

1983 WL 181791 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 14, 1983

*1 Mr. Felton C. Benton
Post Office Box 524
Cayce, South Carolina 29033

Dear Mr. Benton:

You have requested the opinion of this Office on the question of whether it would be a violation of the dual office holding provisions of the South Carolina Constitution for a person to hold a State Constable Commission and serve concurrently as a Town Clerk.

It is provided in [Article XVII, § 1A of the South Carolina Constitution](#) 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 \(1907\)](#). 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, 266 S.E.2d 61 \(1980\)](#).

This Office has previously concluded on a number of occasions that persons holding constable's commissions are officers for dual office holding purposes. [See, 1973 Op. Att'y. Gen. No. 3455; 1968 Op. Att'y. Gen. No. 2555; Opinion dated October 27, 1977 \(copies enclosed\)](#).

[Section 5-7-220, Code of Laws of South Carolina, 1976](#), authorizes the city council or city manager to appoint ‘an officer of the municipality who shall have the title of municipal clerk.’ That code section further prescribes the duties of the municipal clerk. Although I can locate no prior opinion considering municipal clerks in the dual office holding context, this Office has considered municipal attorneys which are similarly provided for in the next [code section, § 5-7-230](#), and has concluded that by virtue of their appointment being statutorily authorized they are considered to hold offices. [See, 1977 Op. Att'y. Gen. 137](#). It would appear, therefore, that a municipal clerk would also be considered an officeholder, for dual office holding purposes.

Based on the foregoing, it is the opinion of this Office that it would violate the dual office holding provisions of the South Carolina Constitution for a person to serve concurrently as a state constable and as a municipal clerk.

Very truly yours,

Helen T. Zeigler
Assistant Attorney General

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