



The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON  
ATTORNEY GENERAL

August 10, 1995

The Honorable James Lee Foster  
Sheriff of Newberry County  
Post Office Box 247  
Newberry, South Carolina 29108

RE: Informal Opinion

Dear Sheriff Foster:

By your letter of July 27, 1995, you have sought an opinion as to whether an officer commissioned by Newberry County would be considered an officer for dual office holding purposes. You indicated that the position was created by budget ordinance, and you enclosed with your letter the job description for the position in question.

Article XVII, Section 1A of the South Carolina 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 a 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 tenure, 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).

The job description enclosed with your letter is for a position titled "Commander Uniform Patrol." As stated previously, the position was created in a budget ordinance of Newberry County. No tenure is provided for. It is assumed that compensation in the form of salary is paid to the individual holding the position. Minimum training and experience, according to the job description, includes being a "[h]igh school graduate with completion of the required training/certifications in criminal justice and 10 years of

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experience in law enforcement at the supervisory level" and possession of a valid South Carolina drivers license. The duties or responsibilities of the holder of the position include the following:

Conducts inspections of Officers and equipment to ensure compliance with all regulations and prevent abuse.

Cooperates with other law enforcement agencies and governmental bodies to provide/receive assistance as needed.

Plans, organizes and provides traffic and crowd control for emergencies and special events and security during General Sessions and Family Courts.

Provides transportation for prisoners from other counties and facilities to appear in court as required; assists in the extradition and transportation of prisoners from other states.

Assists in the investigations of major crimes.

Provides aid and assistance to officers on tour of duty, lending advice and direction as needed.

Operates and maintains various equipment such as a patrol vehicle, radio, and office equipment.

Utilizes various law enforcement tools including pistol, shotgun, hand cuffs, fingerprint kit, walkie-talkie, etc.

Performs other related duties as required.

An analysis of these duties indicates that the holder of the position is most probably exercising a portion of the sovereign power of the State, much like any other law enforcement officer in investigation of crime; providing crowd control and security; assisting officers on duty; utilizing such equipment as weapons and hand cuffs, which at the very least implies that there is the authority to carry and use appropriate weapons and effect arrests; and the like.

Considering all of the foregoing, I am of the opinion that the commissioned officer in question meets sufficient of the criteria usually found in an office and that such person

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would most probably be considered an officer for dual office holding purposes. I discern no reason to treat this position differently from police officers, deputy sheriffs, jailers, highway patrol members, sheriffs, or other similar law enforcement officers, all of whom have been considered officers for dual office holding purposes.

This letter is an informal opinion only. It has been written by a designated Senior Assistant Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion. I trust that I have satisfactorily responded to your inquiry and that you will advise if clarification or additional assistance should be necessary.

With kindest regards, I am

Sincerely,

*Patricia D. Petway*

Patricia D. Petway  
Senior Assistant Attorney General