

1980 WL 120870 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 12, 1980

*1 Honorable James R. Metts
Sheriff of Lexington County
521 Gibson Road
Lexington, SC 29072

Dear Jimmy:

In a letter to this office, you raised several questions relating to reserve police officers. You specifically asked:

1. Can someone holding a state constable's commission serve as a reserve police officer or will this constitute dual office holding?
2. Can a private security guard be a reserve police officer?
3. Will reserve police officers be allowed to carry weapons while off-duty?

[Article XVII, Section 1\(A\) of the South Carolina Constitution](#) states that:

‘ . . . no person shall hold two offices of honor or profit at the same time . . . Also, see Article VI, Section 3 of the Constitution.

Therefore, as to the question posed, it is necessary to determine if the positions of state constable and reserve police officer are offices when the meaning of [Article XVII, Section 1\(A\)](#). It has been determined that an office within this provision is one which is:

‘ . . . charged by law with duties involving an exercise of some part of the sovereign power, either small or great, in the performance of which the public is concerned, and which are continuing and not occasional or intermittent . . . ’ [Sanders v. Belue, 78 S.C. 171, 174, 58 S.E. 762, 763 \(1907\).](#)

This office in past opinions has held that the position of state constable is an office within the meaning of [Article XVII, Section 1\(A\)](#). (See opinions dated October 10, 1967, May 9, 1977, and October 27, 1977). Also, in an opinion dated June 5, 1979, this office determined that the position of reserve police officer, as set forth in [Sections 23-28-10, et seq., Code of Laws of South Carolina, 1976](#), as amended, was an office within the meaning of [Article XVII, Section 1\(A\)](#). Therefore, as to your specific question, it is the opinion of this Office that the simultaneous holding of the offices of state constable and reserve police officer would contravene the provision of the South Carolina Constitution prohibiting dual office holding.

In your second question you asked whether a private security guard could also serve as a reserve police officer. Please be advised that upon examination of the statutes regulating private security guards and providing for reserve police officers, it appears that there are no prohibitions against private security guards serving as reserve police officers. However, it should be emphasized that pursuant to [Section 40-17-140, Code of Laws of South Carolina, 1976](#), the license or registration of a private security guard may be suspended or revoked if it is determined that he has

‘ . . . impersonated or permitted or aided and abetted any other person to impersonate a law-enforcement officer . . . ’

Therefore, any individual serving as both a private security guard and a reserve police officer must take caution to assure that the roles do not become intermingled. The authority granted private security guards, especially their arrest authority pursuant to [Section 40-17-130, Code of Laws of South Carolina, 1976](#), is generally considered to be more restrictive than the authority which may be granted reserve officers pursuant to Section 23-28-70, supra.

*2 In your third question, you asked whether reserve police officers are permitted to carry weapons while off duty. (I presume you are referencing pistols). Please be advised that in a previous opinion of this office, a letter dated August 23, 1978, a copy of which is enclosed, this office determined that inasmuch as reserve police officers do not have the same powers and duties of full-time law law enforcement officers, they are not permitted to carry pistols while off duty. As you are aware, [Section 16-23-20, Code of Laws of South Carolina, 1976](#), provides that
'regular, salaried law-enforcement officers of a municipality, county, or the State . . .'

are permitted to carry pistols. Of course, in all instances, attention should be directed to the other exceptions provided by [Section 16-23-20](#) in considering whether in a particular instance a person would be permitted to carry a pistol on their person.

If you have any questions concerning the above, do not hesitate to contact me.

Sincerely,

Charles H. Richardson
Assistant Attorney General

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