



ALAN WILSON  
ATTORNEY GENERAL

June 20, 2013

Brandy A. Duncan, Esquire  
General Counsel  
South Carolina Criminal Justice Academy  
5400 Broad River Road  
Columbia, South Carolina 29212

Dear Ms. Duncan,

You request an opinion of this Office as to whether an individual certified as a law enforcement officer in North Carolina can maintain such certification if he or she is also certified as a Class 2 law enforcement officer as a jailer in South Carolina. By way of background, you state:

The J. Rueben Long Detention Center staff contacted me recently about training and certification for one of their jailers. This candidate formerly worked as a law enforcement officer in North Carolina, in a position equivalent to South Carolina's Class 1 law enforcement certification. This candidate is interested in maintaining her certification as a law enforcement officer in North Carolina while still being certified in South Carolina as a Class 2 law enforcement officer (jailer). Is this permissible since the "offices" are located in two different states OR would this violate the dual office holding prohibition in the South Carolina Constitution?

#### 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).

We have previously issued opinions concluding that an individual holding certification as a Class 1, 2, or 3 law enforcement officer, including jailers, in South Carolina holds an office for dual office holding purposes. See *Ops. S.C. Att'y Gen.*, 2012 WL 4836949 (Oct. 2, 2012); 2012 WL 989298 (March 16, 2012); 1988 WL 485225 (Feb. 5, 1998). Thus, the question remains whether Article XVII,

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§ 1A prohibits an individual certified as a law enforcement officer in this State from maintaining certification as a law enforcement officer in another state.

The definition of a public officer as stated in Sanders and Crenshaw, *supra*, does not apply to a position or office which is not created by South Carolina law and which does not have any duties involving the exercise of some part of the sovereign power of this State. As we have previously stated:

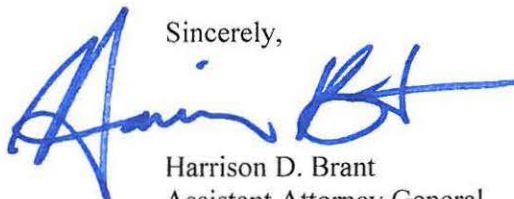
We have concluded on a number of occasions that a position not created by [South Carolina] law is not an office....

Numerous opinions which have been issued by this Office in past years have considered whether positions required by or established *under federal law* would be considered offices for purposes of dual office holding. We have consistently concluded that a position established pursuant to federal law would not be an office for purposes of Article XVII, § 1A....

Op. S.C. Att'y Gen., 2008 WL 608964 (Feb. 4, 2008) (emphasis in original); see also Ops. S.C. Att'y Gen., 2010 WL 2678694 (June 25, 2010); 2009 WL 2406409 (July 24, 2009). In a 2004 opinion, we concluded that an individual holding a law enforcement position created by federal law for which he possessed only federal arrest authority did not hold an office for purposes of Article XVII, § 1A, and thus could continue serving as a part-time law enforcement officer with a municipal police department in this State. Op. S.C. Att'y Gen., 2004 WL 2745679 (Nov. 15, 2004).

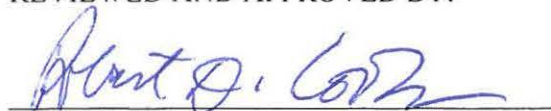
The conclusions of the above opinions apply to the instant case. A position created by North Carolina law or the law of any other state does not involve the exercise of some part of the sovereign power of the State of South Carolina. Therefore, such positions are not offices for purposes of the dual office holding prohibition of the South Carolina Constitution. Accordingly, Article XVII, § 1A does not prohibit a person holding a position in this state as a jailer with Class 2 law enforcement certification from maintaining certification as a law enforcement officer in North Carolina. We note, however, that this opinion is limited in scope to consideration under the dual office holding prohibition of Article XVII, § 1A; it does not address whether certification in both states is prohibited by any other laws or regulations of either state, or by the rules, regulations, or policies of the agencies or institutions which issue such certifications or employ the individual at hand.

Sincerely,



Harrison D. Brant  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Solicitor General