

The State of South Carolina



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Opinion No 86-108
P327

October 21, 1986

K. H. Simmons, Town Administrator
Town of Varnville
Post Office Box 308
Varnville, South Carolina 29944

Dear Mr. Simmons:

By your letter of October 7, 1986, you have asked whether an individual who is employed as chief of police by one municipality may also be employed by a second municipality as a "regular police officer."

Article XVII, § 1A of the South Carolina Constitution provides that "... no person shall hold two offices of honor or profit at the same time." For this provision to be contravened, a person concurrently must hold two public 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 tenure, 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).

In State v. Crenshaw, supra, police officers were declared to be officers. 274 S.C. at 478. In Edge v. Town of Cayce, 187 S.C. 171, 197 S.E. 216 (1938), a chief of police was determined to be a public officer. 187 S.C. at 180. See also Ops. Atty. Gen. dated July 15, 1982; September 24, 1982; and August 23, 1984. Copies of these cases and opinions are enclosed.

We note further that a police officer's jurisdiction is confined to the municipality in which he is employed, basically. If the individual in question were to be employed in more than one jurisdiction concurrently, he would derive his law enforcement authority from more than one source. Further, he would not

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be employed in the second capacity, or ex officio, by virtue of being a police chief. Thus, the dual office holding prohibitions of the State Constitution would most probably be violated if one were to be employed as chief of police in one municipality and as a police officer in a second municipality.

You have also asked about other problems which could arise in this situation. Other than dual office holding, it is easy to imagine numerous other difficulties which could occur: ethical, jurisdictional, timing, and being "on call" are several which are immediately apparent. Whether either municipality has a policy on "moonlighting" would also be a consideration, even without dual office holding constraints.

We trust that we have adequately responded to your inquiries. Please advise if you need clarification or additional information.

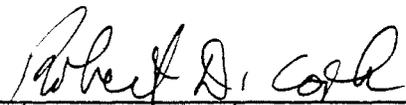
Sincerely,

Patricia D. Petway
Patricia D. Petway
Assistant Attorney General

PDP/an

Enclosures

REVIEWED AND APPROVED BY:



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