

1983 WL 181790 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 11, 1983

***1 RE: Conflict of Interest—Dual Officeholding, State Constables and Private Detective Companies or Private Security Companies**

J. P. Strom
Chief
S. C. Law Enforcement Division
ATTN: Mr. Paul J. Moran
P. O. Box 21398
Columbia, South Carolina 29211

Dear Chief Strom:

You recently have asked the opinion of this Office on whether there is 'a conflict [of] interest for the owner, operator, or manager of a private detective, or private security company under the provisions of Section 40-17-10, et. seq. to also be commissioned as a State Constable, vested with all the powers of a peace officer of the State as provided in Section 23-1-60.'

Prior to addressing your immediate question, I feel compelled to address the collateral issue concerning whether an individual commissioned as a State Constable violates the dual officeholding provision of the [South Carolina Constitution, Article XVII, Section 1A](#); [Sanders v. Belue, 78 S.C. 171 \(1907\)](#). As I am sure you are aware, this Office has previously opined that private security officers, as that term is defined in Section 40-17-20 violate the dual officeholding provisions of our State Constitution if they also accept an appointment by the Governor as a State Constable. Opinion dated January 28, 1975, to Chief J. P. Strom. How this opinion on dual officeholding affects the 'private detective business', as that term is defined in Section 40-17-20(a), or the owner, operator, or manager of a private detective, or private security company, has not been requested and therefore is not the subject of this opinion. However, if an opinion request is made to this Office addressing this issue, I would suggest that it be directed to Mr. Helen T. Zeigler, Assistant Attorney General, since she is primarily responsible for handling questions of this nature.

Addressing your specific question, you asked whether a conflict of interest exists for the owner, operator, or manager of a private detective or private security company to also be commissioned as a State Constable. In response to this inquiry, it is the opinion of this Office that a conflict of interest does exist and that the interests of the public in this State would best be served if the owners, operators, and/or managers of private detective and/or private security companies not be appointed as State Constables.

[Section 23-1-60, Code of Laws of South Carolina \(1976\)](#) provides for the appointment by the Governor of State Constables. In addition, the statute authorizes State Constables to assist, when requested, in 'the detection of crime and the enforcement of any criminal laws of this State . . .' [Section 23-1-60](#). A private detective, on the other hand, by definition makes investigations to obtain information with reference to conduct, movement, and honesty of others; the location and disposition of lost and stolen property; the cause of fires, accidents or damage to persons or property; and evidence to be used in any civil court. Section 40-17-20(a). Likewise, a private security guard acts as a watchman or guard, is empowered to wear a pistol, and has the power of arrest as that of a Sheriff. Section 40-17-20(b), 40-17-120 and 40-17-130.

***2** While in an ideal setting one would hope that the responsibilities and aims of a State Constable and a private detective or private security guard would be similar, in actuality many times they differ. A State Constable, which is an office of honor, when called upon by law enforcement to assist in the 'detection of crime and the enforcement of any criminal laws of this State'

must at all time act in the public interest. However, a private detective and a private security guard must, out of necessity, look out for the interests of their private employer[s]. As previously mentioned, all too often, the interests of the public and those of an individual private citizen conflict. However, a State Constable, when called upon to assist law enforcement, acts in the capacity of a public employee, and, therefore, must avoid any conflict of interest between his official position and his duties and responsibilities as a private citizen.

While your question does not set forth any specific problems, potential problems can be readily seen to exist if a detective or a private security guard or if an owner, operator, or manager of a private detective or private security company utilizes his position as a State Constable to enhance or expand his authority while he is performing the functions of a private detective and/or a private security guard or ordering the performance of these functions or if he is otherwise acting in his capacity as a private citizen. In this regard, Section 8-13-140, as amended, provides that 'no public official or public employee shall use his official position or office to obtain financial gain for himself.'

In addition, Section 8-13-440 provides that no public official or public employee can use confidential information gained during the course of his official employment in such a way as would result in financial gain for himself or for his employer. In this regard, it would appear impossible for a State Constable who has gained confidential information in the course of his official employment, or who has access to confidential information, to separate the confidences and/or information he has gained from his official or public position from that he has gained in his private capacity and/or from using the same in his capacity as an owner, operator or manager of a private detective and/or private security company.

Since your inquiry concerning this issue was very general, this Office's response, out of necessity, has also been very general. However, in subsequent phone conversations, this Office has been informed of specific problems that now exist in this area and, therefore, I would suggest that you contact the State Ethics Commission, citing your specific problems and the above-referenced statutory authority and request an opinion from them concerning these problems.

If this Office can be of any further assistance to you, or if I can personally provide you with any further information on this topic, please do not hesitate to contact me. I am

Sincerely,

*3 Larry L. Vanderbilt
Assistant Attorney General

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