



2009-071

STATE OF ALABAMA  
OFFICE OF THE ATTORNEY GENERAL

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Honorable Lee A. Green  
Constable, Dallas County  
Post Office Box 618  
Selma, Alabama 36702

Constables – Private Work – Office of Profit  
– Employees, Employers, Employment –  
Conflicts of Interest

A constable may contract with a nonprofit organization, law firm, or private company to provide private investigative service and/or security service while holding office, as long as the duties of such employment do not overlap, interfere, or present a conflict of interest with the duties of constable.

A constable may not privately contract to provide process service, because he or she has a preexisting statutory obligation to perform this duty.

Dear Constable Green:

This opinion of the Attorney General is issued in response to your request.

QUESTION

Can a constable, when not engaged in official business, contract with a nonprofit organization, law firm, or private company to provide process service, private investigative service, and/or security service?

### FACTS AND ANALYSIS

Section 280 of the Constitution of Alabama addresses concurrent employment by constables as follows:

No person holding an office of profit under the United States, except postmasters, whose annual salaries do not exceed two hundred dollars, shall, during his continuance in such office, hold any office of profit under this state; nor, unless otherwise provided in this Constitution, shall any person hold two offices of profit at one and the same time under this state, except justices of the peace, constables, notaries public, and commissioner of deeds.

ALA. CONST. art. XVII, § 280.

An office of profit is one which “derives its authority directly from the state by legislative enactment; its duties and powers are prescribed by law; and the holder is vested with a portion of the powers of government, whether it be legislative, judicial or executive.” *Opinion of the Clerk No. 27*, 386 So. 2d 210 (Ala. 1980). If one exercises some part of the sovereign power of the state, has a fixed term of office, and receives compensation for the performance of his or her duties, then one holds an office of profit. *Opinion of the Justices*, 244 Ala. 386, 13 So. 2d 674 (1943); opinion to Honorable Morgan Weeks, Attorney at Law, dated December 12, 1989, A.G. No. 90-00070; and to Honorable Ed Arnold, Jr., Superintendent, Cherokee County Schools, dated January 7, 1988, A.G. No. 88-00114.

Section 280 of the Constitution exempts constables from the prohibition against holding two offices of profit at the same time, but it does not address whether a constable may hold concurrent employment in a position that is not an office of profit. This Office has previously stated that a person who holds an office of profit may hold a concurrent position that is not an office of profit as long as the duties do not interfere or overlap:

- Honorable Chad Harless, Coroner, Pickens County, dated May 8, 2007, A.G. No. 2007-095 (stating that a county coroner may serve as director of the county Emergency Management Agency because the EMA director does not hold an office of profit);

- Honorable Tracy L. Hawsey, Conecuh County Sheriff, dated March 29, 2002, A.G. No. 2002-194 (stating that a coroner may serve as a deputy sheriff as long as his duties as coroner do not overlap with his work in the sheriff's office);
- Mr. Clemons Roe, Supernumerary Sheriff, St. Clair County, dated February 1, 1983, A.G. No. 83-00170 (stating that a supernumerary sheriff is not prohibited from being employed by the state or municipality in a position that is not an office of profit); and
- Honorable Fob James, Governor, State of Alabama, dated August 20, 1981, A.G. No. 81-00527 (stating that a county coroner may be employed as an investigator in the District Attorney's Office provided that the investigative services do not overlap or interfere with his duties as coroner).

Thus, it is the opinion of this Office that a constable may obtain concurrent employment as long as the duties of such employment do not overlap or interfere with the duties of constable.

Section 36-23-6 of the Code of Alabama defines the duties of a constable. This section states as follows:

It shall be the duty of every constable:

- (1) To attend the circuit court of the county when summoned by the sheriff for that purpose;
- (2) To execute and return all summons, executions and other process directed to him by any lawful authority;
- (3) To pay over moneys collected by virtue of his office to the person entitled thereto; and
- (4) To perform such other duties as are or may be required of him by law.

ALA. CODE § 36-23-6 (2001).

Your request specifically asked whether a constable may contract with a nonprofit organization, law firm, or private company to provide process service, private investigative service, and/or security service. Private investigative and

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security services do not appear to overlap with the duties of constable, so the constable may perform these services as long as he avoids any possible conflicts of interest with his or employment as constable.

A constable has a preexisting statutory obligation to execute and return all service of process directed to him. It is therefore the opinion of this Office that a constable may not privately contract to provide process service.

You may wish to present this question to the Alabama Ethics Commission for an opinion as to whether there would be any prohibitions under the State Ethics Law.

#### CONCLUSION

A constable may contract with a nonprofit organization, law firm, or private company to provide private investigative service and/or security service while holding office, as long as the duties of such employment do not overlap, interfere, or present a conflict of interest with the duties of constable. A constable may not privately contract to provide process service because he has a preexisting statutory obligation to perform this duty.

I hope this opinion answers your question. If this Office can be of further assistance, please contact Monet Gaines of my staff.

Sincerely,

TROY KING  
Attorney General  
By:



BRENDA F. SMITH  
Chief, Opinions Division

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