

1990 WL 599330 (S.C.A.G.)
Office of the Attorney General
State of South Carolina
October 19, 1990

*1 The Honorable J. Roland Smith
Member, House of Representatives
Box 1047
Langley, South Carolina 29834

Dear Representative Smith:

In a letter to this Office you questioned whether a magistrate's constable could also serve as a part-time chief of police.

Article XVII, § 1A of the South Carolina Constitution provides that "... no person shall hold two offices of honor or profit at the same time." 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. Beluc*, 78 S.C. 171, 58 S.E. 762 (1907). Other relevant considerations are whether statutes, or other such authority, establish the position, prescribe its tenure, duties or salary, or require qualifications or an oath for the position. *State v. Crenshaw*, 274 S.C. 475, 266 S.E.2d 61 (1980).

In *State v. Crenshaw*, *supra*, police officers were declared to be officers. 274 S.C. at 478. In *Edge v. Town of Cayce*, 187 S.C. 171, 197 S.E. 216 (1938), a chief of police was determined to be a public officer. 187 S.C. at 180. See also *Ops. Atty. Gen.* dated July 15, 1982; September 24, 1982; and August 23, 1984. In opinions of this Office dated July 11, 1984 and July 8, 1982 it was determined that the position of magistrate's constable also constitutes an office for dual office holding purposes.

In 1989 Article III, Section 24, Article VI, Section 3 and Article XVII, Section 1A of the State Constitution relating to dual office holding were amended to provide that the prohibition is not applicable to "constables" who hold another office. This Office has interpreted such provision as being applicable only to individuals appointed by the Governor pursuant to Section 23-1-60 of the Code as state constables. See: *Opins. of the Atty. Gen.* dated May 2, 1989 and January 31, 1989. Therefore, the dual office holding prohibition would remain as to an individual serving as a magistrate's constable and a chief of police.

Also, as with any question involving a position associated with the magistrate's court, consideration may be given to contacting the Judicial Standards Commission for their review of this question. Their address is P.O. Box 50487, Columbia, South Carolina 29250.

With best wishes, I am
Very truly yours,

Charles H. Richardson
Assistant Attorney General

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