court would find that any dual office holding concerns would be resolved if an individual simply performed the duties of a deputy coroner without formally assuming the office and taking the constitutional oath prescribed by statute. The individual would still be performing the statutory duties of a deputy coroner and would thus hold the office as a *de facto* officer. To otherwise allow a non-qualified individual to perform the duties of a deputy coroner may subject the coroner to civil liability or questions regarding the legality of any actions taken by such individual as a deputy coroner. Nor do we believe any such dual office holding concerns would be resolved by virtue of a person's state constable commission as a state constable commission is incompatible with the office and duties of a deputy coroner.

Very truly yours,



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Assistant Attorney General

REVIEWED AND APPROVED BY:



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