

1976 S.C. Op. Atty. Gen. 228 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4391, 1976 WL 23009

Office of the Attorney General

State of South Carolina

Opinion No. 4391

July 12, 1976

***1 In Re: Magistrates' Constables, Governor's Constables Without Pay, Holding Both Positions at the Same Time**

Honorable James B. Edwards

Governor

State of South Carolina

State House

Post Office Box 11450

Columbia, South Carolina 29211

ATTENTION: Harold E. Trask, Jr., Esquire Legal Assistant

Dear Governor Edwards:

You have inquired whether or not a person may hold the positions of magistrate's constable and Governor's Constable without pay at the same time.

This Office has filed many opinions in the past that both positions are 'offices' as opposed to mere employment with strictly ministerial duties.

Article VI, Section 3, Constitution of South Carolina, reads in part:

'No person shall hold two offices of honor or profit at the same time;—.'

In view of the foregoing, it is the opinion of this Office that a person may not hold the positions of magistrate's constable and Governor's Constable without pay at the same time.

The holding of the South Carolina Supreme Court in [Walker v. Harris](#), 170 S.C. 242, 170 S. E. 270, could present real problems for magistrates' constables who have been appointed and have qualified as Governor's Constables without compensation. That case held [170 S.C. 242, 248]:

'—where a person holding one office of trust or profit is elected or appointed to another such office, and qualifies in the latter capacity, he thereby vacates the first office to which he was elected or appointed—. ' See also [State v. Buttz](#), 9 S. C. 156; Cf. [State v. Coleman](#), 54 S.C. 282, 32 S. E. 406.

Although the [Coleman](#) case, *supra*, holds that a dual office holder might continue as a *de facto* officer when he continues to perform the duties of the first office, so as to render his official acts valid, it is clear that he cannot remain as an officer *de jure* in the first position. That being so, it is questionable that such a magistrate's constable would be legally entitled to receive any salary, fees, or other emoluments as a magistrate's constable.

Yours very truly,

Joseph C. Coleman

Deputy Attorney General

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