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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

January 25, 1996

The Honorable Joe Wilson
Senator, District No. 23
Box 5709
West Columbia, South Carolina 29171

Re: Informal Opinion

Dear Senator Wilson:

You have been contacted by the Midlands State Constables Association. You note that State Constables "are increasingly being questioned about liability and safety concerns when called to duty by local law enforcement agencies." You further state:

[a]s you are aware, State Constables voluntarily serve as back-up assistance to a variety of state and local law enforcement officials. State Constables currently are not covered by any insurance system that would protect them in the event of personal injury or in law suits filed against them as a result of performing their duties.

I would like to ascertain whether State Constables can be protected by the Insurance Reserve Fund, the Workers' Compensation System, or other sources. If it is determined that they are legally able to be covered under these systems, I would like your direction as to which agency should be responsible for paying the insurance premiums and other costs.

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S.C. Code Ann. § 23-1-60 provides for the appointment of state constables. Such Section states:

[t]he Governor may, at his discretion, appoint such additional deputies, constables, security guards and detectives as he may deem necessary to assist in the detection of crime and the enforcement of any criminal laws of this State, the qualifications, salaries and expenses of such deputies, constables, security guards and detectives appointed to be determined by and paid as provided for by law. Appointments by the Governor may be made hereunder without compensation from the State. Any appointments of deputies, constables, security guards and detectives made without compensation from the State may be revoked by the Governor at his pleasure. All appointments of deputies, constables, security guards and detectives hereunder without compensation shall expire sixty days after the expiration of the term of the Governor making such appointment. Each Governor shall reappoint all deputies, constables, security guards and detectives who are regularly salaried as provided for by law within sixty days after taking office unless such deputy, constable, security guard or detective is discharged with cause as provided for by law. All persons appointed under the provisions of this section shall be required to furnish evidence that they are knowledgeable as to the duties and responsibilities of a law-enforcement officer or shall be required to take such training in this field as may be prescribed by the chief of the South Carolina Law-Enforcement Division.

This Office, citing the decision of our Supreme Court in State v. Luster, 178 S.C. 199, 182 S.E. 427 (1935) has often concluded that state constables possess the authority of regularly commissioned peace officers, including the power of arrest. See, Op. Atty. Gen., Sept. 6, 1990; May 14, 1980; July 6, 1977. In Luster, our Supreme Court stated:

[t]he trial Judge held and so instructed the jury, that Miliam, under the commission given him by the Governor, was a peace officer of the State, and as such officer had the right and authority to arrest any where without a warrant any person committing a misdemeanor in his presence. This charge, or

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holding, was unquestionably correct and was applicable under the facts of the case.

178 S.C. at 205. Moreover, citing Section 17-13-10, we have concluded that state constables are allowed to carry pistols. Op. Atty. Gen., Oct. 23, 1978.

Thus, a state constable is clearly recognized as a state officer, possessing statewide law enforcement authority as a peace officer. Our Supreme Court has stated that constables perform all the duties of law enforcement officers and in particular "a constable stands on the same footing as a sheriff." State v. Franklin, 80 S.C. 332, 338, 60 S.E. 953, 955 (1908). In Allen v. Fidelity and Depos. Co. of Md., 515 F.Supp. 1185, 1189 (D. S. C. 1980), the Court noted that in 1870

constables with general law enforcement powers existed at the city, local, county and state levels and together with county sheriffs and to a lesser extent coroners, were the principal providers of law enforcement for the State of South Carolina.

Thus, the Court found that the Legislature enacted a special statute of limitations for the performance of law enforcement duties. [Section 15-3-540 provides a special limitation period for actions against sheriffs, coroners or constables upon liability incurred by the doing of an act in his official capacity and in virtue of his office or by omission of his official duties]. Accordingly, some form of insurance coverage for tort liability and workers compensation coverage is certainly consistent with the nature of the office of state constable.

However, it is also worth noting that this Office has distinguished state constables from other public law enforcement agencies. Former Attorney General McLeod noted that "[t]he majority of constables serve without compensation." Op. Atty. Gen., No. 3794 (June 5, 1974). Another opinion has concluded that, with respect to state constables, it is the Governor who is the appointing authority, and in Op. Atty. Gen., May 31, 1984, we stated that "[a] constable not compensated by the State is not regularly salaried or on the payroll of a law enforcement agency, and is therefore not subject the enforcement agency, and is therefore not subject to the Training Article." Thus, we found that a state constable, employed as a fire marshal for a Fire District would not fall within the requirements of Section 23-23-40 with respect to training of law enforcement agencies. In Op. Atty. Gen., Jan. 28, 1975, it was stated that "[g]overnors constables without compensation are not employed or appointed by a public law enforcement agency, but by the Governor."

Section 1-11-140 of the Code provides the authority for tort liability insurance for the State, its political subdivisions and their officers and employees. Such Section provides in pertinent part:

[t]he State Budget and Control Board, through the Division of General Services, is authorized to provide insurance for the State, its departments, agencies, institutions, commissions, boards and the personnel employed by the State in its departments, agencies, institutions, commissions, and boards so as to protect the State against tort liability and to protect these personnel against tort liability arising in the course of their employment.

The Board is also authorized to insure the political subdivisions of the State and government hospitals, chartered nonprofit eleemosynary hospitals and other specified entities. Thus, the Board is statutorily authorized to write tort liability insurance for personnel "arising in the course of employment." Such insurance is to protect the personnel employed by the State in its departments, agencies, commissions and boards." Based upon this statutory authority, it does not appear that the General Assembly anticipated the situation of offices or positions such as state constables, which possess sovereign authority but do not neatly fit into the tradition definition of state or local "employment."

No South Carolina case has ever considered the issue of whether a constable, by virtue of his office only, falls within the definition of "employment" for purposes of Section 1-11-140. Certainly, in its original sense, the constable was not viewed as an "employee" of the State or political subdivision in the strictest sense of the word. It has been written that

[i]nitially, public spirited citizens in some colonial communities took turns serving as the night watchman. Later, local government acting through town meetings, assigned the duty, on a rotating basis, to specified citizens. Failure to serve was punished by fines. Gradually, citizens of areas began to pay other people to serve as their substitutes on night-watchman's duty. In time, the entire watch came to be paid on a privately paid basis and eventually, in all communities police protection came to be a publicly administered service, paid out of taxes.

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McQuillin, Municipal Corporations, § 1.15. And in Hartley v. Inhabitants of Granville, 216 Mass. 38, 102 N.E. 942, 943 (1913), the Court noted that, normally the constable did not "give up his ordinary occupation and spend substantial time in search for evidence which may or may not lead to the detection of criminals, nor perform the work commonly done by detectives." Thus, the Court found that, generally, speaking, the constable was not paid "in the absence of special contract."

Of course, there are numerous such situations throughout South Carolina where a person holding a constable's commission is employed by a state or local agency. As we noted in an opinion of May 6, 1976, "[g]enerally speaking, campus security departments throughout the State are staffed by special State Constables without additional compensation who are appointed by the Governor." Other similar situations abound where a state constable is employed by a state or local agency, which is eligible to purchase insurance, pursuant to Section 1-11-140. Often times, the constable's commission is limited specifically to the performance of the job duties or to the property of the public agency or institution.

I would believe that under existing law, such insurance could be purchased by that individual's employer as is the case with respect to the agency's other employees. On the other hand, under Section 1-11-140, as it presently exists, I would doubt that without legislative amendment coverage to all constables as a group could be afforded simply by virtue of the fact that they are public officers performing public duties. Under present law, they must also be "employed" by a state or local agency or institution.

As to workers compensation coverage, again, I believe the same situation would exist. Section 42-7-60 explicitly limits coverage of the State Accident Fund (formerly known as "State Workers Compensation Fund") to all "officers and employees of the State and of any county, municipality, or other political subdivisions thereof or any agency or institution of the State which has elected to participate under the provisions of § 42-7-50." Thus, while a state constable is indeed a public officer, unless the constable is actually employed by and on the payroll of a state or local agency, legislation would probably be necessary in order that constables as a group would be covered for purposes of workers compensation. Thus, Mr. Corley is correct that legislative amendment would be necessary to assist constables as a group rather than simply on an individual employee basis. I would see no constitutional impediment to the concept of such legislation, were it enacted.

Other options for consideration are also available. Law enforcement associations often provide a tort liability group policy through the payment of dues. Mr. Corley may wish to consider this option as well.

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This letter is an informal opinion only. It has been written by a designated Assistant Deputy 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.

With kind regards, I am

Very truly yours,



Robert D. Cook

Assistant Deputy Attorney General

RDC/ph

cc: Ralph Corley, President
Midlands State Constables Association