

The State of South Carolina



Office of the Attorney General

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February 5, 1988

The Honorable Michael R. Carter
Sheriff of Georgetown County
Post Office Box 869
Georgetown, South Carolina 29442

Dear Sheriff Carter:

By your letter of January 19, 1988, you have asked whether the constitutional prohibition against dual office holding would be violated if a jailer would also serve as a Reserve Deputy or a SLED Constable.

Article XVII, § 1A of the South Carolina Constitution provides that "... no person shall hold two offices of honor or profit at the same time." 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).

This Office has opined that a jailer or warden of a county prison would most probably be considered to be an officer for dual office holding purposes. See Op. Atty. Gen. dated January 17, 1985 (enclosed, with an enclosure dated July 3, 1984).

Likewise, this Office has opined on several occasions that one who serves as a reserve police officer, a position authorized by Section 23-28-10 et seq. of the Code of Laws of South Carolina (1987 Cum. Supp.), would hold an office within the

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meaning of Article XVII, § 1A of the Constitution. See Ops. Atty. Gen. dated June 5, 1979 and September 12, 1980 (copies enclosed).

During the 1987 legislative session, the General Assembly added Section 8-1-130 to the Code of Laws, as follows:

Any member of a lawfully and regularly organized fire department, county veterans affairs officer, constable, or municipal judge serving as attorney for another city is not considered to be a dual officeholder, by virtue of serving in that capacity, for the purposes of the Constitution of this State. [Emphasis added.]

By an opinion dated September 10, 1987 (copy enclosed), this Office concluded that Section 8-1-130 of the Code excepts holders of constables' commissions from considerations of dual office holding for purposes of the South Carolina Constitution.

In conclusion, it is the opinion of this Office that a jailer who would also serve as a Reserve Deputy would most probably contravene the dual office holding prohibitions of the State Constitution. Based on Section 8-1-130, the jailer would not be precluded from holding a constable's commission for the reason of dual office holding.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/an

Enclosures

REVIEWED AND APPROVED BY:

Robert D. Cook

Robert D. Cook
Executive Assistant for Opinions