

1981 WL 157967 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 16, 1981

\*1 Honorable Chris Pracht  
Post Office Box 574  
Anderson, South Carolina 29622

Dear Representative Pracht:

In a letter to this office you raised the following questions:

1. Can a State Constable that is appointed to serve at the pleasure of the Governor of South Carolina and without remuneration work for the Anderson County's Sheriff's Department, wear the uniform of an Anderson County Deputy, receive a uniform allowance, receive pay for his service from the Anderson County Treasurer based on his State Constable status and Commission?
2. Can an individual hold a State Constable Commission, serve as Assistant Fire Chief of an Anderson County Fire Department and as Fire Chief during the absence of the regular Chief, and wear the uniform of a County Deputy Sheriff?
3. Can a County Sheriff appoint an individual as a County Constable and can a County Constable receive pay and uniform allowance from a County Treasurer?

Enclosed please find a copy of a previous opinion of this office dated September 23, 1980, which states in part that due to provisions in the State Constitution prohibiting dual office-holding, an individual may not simultaneously hold the offices of fire chief, state constable, and deputy sheriff. Therefore, as to the situation referenced in your first question, generally, an individual would be prohibited from holding simultaneously the positions of state constable and deputy sheriff.

However, upon close reading of your first question, it appears that while the individual referenced in such question works for the Anderson County Sheriff's Department and wears the uniform of a sheriff's deputy, he is paid based upon his state constable status and commission. Therefore, it appears that an attempt has been made to draw a distinction between such an individual and a regular sheriff's deputy.

Mr. McLeod, in a letter dated June 5, 1974, a copy of which is enclosed, stated in part that:

The majority of . . . (state) . . . constables serve without compensation, but I see no legal obstacle to Greenville County using its funds to compensate a constable appointed by the Governor for the services rendered by him in the enforcement of the law.

Therefore, it appears that the arrangement referenced in Question One could under proper circumstances be authorized. However, inasmuch as such an arrangement could have potential dual office-holding problems, extreme care should be taken to insure that the position as outlined in Question One does not evolve to where such an individual is considered as being a regular deputy sheriff.

Your second question, as set forth above, appears to have been answered by the September, 1980, opinion with the result that an individual would be prevented by the dual office-holding prohibitions from simultaneously serving in the positions referenced.

As to your remaining question concerning the appointment of a county constable by a sheriff, I am unfamiliar with any statutory authorization for such a position. Apparently the position you reference is not that of a magistrate's constable, a position which is,

pursuant to [Section 22-9-10, CODE OF LAWS OF SOUTH CAROLIAN](#), 1976, under the appointment power of a magistrate. I am including a copy of Sections 23-28-10 et seq., CODE OF LAWS OF SOUTH CAROLIAN, 1976, which provides for the appointment of reserve police officers. If the individuals you reference do not come within the category of reserve police officers, or if you have any further information concerning the position of county constable, please advise me and I will be happy to look into the matter further.

\*2 With best wishes,  
Sincerely,

Charles H. Richardson  
Assistant Attorney General

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