

1983 WL 181782 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 7, 1983

***1 RE: Roger H. Baker; State Constable Commission**

The Honorable O.V. Player, Jr.
Clerk of Court
Sumter County
Sumter, South Carolina 29150

Dear Mr. Player:

Mr. Sloan has referred your letter, dated February 15, 1983, to me for reply. Attached to that letter was a copy of Roger H. Baker's Constable Certificate, a letter Mr. Baker had received from Chief J.P. Strom dated February 9, 1983, an enclosure that arrived with Chief Strom's letter regarding State Constables, and a copy of §§ 23-24-10 et seq., of the Code of Laws.

As I understand it, the question you presented was as follows: Can Mr. Baker, a State Constable, employed by the Family Court to serve process and conduct other duties for the Court also moonlight as a private security guard for a nightclub, and a department store.

My research into the issues presented, and discussions with individuals at SLED, indicate that Mr. Baker may not continue to moonlight as a private security guard for the nightclub or the department store and remain a State Constable.

[Section 23-1-60, Code of Laws, South Carolina](#), provides for the appointment by the Governor of State Constables, also known as Governor's Constables. The appointments are made without compensation from the State. They may be revoked by the Governor at his pleasure, and the term of appointment is for the term of the Governor. The statute further provides for reappointment of Constables by a successor Governor.

The Rules and Regulations provided all State Constables by SLED state that a Constable's Commission cannot be used for private security work. This is based upon two (2) premises. First, to serve as a private security guard, an individual must be licensed under the appropriate section of the Code dealing with detectives and private security agencies: [§§ 40-17-10 et seq., Code of Laws of South Carolina](#), 1976. And, second, opinions from this office have held that an individual may not hold both a State Constable's Commission and a private security license. A person may be a law enforcement officer and be exempted from the provisions of the Detective and Private Security Act. For example, at § 40-17-150(a)(5), 'a person receiving compensation for private employment on an individual . . . basis as a . . . guard . . . who has full-time employment as a peace officer with a state, county or local police department' is exempted. Since Mr. Baker is not employed on a full-time basis as a peace officer with a state, county, or local police department, he would not fit the exemption contained in that section.

It also appears that the provisions of the moonlighting statute, [§§ 23-24-10 et seq., Code of Laws of South Carolina \(1976\)](#) would not apply to Mr. Baker. The intent of that section was to allow uniformed police officers to perform as private security guards during their off-duty hours, for the purpose of adding to the security of the public without additional expense. [Section 23-24-10 of the Code](#) provides that 'uniformed law enforcement officers may wear their uniforms and use their weapons . . . while performing private jobs in their off-duty hours with the permission of the law enforcement agency and governing body by which they are employed'. By its specific language, that section, and the sections that follow, are limited to uniformed law enforcement officers. A State Constable such as Mr. Baker is not a uniformed officer.

*2 I trust this information satisfies your inquiry. If I can be of any further service, or provide any further information, please do not hesitate to contact me.

Sincerely yours,

James G. Bogle
Assistant Attorney General

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