

1980 WL 120742 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 24, 1980

*1 Mr. Hubert Johnson
Post Office Box 1452
Spartanburg, South Carolina 29304

Dear Mr. Johnson:

You have asked the opinion of this Office on whether a 'mill constable', who is also a State constable, may serve on the Board of Trustees of Spartanburg General Hospital.

[Article XVII, § 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, § 3. For this provision to be contravened, a person currently 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 \(1907\)](#).

The Board of Trustees of Spartanburg General Hospital is created and provided with certain powers and duties by Act Number 773 of the 1973 Acts and Joint Resolutions. A review of this Act indicates that membership on the Board of Trustees would be the holding of a public office within the meaning of [Article XVII, § 1A](#).

The letter requesting the opinion noted that the particular person under consideration for appointment to the Board is employed as a 'mill constable' and is paid by the textile company and Spartanburg County. My research did not reveal any general statutes or local acts related to 'mill constables.' If the person, however, has the powers and duties of a magistrate's constable or a deputy sheriff for industrial communities, he would be holding a public office. [See § 22-9-10 to § 22-9-120 and § 23-13-210 to § 23-13-300, Code of Laws of South Carolina, 1976](#). It is possible that the person would not be holding such an office if his position is merely one of custom and/or employment. The fact that the person is paid in part by the County leads me to believe that he is holding a public office; but because I do not have sufficient information on this position, a determination on whether it is a public office cannot be made.

The letter requesting the opinion also noted that the person held a State constable's commission. This Office has previously determined that a State constable, or Governor's constable, holds a public office within the meaning of [Article XVII, § 1A](#). [See attached opinion dated July 12, 1976].

Based on the foregoing, it is the opinion of this Office that a person may not concurrently serve as a State constable and a member of the Board of Trustees of Spartanburg General Hospital in that this would contravene [Article XVII, § 1A of the South Carolina Constitution](#). With regard to the position of 'mill constable', sufficient information has not been obtained to make a determination on whether it falls within this prohibition.

Sincerely,

James M. Holly
Assistant Attorney General

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