

1976 WL 30749 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 30, 1976

*1 Sheriff Frank Powell
Richland County
Post Office Box 143
Columbia, SC 29202

Dear Sheriff Powell:

You have requested the Opinion of this Office on the following matters:

- (a) Does a Magistrate's Constable have the authority of arrest on misdemeanors with or without a warrant?
- (b) Does a Magistrate's Constable have authority to use emergency devices on his vehicle such as blue lights and sirens? Does such constable have authority to stop a citizen using such device?
- (c) Can a Magistrate's Constable hold a State Constable's Commission?
- (d) Can the authority of a State Constable's Commission be given and used by anyone while serving for the judicial arm of government?
- (e) Can a Magistrate's Constable legally procure and use a vehicle similar to a law enforcement vehicle for the purpose of presenting himself to the public as a law enforcement officer?

Due to the delegation of special statutory powers to magistrates in some counties, no general statement will be applicable to every Magistrate's Constable in each of the counties of the State. However, a general statement regarding the powers of a Magistrate's Constable is found in Section 43-316 of the Code of Laws of South Carolina, 1962, which provides in pertinent part:

§ 43-316. Constables may act throughout county. When not otherwise specially provided by law every qualified constable shall be entitled to exercise his office throughout the county in which he may be elected or appointed.

Otherwise, the powers of individual magistrates are derived from Chapter Five of Title 43, 'Local Provisions'. Since the local provisions do vary greatly in the amount of power given a Magistrate's Constable from county to county, the responses to the questions you have posed are in reference to Magistrate's Constables in Richland County. While these opinions may or may not be applicable to situations in other specified counties, reliance upon their application should not be made without further inquiry.

- (a) Does a Magistrate's Constable in Richland County have the authority of arrest on misdemeanors with or without a warrant?

In a previous opinion of this office the determination made in reference to this question was:

1. A Magistrate's Constable does not have general authority as a peace officer and is limited to the specific duties of executing writs and warrants issued by the Magistrate; maintaining order in Magistrate's Court at the direction of the Magistrate and other specified statutory duties such as drawing juries;
2. A magistrate's Constable does not have the power to arrest without a warrant for a misdemeanor committed in his presence.

See Atty. Gen. Op. No. 3138, p. 90.

(b) Does a Magistrate's Constable in Richland County have authority to use emergency devices on his vehicle such as blue lights and sirens?

As you are aware, there is a separate penalty provision within the Code of Laws of the State of South Carolina, 1962, for any violation of the Motor Vehicle laws. Section 46-544.1 provides in pertinent part:

*2 ' . . . it shall be unlawful for any person to use dome-mounted flashing, oscillating or rotating blue lights on any emergency vehicle except one used primarily for law enforcement purposes.' (emphasis added).

Further:

'The alternately flashing lighting described in subsection (b) of this section [46-544.1] shall not be used on any vehicle other than an authorized emergency vehicle.' (emphasis added).

Within the term's meaning of that statute a 'police officer' is defined as 'Every officer authorized to direct or regulate traffic or to make arrests for violations of vehicular and traffic laws.'

Strictly construed, however, the statute reads 'shall not use.' The word use has a primary and a secondary meaning; on the one hand, the word may signify the act of employing anything and on the other hand it may mean that property of a thing which renders it suitable for a purpose, adaptability to attainment of an end, availability, serviceableness, convenience and help. [State v. Douglas](#), 16 N.W.2d 489, 494, 495, 70 S.C. 203.

Depending on the judicial interpretation of the word use, there may or may not be violations of this section if one is 'equipping' autos with this type device as opposed to 'operating' these devices attached to their vehicles.

As a practical matter, however, we may assume that because one has no authority to operate such devices on his automobile, it follows he would possess no authority to equip his vehicle with such devices.

(b) Part 2. Does such constable have authority to stop a citizen using such devices?

Since a Magistrate's Constable does not have the authority of a law enforcement officer, then it follows that such constable would not be entitled to engage in acts normally associated with a police officer. Such actions fall within the general heading of 'impersonation of an officer.' Any person found guilty of engaging in such acts is open to both civil and common law actions.

Any Magistrate's Constable presenting himself as an officer of the law and engaging in such acts may be open to attack and subject to arrest under the foregoing actions.

(c) Can a Magistrate's Constable hold a State Constable's Commission? (Reference—Attorney General Opinion dated March 26, 1975, by Assistant Attorney General Davis.)

In a recent opinion of this office the subject you have presented concerning the status of 'Magistrate's Constable' and 'State Constable' as officers within the dual-officeholding provision of the State Constitution was dealt with. That opinion stated that 'the holding of the position of magistrate's constable and state constable without pay by one person at the same time would be unlawful.'

(d) Can the authority of a State Constable's Commission be given and used by anyone while serving for the judicial arm of government?

No. Former Article 2, Section 2 of the Constitution of the State of South Carolina transferred and re-numbered Section 1-A of Article 1m provides that no person shall hold two offices of honor or profit at the same time.

*3 In a previous opinion, this office has determined that the position of 'State Constable' is an office within the meaning of that dual officeholding provisions. Op. Att'y Gen., No. 2479, p. 147.

In a separate opinion the position of 'municipal judge' was found to have been within the meaning of office in the dual officeholding prohibition. See, Att'y Gen. Op. No. 3443, p. 14.

Section 50-1 of the South Carolina Code in defining a public officer provides as follows:

'The term 'public officers' shall be construed to mean all officers of the State that have heretofore been commissioned and trustees of the various colleges of the State, members of various State boards and other persons whose duties are defined by law.'

Absent a reference to a specific position in the judicial arm of the government, I may only assume that the position to which you have reference is one 'defined by law'. Should that prove to be the case in your specific instance there is the result that the person in that position exercises some portion of the sovereignty of the State.

Further this office has previously stated that the Constitutional prohibition against dual officeholding applies regardless of whether the office is created by statute or municipal ordinance. See, Atty's Gen. Op. No. 3443, p. 14.

(e) Can a Magistrate's Constable legally procure and use a vehicle similar to a law enforcement vehicle for the purpose of presenting himself to the public as a law enforcement officer?

Consistent with the conclusions reached in item '(A)' of your correspondence, a magistrate is not a law enforcement officer. Therefore, to use a police vehicle to perform acts normally associated with a police officer would be tantamount to impersonating an officer within the meaning of the Code of Laws of South Carolina, 1962. Section 16-369 provides in pertinent part:

'Whoever, with intent to defraud either the State, any county or municipal government thereof or any person, shall take upon himself to act as an officer or shall in such pretensive or pretended character demand, obtain or receive from any person or any officer of the State, county or municipal government any money, paper, document or other valuable thing shall be guilty of a misdemeanor . . . ' (emphasis added).

Any person guilty of violating the provisions of this Section would, of course, be subject to the criminal sanctions imposed by such statute. However, any violations must be determined on the facts and on the particular circumstances and actions and from the information you have provided it is difficult to make a determination that can be applied.

Very truly yours,

Hutson S. Davis, Jr.

Assistant Attorney General

1976 WL 30749 (S.C.A.G.)

End of Document

© 2016 Thomson Reuters. No claim to original U.S. Government Works.