

1981 WL 158141 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 9, 1981

\*1 William P. Griggs, Esquire  
Griggs and Spruill  
222 Market Street  
Cheraw, South Carolina 29520

Dear Mr. Griggs:

In a letter to this office you questioned whether a city fireman, who is also a State constable, may be appointed as a ministerial recorder pursuant to [Section 14-25-115, Code of Laws of South Carolina](#), 1976, as amended. Such section provides:

‘(t)he council of any municipality may establish the office of ministerial recorder and appoint one or more full-time or part-time ministerial recorders, who shall hold office at the pleasure of the council. Before entering upon the discharge of the duties of the office of ministerial recorder, the person appointed shall take and subscribe the prescribed oath of office and shall be certified by the municipal judge as having been instructed in the proper method of issuing warrants. Ministerial recorders shall have the power to issue summonses, subpoenas, arrest warrants, and search warrants in all cases arising under the ordinances of the municipality, and in criminal cases as are now conferred by law upon magistrates, by shall have no other judicial power.’

Particular concern was raised inasmuch as constables are recognized as having law enforcement authority. See: [State v. Luster](#), 178 S.C. 199, 182 S.E. 427 (1935). Referencing such law enforcement authority, you questioned whether such an individual could serve as a ministerial recorder, and therefore be authorized to issue arrest and search warrants, without violating any constitutional requirements that such warrants be issued by ‘neutral and detached’ judicial officers. See: [State v. Sachs](#), 264 S.C. 541, 216 S.E.2d 501 (1975); [Coolidge v. New Hampshire](#), 403 U.S. 443 (1971).

However, aside from the above considerations, in the opinion of this office, it would be a violation of the State constitutional provisions prohibiting dual office holding, namely Article XVII, Section 1A and Article VI, Section 3, for an individual currently holding a State constable's commission to serve as a ministerial recorder. An office within such constitutional provisions has been defined as one which 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 . . .’ [Sanders v. Belue](#), 78 S.C. 171 at 174, 58 S.E. 762 (1907).

This office has in numerous previous opinions advised that one who holds a State constable's commission is a public officer for dual office-holding purposes. See, e.g. 1973 Op. Attorney General No. 3455, Opinion dated May 30, 1979. Referencing the powers and duties of a ministerial recorder as defined by [Section 14-25-115](#), *supra*, which clearly involve exercise of the sovereign power, in the opinion of this office, such position is also a public office for dual office holding considerations.

\*2 As to whether other firemen could serve as ministerial recorder, an absolute finding cannot be made. You indicated that the referenced firemen are full-time paid employees of the Town. While this office has held in earlier opinions, such as one dated December 17, 1969, that a volunteer fireman does not hold an office for dual office-holding considerations, in an opinion dated August 3, 1964 this office determined that the position held by a regular fireman is such an office. (A review of the opinion in its entirety suggests that the position of fireman referenced was that of a full-time, paid individual. However, such opinion did not discuss any of the duties or qualifications of the particular position.)

As to the firemen you wish to use as ministerial recorders, to remove them from consideration as officers within dual office-holding considerations, it must be determined that the positions held do not involve any exercise of some part of the sovereign power nor are such firemen required to take an oath of office, serve any specific term, or be bonded. Referencing such criteria, if it is determined the firemen are merely municipal employees, they could serve as ministerial recorders.

As to your separate question concurring whether a dispatcher at the police department could also serve as a clerk for the municipal court, reference is made to [Section 14-25-35, Code of Laws of South Carolina](#), 1976, as amended, which provides: ‘ . . . (t)he municipal clerk or other municipal employee may be appointed to serve as clerk of the court . . . .’

Therefore, pursuant to such, the dispatcher would be authorized to serve as court clerk. There would be no dual office-holding considerations in such an arrangement.

If there are any questions concerning the above, please contact me.

Sincerely,

Charles H. Richardson  
Assistant Attorney General

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