

1981 WL 158087 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

December 29, 1981

\*1 J. P. Strom  
Chief  
S.C. Law Enforcement Division  
Post Office Box 21398  
Columbia, South Carolina 29221

Dear Chief Strom:

You have asked the opinion of this office on the question of whether a person may serve concurrently as a deputy clerk of court and a State constable without compensation.

[Article XVII, Section 1A of the South Carolina Constitution](#) states that ‘ . . . no person shall hold two offices of honor and profit at the same time.’ Also see Article VI, Section 3. 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 \(1907\)](#). Another relevant consideration is whether statutes, or other such authority, establish tenure, duties, salary, oath, etc., for the position involved. [State v. Crenshaw](#), South Carolina Supreme Court, Op. No. 21189, 4-9-80.

In numerous opinions this Office has concluded that the position of a State constable without pay or compensation is a public office within the meaning of [Article XVII, Section 1A](#). May 30, 1979, and September 23, 1980, opinions to Chief J. P. Strom, South Carolina Law Enforcement Division.

A review of the constitutional provision and statutes providing for the position of clerk of court and its duties establishes that it is a public office having duties involving an exercise of the sovereign power of the State. Article V, Section 20; [Sections 14-17-10, et seq., Code of Laws of South Carolina](#), 1976. Because a deputy clerk, pursuant to Section 14-17-60, is appointed by the clerk upon approval of the Court of Common Pleas, is required to take the oath prescribed by the South Carolina Constitution, and may perform any and all of the duties appertaining to the office of clerk of court, this position also constitutes a public office within the meaning of [Article XVII, Section 1A](#).

Based on the foregoing, it is the opinion of this Office that a person concurrently serving as a deputy clerk of court and a State constable without pay would be in violation of the provisions of the South Carolina Constitution prohibiting dual office-holding.  
Sincerely,

James M. Holly  
Assistant Attorney General

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