

1980 WL 120892 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 23, 1980

**\*1 SUBJECT: Conflict of Interest; Public Officers; Arrest**

- (1) An individual may not simultaneously hold the offices of Fire Chief, State Constable, and part-time paid Sheriff's Deputy.
- (2) A Magistrate may not simultaneously hold the office of Fire Chief.
- (3) A law enforcement officer may accomplish service on an individual arrested for disorderly conduct by use of the Traffic Ticket Summons.
- (4) The arrest in question was not unlawful; and even if it were, such does not bar any subsequent prosecution and conviction of the defendant.
- (5) A Fire Chief is not entitled to compensation as a part-time Sheriff's Deputy.
- (6) A law enforcement officer may not set bond for individuals whom he arrests.

Chief J. P. Strom  
South Carolina Law Enforcement Division

QUESTIONS:

1. May one individual simultaneously hold the offices of Fire Chief, State Constable, and part-time paid Sheriff's Deputy?
2. May a Magistrate simultaneously hold the office of Fire Chief?
3. May a law enforcement officer accomplish service on an individual arrested for disorderly conduct by use of a Traffic Ticket Summons?
4. Was the arrest lawful?
5. Is a Fire Chief entitled to compensation as a part-time Sheriff's Deputy?
6. May a law enforcement officer set bond for individuals whom he arrests?

STATUTES AND CASES:

The [Constitution of South Carolina \(1976\)](#), Article VI, Section 3 and Article XVII, Section 1A; § 8-1-10; § 14-891, [et seq.](#) (1962); § 4-19-10, [et seq.](#); § 4-21-10, [et seq.](#); §22-3-10, [et seq.](#); § 6-7-10, [et seq.](#); § 22-3-710; § 16-17-530; § 17-15-10, [et seq.](#); § 23-5-50; [State v. Crenshaw](#), Opinion No. 21189, filed April 9, 1980; [State v. Biehl](#), 246 S.E. 2d 859 (1978); [State v. Holliday](#), 225 S.C. 142, 177 S.E. 2d 541 (1970); [State ex rel Carson v. Wood](#), 154 W.Va. 397, 175 S.E. 2d 482 (1970); [McLure v. McElroy](#), 211 S.C. 106, 44 S.E. 2d 101 (1947); [Edge v. Town of Cayce](#), 187 S.C. 171, 197 S.E. 216 (1938); [State v. Luster](#),

178 S.C. 199, 182 S.E. 427 (1935); [Walker v. Harris](#), 170 S.C. 242, 170 S.E. 270 (1933); [Sanders v. Belue](#), 78 S.C. 171, 58 S.E. 762 (1907); [State v. Buttz](#), 9 S.C. 156 (1877); Ops. Atty. Gen. dated October 27, 1977; Ops. Atty. Gen. dated April 27, 1977; 1974-1976 Ops. Atty. Gen. No. 4518, p. 380; 1974-1975 Ops. Atty. Gen. No. 4137, p. 205; Ops. Atty. Gen. dated April 26, 1979; Ops. Atty. Gen. dated June 19, 1975; Ops. Atty. Gen. dated May 13, 1975; Ops. Atty. Gen. dated January 28, 1975; Ops. Atty. Gen. dated November 6, 1968; 1967 Ops. Atty. Gen. No. 2298, p. 118.

#### DISCUSSION:

1. [Article XVII, Section 1A of the Constitution of South Carolina](#) provides, in pertinent part, that:

Every qualified elector shall be eligible to any office to be voted for, unless disqualified by age, as prescribed in this Constitution. But no person shall hold two offices of honor or profit at the same time.

\*2 [Article VI, Section 3 of the Constitution of South Carolina](#) provides that:

No person shall hold two offices of honor or profit at the same time; provided, that this limitation shall not apply to officers in the militia, notaries public, or delegates to a Constitutional Convention.

In defining what constitutes a public office or officer under the aforementioned constitutional provisions, the following statutory and case law is applicable.

§ 8-1-10, [Code of Laws of South Carolina \(1976\)](#) provides that:

The term public officer shall be construed to mean all officers of the State that have heretofore been commissioned and trustees of the various colleges of the State, members of various State boards and other persons whose duties are defined by law.

The opinion rendered by the Supreme Court in the case of [Sanders v. Belue](#), 78 S.C. 171, 58 S.E. 762 (1907) defines a public officer in the following manner:

One who is charged by law with duties involving an exercise of some part of the sovereign powers, either small or great, in the performance of which the public is concerned, and which are continuing and not occasional or intermittent, is a public officer. Conversely, one who merely performs the duties required of him by persons employing him under an express contract or otherwise, though such persons be themselves public officers, and though the employment be in or about a public work or business, is a mere employee.

There is yet one additional opinion which has a bearing upon whether or not the holding of two or more offices constitutes dual office holding within the meaning of [Article VI, Section 3](#), and [Article XVII, Section 1A of the State Constitution](#). The case of [State v. Crenshaw](#), Opinion No. 21189, filed April 9, 1980, states a number of criteria to be utilized in distinguishing between a public officer and a public employee:

Criteria . . . include whether the position was created by the legislature; whether the qualifications for appointment are established; whether the duties, tenure, salary, bond and oath are prescribed or required; whether the one occupying the position is a representative of the sovereign, among others. [State ex rel Carson v. Wood](#), 154 W.Va. 397, 175 S.E. 2d 482 (1970). No single criteria is conclusive; neither is it necessary that all the characteristics of an officer or officers be present. 67 CJS, Officers, § 8(a) (1978).

From the aforementioned statutory and case law, it is evident that no individual may hold two offices of honor or profit, such offices being considered public offices. [Sanders v. Belue](#), *supra*, [State v. Crenshaw](#), *supra*. The application of the law to the issues posed in this case is now in order.

With respect to the office of Fire Chief, an Opinion rendered by this Office on September 26, 1975, established that the office of Fire Chief was an office within the purview of [Sanders v. Belue, supra.](#), 1974-1975 Op. Atty. Gen. No. 4137, p. 205. In a review of the facts of the present case, the Anderson County Fire Commission was created pursuant to legislative enactment. § 14-891, *et seq.*, [Code of Laws of South Carolina](#) (1962), § 4-19-10. *et seq.*, and [§ 4-21-10, et seq., Code of Laws of South Carolina \(1976\)](#) also authorize the counties of the State to develop their own respective fire protection and prevention systems.

\*3 Under the Anderson County system, the Fire Chiefs of each of the twenty-six (26) departments are elected annually, pursuant to the Rules and Regulations of the Anderson County Fire Department, as promulgated by the Anderson County Fire Commission, a body with supervisory power over the fire protection system, and a body which is appointed by the County Council. Pursuant to the Rules and Regulations of the Anderson County Fire Department, the office of Fire Chief is also defined, complete with a description of the duties, responsibilities and qualifications thereof.

It is thus submitted that the office of Fire Chief of any of the sub units of Anderson County is a public office within the meaning of [Sanders v. Belue, supra](#) and [State v. Crenshaw, supra](#). The office was established pursuant to legislative enactment, and is presently operating pursuant to County authority, and is thus exercising a portion of the State's power.

In a review of the office of Deputy Sheriff, the opinions rendered by the Supreme Court in [State v. Crenshaw](#), Opinion No. 21189, filed April 9, 1980; and [Edge v. Town of Cayce, 187 S.C. 171, 197 S.E. 216 \(1938\)](#), establish that a law enforcement officer is a public officer. 1967-1968 Ops. Atty. Gen. No. 2537, p. 229; Ops. Atty. Gen. dated January 28, 1975.

The offices of Fire Chief and Deputy Sheriff thus both constituting public offices within the meaning of [Article VI, Section 3](#) and [Article XVII, Section 1A of the Constitution of South Carolina](#), it is submitted that an individual cannot hold both of the aforementioned positions simultaneously without running afoul of the constitutional prohibitions.

The office of State Constable is likewise a public office under the law of South Carolina, even though the office may be non-salaried. [Sanders v. Belue, supra](#); [Edge v. Town of Cayce, supra](#); Ops. Atty. Gen. dated October 27, 1977, Ops. Atty. Gen. dated May 13, 1975.

It is therefore submitted that an individual may not simultaneously hold the offices of Fire Chief, Deputy Sheriff, and State Constable. One individual may not even hold any two of the aforementioned positions without violating the constitutional prohibitions against dual office holding.

2. Under the authority of [Sanders v. Belue, supra](#), the office of Magistrate is a public office, in that the office is charged by law with duties involving an exercise of some part of the sovereign power of the State, in the performance of which the public is concerned. [§ 22-3-10, et seq., Code of Laws of South Carolina \(1976\)](#). It has already been established that the office of Fire Chief is a public office. [State v. Crenshaw](#), Opinion No. 21189, filed April 9, 1980; [Sanders v. Belue, supra](#). It is thus submitted that a Magistrate may not simultaneously hold the office of Fire Chief without violating the constitutional prohibitions against dual office holding.

3. [Section 56-7-10, et seq., Code of Laws of South Carolina \(1976\)](#) provides that:

\*4 There shall be one uniform traffic ticket used by all law enforcement officers in the State, counties and municipalities having traffic jurisdiction, the service of which shall vest all traffic courts with jurisdiction to hear and dispose of the charge for which such ticket was issued and served.

Under an opinion of this Office dated November 12, 1976, a law enforcement officer may arrest an individual for disorderly conduct by the issuance of a uniform traffic ticket. 1974-1976 Ops. Atty. Gen. No. 4518, p. 380. This opinion is supported by

§ 56-7-10 of the [Code of Laws](#), enumerated above. Under the aforementioned statute, the arrest of a person by use of the ticket summons is sufficient to confer jurisdiction of the matter to the Magistrate's Court.

Under the laws of South Carolina, however, a defendant is granted certain rights prior to the commencement of his trial. [Section 22-3-710, Code of Laws of South Carolina \(1976\)](#) provides that a defendant must be sufficiently informed of the charges against him. Thus, in an Opinion issued by this Office on April 27, 1977, it was stated that:

When an individual is arrested for a misdemeanor violation other than a traffic offense, while there is nothing to prevent the officer from issuing and serving the uniform traffic ticket, the criminal offense may not be properly disposed of by the court unless and until an arrest warrant has been issued and served on the arrestee or is in the possession of the magistrate when the trial is held. The warrant serves a variety of purposes. It informs the arrested person of the charge against him. A warrant is necessary in cases triable by a magistrate because the warrant constitutes the charging paper, and the defendant must be informed of the charges against him.

This is particularly true when one examines the offense of disorderly conduct. A defendant must be specifically informed of what conduct of his has resulted in his being charged with the offense of disorderly conduct. As is apparent, [§ 16-17-530 of the Code of Laws \(1976\)](#) prescribes various types of disorderly conduct:

Any person who shall (a) be found on any highway or at any public place or public gathering in a grossly intoxicated condition or otherwise conducting himself in a disorderly or boisterous manner, (b) use obscene or profane language on any highway or at any public place or gathering or in hearing distance of any school house or church or (c) while under the influence or feigning to be under the influence of intoxicating liquor, without just cause or excuse, discharge any gun, pistol or other firearm while upon or within fifty yards of any public road or highway, except upon his own premises, shall be deemed guilty of a misdemeanor and upon conviction shall be fined not more than one hundred dollars or be imprisoned for not more than thirty days.

It is therefore submitted that while a law enforcement officer may accomplish service on an individual for disorderly conduct by use of the Traffic Ticket Summons, thus conferring jurisdiction of the matter upon the Magistrate's Court; a warrant of arrest should also be obtained prior to the commencement of the trial in order to ensure that the defendant is sufficiently notified of the charges against him.

\*5 4. In the particular factual situation of the present case, the arrest was lawful, although the arresting officer was simultaneously holding three public offices—that of State Constable, Deputy Sheriff, and Fire Chief. Under the law of the State, an individual can hold only one of the aforementioned offices. Therefore, under the authority of [McLure v. McElroy, 211 S.C. 106, 44 S.E. 2d 101 \(1947\)](#); [Walker v. Harris, 170 S.C. 242, 120 S.E. 270 \(1933\)](#); and [State v. Buttz, 9 S.C. 156 \(1877\)](#) an officer has good title to the latest office to which he is appointed and for which he has been duly qualified, which means that he is the incumbent de jure, and thus vacates the earlier office upon qualification to the last one. In an Opinion issued by this Office on June 19, 1975, however, it was stated that:

one who occupies the dual officeholding status continues in such office and his acts and doings in that office are valid unless and until the matter is rectified by designation of a successor or by resolution by lawsuit.

Therefore, as long as the arresting officer in this case had the authority to make arrests, the fact that he was a dual officeholder will not make the arrest unlawful nor make all of the proceedings following the arrest of the defendant invalid. [State v. Biehl, 246 S.E. 2d 859 \(1978\)](#); [State v. Holliday, 255 S.C. 142, 177 S.E. 2d 541 \(1970\)](#); [State v. Luster, 178 S.C. 199, 182 S.E. 427 \(1935\)](#). It is thus submitted that the arrest in this case was lawful in that the arresting officer had the authority to make the arrest by virtue of his occupying the office of State Constable.

5. It is unclear to this Office as to what constitutes the office of part-time Sheriff's Deputy. The [Code of Laws of South Carolina](#) have not specifically established such an office. Under the facts you have presented to this Office, a part-time sheriff's deputy

works for 16 hours per week and is paid \$2,743 per year. Even assuming that the office of part-time sheriff's deputy was established under the [Code of Laws](#), one individual who holds the office of Fire Chief may not simultaneously hold the office of Deputy Sheriff, and thus such person is not entitled to receive compensation as a Deputy Sheriff. [Article VI, Section 3](#) and [Article XVII, Section 1A of the Constitution of South Carolina \(1976\)](#); [Sanders v. Belue, supra](#).

6. An Opinion issued by this Office on April 26, 1979, is responsive to the final issue. [Section 17-15-10, et seq., of the Code of Laws of South Carolina \(1976\)](#) was interpreted to mean that as to a person charged with a non-capital offense which is triable in the Magistrate's Court or Circuit Court, the determination as to bail is to be made ' . . . at . . . (the accused) . . . appearance before any such courts.' Thus, the section appears to indicate the necessity of a hearing before a judicial officer whereby a determination may be made as to the release of an individual on bond.

Other sections indicate that in evaluating conditions of bail, the person admitting to bail, such as a magistrate, may take into consideration several criteria more particularly set out in [§ 17-15-30 of the Code of Laws](#). Therefore, again, a hearing before a judicial officer appears to be required.

\*6 As to traffic cases, a previous Opinion of this Office, 1967 Ops. Atty. Gen. No. 2298, p. 118, indicated that the issuance of a uniform traffic ticket does not empower a law enforcement officer to set and accept cash bail. Instead, the Opinion stated, since the setting of bail is a judicial function, this authority can be granted to police officers only by action of the General Assembly.

[§ 23-5-50 of the Code of Laws of South Carolina \(1976\)](#) however, is an exception to this rule, and authorizes a highway patrolman to accept money as bail from an individual charged with the violation of any traffic or other law in lieu of bringing such person before a judicial officer. This exception, however, has not been applied to the Sheriff's Department.

It is thus submitted, that unless otherwise authorized by statute, law enforcement officers may not conduct bail hearings or accept bail. Such duties and responsibilities are within the province of the Court.

#### CONCLUSION:

1. It is the Opinion of this Office that an individual may not simultaneously hold the offices of Fire Chief, State Constable, and Deputy Sheriff, in that such would constitute a violation of [Article VI, Section 3](#), and [Article XVII, Section 1A of the Constitution](#), the said constitutional provisions prohibiting dual officeholding.
2. It is the Opinion of this Office that an individual may not simultaneously hold the offices of Magistrate and Fire Chief, in that such would constitute a violation of [Article VI, Section 3](#) and [Article XVII, Section 1A of the State Constitution](#), the said constitutional provisions prohibiting dual office holding. [State v. Crenshaw, supra](#), [Sanders v. Belue, supra](#).
3. It is the Opinion of this Office that a law enforcement officer may accomplish service on an individual arrested for disorderly conduct by use of the Traffic Ticket Summons.
4. It is the Opinion of this Office that the arrest in this matter was lawful, and that even if it were not, such does not bar any subsequent prosecution and conviction of the defendant for the offense charged. [State v. Biehl, supra](#), [State v. Holliday, supra](#), [State v. Luster, supra](#).
5. It is the Opinion of this Office that a Fire Chief is not entitled to compensation as a Deputy Sheriff, even as the term 'part-time deputy sheriff' is defined upon the facts of this case; in that such would constitute a violation of the prohibitions against dual office holding. [Article VI, Section 3](#) and [Article XVII, Section 1A of the Constitution of South Carolina](#). [State v. Crenshaw, supra](#), [Sanders v. Belue, supra](#).

6. It is the Opinion of this Office that a law enforcement officer may not set bond for individuals whom he arrests unless otherwise authorized by statute, in that the setting of the bond is generally a judicial function. [§ 17-15-10](#), et seq., Code of Laws of South Carolina (1976); Ops. Atty. Gen. dated April 26, 1979.

Sincerely yours,

Wayne G. Carter, Jr.

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