

1984 WL 249891 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 17, 1984

*1 Bobbie Jean Lawson, CMC
Municipal Clerk
Herndon Street
P.O. Drawer K
Union, South Carolina 29379

Dear Ms. Lawson:

You have requested the opinion of this Office on the question of whether an individual who holds a State Constable position may run for a Council seat for the City of Union and, if elected, serve in both positions.

[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. [Sander v. Belue](#), 78 S.C. 171, 58 S.E. 726 (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 previously concluded that a member of a city council is an office for dual office holding purposes. [See Ops. Atty. Gen.](#) dated September, 1983 and January 31, 1984 (copies enclosed).

This Office has also determined that a person holding the position of a State Constable with or without compensation is an office for purposes of dual office holding. [See Ops. Atty. Gen.](#) dated March 28, 1983 and December 29, 1981 (copies enclosed). This conclusion is based upon the fact that a State Constable's duties involve an exercise of a portion of the sovereign power of the State.

Neither State Law nor the constitutional provisions prohibiting dual office holding prohibit one presently holding an office from offering for election for a second office. However, there may be a municipal policy prohibiting such political activity, or some other policy relative to constables regulating their political activity; such policies should be consulted.

If, however, one person holds one office on the date he assumes the second office, both offices falling within the provisions of [Article XVII, § 1A of the Constitution](#), he is deemed to have vacated the former office. However, he may continue to perform the duties of the previously held office as a *de facto* officer, rather than *de jure*, until a successor is duly selected to complete his term of office (or to assume his duties if the term of service is indefinite). [See, Walker v. Harris](#), 170 S.C. 242 (1933); [Dove v. Kirkland](#), 92 S.C. 313 (1912); [State v. Coleman](#), 54 S.C. 282 (1898); [State v. Buttz](#), 9 S.C. 156 (1877).¹

In conclusion, it is the opinion of this Office that one who would serve simultaneously as a State Constable and as a member of the Union City Council would contravene the dual office holding provisions of the Constitution of South Carolina.

Sincerely,

Patricia D. Petway
Staff Attorney

Footnotes

- 1 A de jure officer is 'one who is in all respects legally appointed and qualified to exercise the office.' 63 Am.Jur.2d Public Officers and Employees § 495. A de facto officer is 'one who is in possession of an office, in good faith, entered by right, claiming to be entitled thereto, and discharging its duties under color of authority.' [Heyward v. Long](#), 178 S.C. 351, 183 S.E. 145, 151 (1936); see also [Smith v. City Council of Charleston](#), 198 S.C. 313, 17 S.E.2d 860 (1942) and [Bradford v. Byrnes](#), 221 S.C. 255, 70 S.E.2d 228 (1952).

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