

1977 S.C. Op. Atty. Gen. 265 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-334, 1977 WL 24673

Office of the Attorney General

State of South Carolina

Opinion No. 77-334

October 27, 1977

***1 Re: W. J. Spiers, Jr.—Constable Application**

The Honorable John G. Felder

Member

House of Representatives

Calhoun County

U. S. 601 North

St. Matthews, South Carolina 29135

Dear John:

Think you for your letter of October 21 concerning the status with respect to the dual officeholding provision to the positions of member of the Orangeburg-Calhoun Law Enforcement Complex Commission and State constable without compensation.

The status of a constable without compensation is one which has plagued me for a long time. In 1970 Judge Nicholson handed down an order in the case of Power v. McNair which recites:

‘A state constable without compensation is also charged by law with duties involving an exercise of a portion of the sovereign power: ‘The enforcement of any criminal laws of this State.’ S. C. Code § 53–3 (1962) [§ 23–1–60, Code, 1976]. I therefore conclude that he is also a public officer under the Constitution. Accord, State v. Slagle, 115 Tenn. 336, 89 S.W. 326 —.’

‘I therefore find that a municipal chief of police, a municipal policeman, and a State constable without compensation each hold ‘offices of honor or profit’ within the meaning of the South Carolina Constitution.’

This case was appealed to the Supreme Court which declined to pass on the issue because the case was moot (Power v. McNair, 255 S.C. 551, 177 S.E.2d 551) in that the Governor had actually not made the appointment as constable.

This matter is of importance and, for that reason, we sought the Supreme Court opinion in the Power case because we have advised various people over the years that, in our opinion, it was dual officeholding. This conclusion was based chiefly on Edge v. Cayce, 187 S.C. 171, 197 S.E. 216, which held that a police chief was an officer. Whether or not this extends to subordinate ranks, I do not know, and that is one reason we hope to get a decision from the Supreme Court on a policeman in the Power case. I, frankly, recognize that it is a gray area but one which can be of vital significance in certain situations, as in the case of city policemen, deputy sheriffs, etc., who generally want constables' commissions to enable them to pursue arrests outside their jurisdictions.

In my opinion, a constable's job is an office and to hold another office would be in violation of the dual officeholding provision. I should like to see the matter settled in the courts.

With best wishes,

Cordially,

Daniel R. McLeod

Attorney General

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