

The State of South Carolina

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Office of the Attorney General

Opinion No 8824

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March 11, 1988

Burnet R. Maybank, III, Assistant Counsel
to the Governor
Office of the Governor
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Columbia, South Carolina 29211

Dear Mr. Maybank:

In a letter to this Office you raised several questions relating to constables appointed by the Governor pursuant to Section 58-13-910 of the Code. Such provision states:

[u]pon the application of the superintendent or manager of any railway or other common carrier doing business in this State the Governor shall appoint special officers or constables for the protection and safety of all property and interest of such common carrier, provided such officers and constables are paid by the common carrier applying for their appointment.

Pursuant to Section 58-13-920 of the Code such constables "...shall have all the powers, duties and responsibilities of deputy sheriffs and other police officers...."

In your first question you asked whether the Governor can issue a constable's commission to an out-of-state resident. In a prior opinion of this Office dated December 17, 1987 it was concluded that a non-resident would not be qualified to be appointed as a special state constable pursuant to the provisions of Sections 23-7-10 et seq. of the Code inasmuch as the individual, being a non-resident, would not meet the requirements to be

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an elector in this State. As referenced in the opinion, Article XVII, Section 1 of the State Constitution provides that "(n)o person shall be elected or appointed to any office in this State unless he possesses the qualifications of an elector...." It was noted in the opinion that this Office had previously concluded that individuals appointed pursuant to Section 23-7-10 as special state constables are state officers.

Similarly, it appears that the position of constable authorized by Section 58-13-910 would similarly constitute a state office. As referenced, such constables are empowered with law enforcement authority. In Edge v. Town of Cayce, 187 S.C. 171 at 179-180, 197 S.E. 216 (1938) the State Supreme Court held:

(o)ne who is charged by law with duties involving an exercise of some part of the sovereign power, either small or great, in the performance of which the public is concerned and which are continuing, and not occasional or intermittent, is a public officer.

Referencing such definition, the Court determined that a chief of police, who the Court noted is charged with the preservation of the peace and the enforcement of the law, is a public officer. Consistent with such, an appointment as constable pursuant to Section 58-13-910 would constitute a state office with the result that an out-of-state resident could not be appointed to such a position inasmuch as he would not meet the requirements to be an elector in this State.

You also asked whether the Governor has the duty to revoke a commission issued to a South Carolina resident who subsequently takes up residence out of state. Section 58-13-920 specifically provides that the Governor "...may also at any time revoke such commissions for cause." This Office in an earlier opinion dated August 1, 1985 determined that one who ceases to be a qualified elector of a particular municipality by virtue of changing residence vacates his municipal office by operation of law. The opinion noted that the action of an officeholder in moving out of the relevant jurisdiction "...is ordinarily treated as an abandonment or implied resignation of the office." The opinion referenced Article XVII, Section 1 of the State Constitution noted above which, again, imposes the qualifications of an elector on an office-holder in this State. The opinion stated that "(w)here a residence requirement has not been specified by

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the legislature, such may be necessarily implied to prevent circumvention of the Constitution." The opinion concluded, therefore, that a municipal official must be a qualified elector of the municipality. See also: Ops. Atty. Gen. dated April 16, 1982; October 4, 1984; December 19, 1980; January 14, 1981. Consistent with the referenced opinions, an individual appointed as a state constable pursuant to Sections 58-13-910 et seq. who takes up residence out of this State vacates his office as constable by operation of law. No further action by the Governor would appear to be necessary.

You also asked whether employees of railroad carriers appointed as constables pursuant to Section 58-13-910 must apply for new commissions each time a new Governor is elected. Such provisions do not specify the length of the terms for which the appointments are made other than to say that "...their commissions shall continue so long as they are employed in such capacity by the railway or other common carrier." Section 58-13-920. By contrast, Section 23-1-60 of the Code provides that regular state constable's appointments made pursuant to such provision "...shall expire sixty days after the expiration of the term of the Governor making such appointment."

It is generally stated that

(a)t common law, apart from statute, an appointing power cannot give an appointee a tenure of office beyond that of the appointing power, and so, a term of appointed office not prescribed by statute, expires with the expiration of the term of the appointing body... Life tenure for officers is not favored, and is authorized only in exceptional circumstances... Such tenure is never created by mere implication, but only by clear and unequivocal declaration.

67 C.J.S. Officers, Section 69 p. 377. Consistent with such, it appears that the individuals appointed as constables should reapply for new commissions each time a new Governor is elected.

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If there is anything further, please advise.

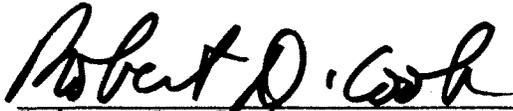
Sincerely,



Charles H. Richardson
Assistant Attorney General

CHR:wle

Reviewed and approved by:



Robert D. Cook
Executive Assistant for Opinions