

1979 WL 42951 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 23, 1979

\*1 Mr. Herbert F. Payton  
Chief of Police  
P.O. Box 36  
Prosperity, South Carolina 29127

You have recently asked the opinion of this Office concerning the following questions:

- 1) Where a municipal police officer after stopping an offender outside the territorial limits of a municipality but within a three (3) mile radius therefore, has trouble with by-standers or a property owner who interferes with the officer making the arrest, can the officer make an arrest of the by-stander or property owner for interfering with the police officer.
- 2) Can a mayor or a councilman hold a police commission while holding office.
- 3) If a mayor or a councilman may not hold a police commission, can either legally carry a gun?

Section 17-13-40 authorizes municipal police officers to make arrests for offenses against municipal ordinances and statutes of this State committed within the corporate limits or at any place within a radius of three (3) miles of the corporate limits with or without a warrant, when such police authorities are in pursuit of such offender. Your letter does not specify whether or not the officer was attempting to arrest for a violation of an ordinance or statute nor does it specify whether when he effected the arrest he was in pursuit of such an offender. However, assuming both of these conditions, it is the opinion of this office that Section 17-13-40 would clothe the officer with full arrest powers within the three (3) mile limit. [Section 16-5-50 of the South Carolina Code of Laws \(1976\)](#) provides penalties for hindering officers in their attempt to arrest any person for whom a warrant has been issued. Where the execution of a warrant is not involved, it has been held that the term 'interfere' is interpreted to mean something more than mere refusal to leave the premises when ordered, and requires some positive action in a bad sense so as to intermeddle or hamper and specifically to do something which hinders or prevents the performance of a legal duty. [City of Charleston v. Mitchell, 239 S.C. 376, 123 S.E. 2d 512 \(1961\)](#).

Article 17-1a of the South Carolina Constitution prohibits any person from holding two offices of honor or profit at the same time. Enclosed are two opinions of this office which would indicate that a municipal police officer is a public officer within the meaning of that section and a town councilman is likewise a public officer within the meaning of that section. Therefore, it is the opinion of this Office that if a mayor or town councilman held a police commission, he would be in violation of Article 17-1a of the South Carolina Constitution.

[Section 23-31-120 of the 1976 Code of Laws of South Carolina](#) regulates persons to whom pistol permits may be issued. There is nothing in this particular section which would preclude mayors or town councilmen from applying for a concealed weapons permit.

Should you require further information on these questions, please contact your city attorney and if he is unable to provide the answer, please feel free to contact us again.

Sincerely,

\*2 Buford S. Mabry, Jr.

State Attorney

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