

The State of South Carolina



Office of the Attorney General

Opinion 1887-79

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ATTORNEY GENERAL

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September 10, 1987

Captain E. H. Watson
Support/Services Commander
City of Greenville
Police Department
4 McGee Street
Greenville, South Carolina 29601

Dear Captain Watson:

By your letter of August 31, 1987, you have asked for the opinion of this Office as to whether a police officer with a commission from the City of Greenville may also hold a State constable's commission to also serve as a reserve officer. You were concerned about dual office holding.

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). In State v. Crenshaw, a police officer was specifically declared to be an officer.

Act No. 127, 1987 Acts and Joint Resolutions, added Section 8-1-130 to the Code of Laws of South Carolina (1976, as revised). The new section provides:

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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.]

In construing a statute such as Section 8-1-130, words must ordinarily be given their plain and ordinary meanings. Snipes v. McAndrew, 280 S. C. 320, 313 S.E.2d 294 (1984). Where such language is clear and unambiguous, no construction is required and the language must be applied literally. State v. Carrigan, S. C. , 328 S.E. 2d 119 (S.C.Ct.App. 1985). Applying these rules of statutory construction, it is clear that Section 8-1-130 excepts holders of constables' commissions from consideration as to dual office holding for purposes of the Constitution of the State of South Carolina.

Therefore, it is the opinion of this Office that the terms of Section 8-1-130 of the Code would permit a city police officer to also hold a constable's commission.

With kindest regards, I am

Sincerely,

Patricia D. Petway
Patricia D. Petway
Assistant Attorney General

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REVIEWED AND APPROVED BY:

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