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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

February 26, 2001

Mr. Mark H. Durham
211 O'Dell Street
Liberty, South Carolina 29657

Dear Mr. Durham:

By your letter of February 12, 2001, you have requested an opinion of this Office concerning dual office holding. Specifically you ask if you may serve simultaneously as a Clemson University Police Department Patrolman and a town councilman.

Article XVII, Section 1A of the State Constitution provides that "no person may hold two offices of honor or profit at the same time ...," with exceptions specified for an officer in the militia, member of a lawfully and regularly organized fire department, constable, or notary public. For this provision to be contravened, a person concurrently must hold two public offices which have duties involving an exercise of some portion of the sovereign power of the State. Sanders v. Belue, 78 S.C. 171, 58 S.E. 762 (1907). Other relevant considerations are whether statutes, or other such authority, establish the position, prescribe its duties or salary, or require qualifications or an oath for the position. State v. Crenshaw, 274 S.C. 475, 266 S.E.2d 61 (1980).

This Office has advised on numerous occasions that a member of a city or town council would be considered an officer for dual office holding purposes. See, as representative of those numerous opinions, OPS. ATTY. GEN. April 12, 1998; June 12, 1995; Feb. 4, 1994; July 23, 1993; July 24, 1991.

Regarding your position as a Patrolman for the Clemson University Police Department, you state that your law enforcement authority is derived solely from a State constable commission signed and issued by the Governor and the Chief of SLED. State law provides that campus security departments are staffed by constables commissioned pursuant to Section 23-1-60 of the South Carolina Code of Laws. See S.C. CODE ANN. § 59-116-20. Therefore, 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. As such, the position would fall under the exception provided for constables found in the Constitution. See also OPS. ATTY. GEN. Jan. 25, 1999; June 3, 1998.

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Based on the foregoing, due to the exception found in the Constitution for constables, it would appear that the dual office holding prohibitions would not be violated if you were to serve as a Clemson University Patrolman and a councilman for the town of Liberty. However, I would recommend that you contact SLED to determine whether that agency possesses any rules and regulations on this subject. Also, you may be interested to know that the Supreme Court of South Carolina is currently reviewing the dual office holding question in regards to a Mount Pleasant police officer who also serves on the Berkeley County Council. Although presently only at the briefing stage, the Court may ultimately provide further guidance on this question and clarify how positions of law enforcement fit within the dual office holding provisions of the Constitution.

This letter is an informal opinion only. It has been written by a designated Assistant Attorney General and represents the position of the undersigned attorney as to the specific question asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kind regards, I remain

Very truly yours,

A handwritten signature in cursive script that reads "Susannah Cole".

Susannah Cole
Assistant Attorney General