



ALAN WILSON
ATTORNEY GENERAL

August 19, 2019

Chief John E. Elkin
F&N Railroad Police Dept.
PO BOX 577
Pelion, SC 29123

Dear Chief Elkin:

We received your request seeking an opinion on whether the dual office prohibition would preclude a certain municipal employee from also serving as a Railroad Police Officer. This opinion sets out our Office's understanding of your question and our response.

Issue (as quoted from your letter):

This department recently opened a part time Railroad Police Officer position and found a well-qualified candidate. I offered the position to this candidate and he accepted. He was previously a sworn employee of the City of Cayce's public safety department as a Police Officer. He subsequently became the Information Technologies Director for the city. The city issued a Permanent Change in Status to the Criminal Justice Academy dated August 1st 2019 separating him from the law enforcement position.

During our hiring process the City of Cayce raised a concern that this may violate the dual office provisions of the state constitution. Out of an abundance of caution I have halted the commissioning process for this candidate; meaning that I have not asked him to swear an oath of office. I will refrain from doing so until the questions posed in this opinion are answered.

It is my understanding the city's Information Technologies Director Position is a civilian position where there is no oath of office. I can also find no mention in the city's online ordinances of the Information Technologies Department or its Director.

Railroad Police Officers are Special State Constables (SC 58-13-910). They are commissioned through the Governor's office as such. The limitations for dual office listed in Article IV Section 3 of the South Carolina Constitution do not apply to Constables.

My questions are:

1. Is a municipal position such as the Information Technologies Director considered an office for the purpose of dual office holding?
2. Is a municipal city manager or assistant city manager considered an officer for the purpose of dual office holding?
3. If these positions are considered an office would the constable exclusion in the South Carolina Constitution allow for such positions to become sworn as a special state constable such as a railroad police officer?
4. This also opens a question for future operations that would probably be best to ask now instead of later: If in the future a municipal police officer or deputy sheriff desired to also work part time for a railroad police department could they also hold a special state constable's commission?

Law/Analysis:

It is the opinion of this Office that concurrently serving as an IT director of a municipality and as a Railroad Police Officer does not violate the dual office holding prohibition of the South Carolina Constitution because such police officers fall within the exception for constables as contemplated by our state's constitution. *See* S.C. Const. art XVII, § 1A. For practical purposes this expedited opinion will focus on the immediate question of your proposed hire, and address any remaining questions in a follow-up opinion.

The South Carolina Constitution prohibits any persons from holding two offices of honor or profit simultaneously, subject to certain exceptions. S.C. Const. art XVII, § 1A. Article XVII, Section 1A of the South Carolina Constitution provides: "No person may hold two offices of honor or profit at the same time, but any person holding another office may at the same time be an officer in the militia, member of a lawfully and regularly organized fire department, constable, or a notary public." *Id.* Construing this provision, the South Carolina Supreme Court has opined that "[a] constable is a person who holds a state commission, is employed in such capacity by a magistrate, or otherwise meets one of the statutory definitions." *Richardson v. Town of Mount Pleasant*, 350 S.C. 291, 566 S.E.2d 523 (2002).

One prior opinion of this Office dated February 26, 2001 addressed this exception for constables in the context of a constable serving in the Clemson University Police Department who also desired to serve on town council. *Op. S.C. Att'y Gen.*, 2001 WL 265254 (February 26, 2001). The opinion reasoned that "since your law enforcement powers are derived solely from the constable commission, the position must be analyzed for dual office holding purposes in the same manner as any other constable position." *Id.* The opinion concluded that "the position

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would fall under the exception provided for constables found in the Constitution.” *Id*; *see also Richardson v. Town of Mount Pleasant*, 350 S.C. 291, 566 S.E.2d 523 (2002).

As you note in your request letter, Railroad Police Officers are Special State Constables, commissioned by the Governor pursuant to S.C. Code Ann. § 58-13-910 (2015). That code section reads in relevant part:

Upon the application of the superintendent or manager of a railway or other common carrier doing business in this State, the Governor shall certify special officers or constables for the protection and safety of all property and interest of the common carrier, if the officers and constables are paid by the common carrier applying for their certification.

S.C. Code Ann. § 58-13-910 (2015). One recent prior opinion of this Office addressed to you concluded on the basis of this text that a “constable commissioned in South Carolina, as provided in Article 13, Chapter 13 of Title 58, may be hired to work in a part-time capacity for a municipal police department, just as a deputy sheriff could,” subject to certain limitations. *Op. S.C. Att’y Gen.*, 2018 WL 1557222 (March 16, 2018).

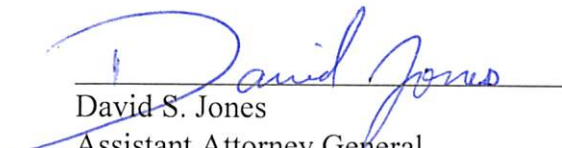
In summary, the same text of Article XVII, § 1A of the South Carolina Constitution which establishes the dual-office holding prohibition also establishes an exception for constables. The Supreme Court of this State and prior opinions of this Office have construed this exception to include constables commissioned pursuant to a statute. *Richardson v. Town of Mount Pleasant*, 350 S.C. 291, 566 S.E.2d 523 (2002); *see also Op. S.C. Att’y Gen.*, 2001 WL 265254 (February 26, 2001). Section 58-13-910 plainly is one such statute which provides for the commission of a constable.

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Conclusion:

For these reasons, it is the opinion of this Office that concurrently serving as an IT director of a municipality and as a Railroad Police Officer commissioned as a constable does not violate the dual office holding prohibition of the South Carolina Constitution because such police officers fall within the exception for constables as contemplated by our State's constitution. *See* S.C. Const. art XVII, § 1A.

Sincerely,



David S. Jones
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General