

1975 WL 29665 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 7, 1975

*1 Honorable D. Gene Rickenbaker
Legal Counsel
Office of the Governor
Post Office Box 11450
Columbia, South Carolina 29211

Dear Mr. Rickenbaker:

Your letter of March 28, 1975, inquires whether the following persons may be commissioned as State constables without violating the dual officeholding provision of the Constitution of this State:

- (1) A Member of the General Assembly
- (2) A mayor or city councilman
- (3) A magistrate

Each of the above positions, in my opinion, constitutes an office within the meaning of the constitutional provision referred to.

In connection with the position of Member of the General Assembly, I direct your attention to [Culbertson v. Blatt](#), 194 S.C. 105, 3 S.E.2d 218, in which the Supreme Court of this State refrained from passing upon the matter on the grounds that each of the branches of the General Assembly is vested with constitutional power to determine the qualifications of its Members and the Court would not transgress the separation of powers doctrine in this respect. Consequently, if dual officeholding is involved in these circumstances, the remedy, insofar as a vacation of a seat in the General Assembly is concerned, is with the respective bodies thereof. Irrespective of these conclusions, I think the Members of the General Assembly are clearly officers within the meaning of the constitutional provision.

It is my opinion that a constable appointed by the Governor is similarly an officer and may therefore not constitutionally occupy another office at the same time he serves as such constable. This conclusion is based principally upon the case of [Edge v. Town of Cayce](#), 187 S.C. 171, 197 S.E.2d 216, in which the Supreme Court of this State considered that a chief of police of a town was an officer. The Court in that case cited the basic case of [Sanders v. Belue](#), 78 S.C. 171, 58 S.E. 762, and after considering the application of Section 50-1 of the Code of Laws, 1962, which it held was not fully decisive of such a matter, laid down the following principal:

‘Laying aside for the moment the statutory definition of a public officer, we venture to think an examination of these and other authorities will lead to the approval of the following definitions as sufficiently expressing the generally accepted distinction between a public officer and an employee: One who 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, is a public officer.’

Constables are appointed by the Governor pursuant to the provisions of Section 53-3, Code of Laws, 1962. They clearly exercise a portion of the sovereignty as law enforcement officers. The fixity of their terms is established, in my opinion,

by consideration of the fact that their terms of office expire sixty days after the expiration of the term of the Governor making the appointment.

*2 It is my opinion that those who hold the positions identified in your letter are officers within the meaning of the dual officeholding provision of the Constitution of this State and that, should they be appointed as constables under the provisions of Section 53-3, they thereby violate the provisions of Article 4, Section 3, of the Constitution, which generally prohibit the occupancy of two offices at the same time by the same person.

Very truly yours,

Daniel R. McLeod
Attorney General

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