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CHAPTER 9.

 CONSTABLES

ARTICLE 1.

 GENERAL PROVISIONS

**SECTION 22‑9‑10.** Constables; appointment, term, and residence.

 Constables shall reside in the county, city or township for which they are elected or appointed.

 Except as otherwise provided in this Title each magistrate may appoint one person to discharge the duties of constable within the jurisdiction of such magistrate and the constable so appointed shall receive the compensation provided by law. He shall hold his office for the term of two years, subject to removal by the magistrate appointing him.

HISTORY: 1962 Code Section 43‑301; 1952 Code Section 43‑301; 1942 Code Section 3734; 1932 Code Section 3734; Civ. C. '22 Section 2267; Civ. C. '12 Section 1471; Civ. C. '02 Section 1046; G. S. 863; R. S. 900; 1878 (16) 715; 1879 (17) 51; Const. Art. 5, Section 20.

**SECTION 22‑9‑20.** Certificate of qualification; bond.

 When any person shall be elected or appointed to the office of constable he shall repair to the clerk's office of the county and, together with the evidence of his election or appointment, he shall lodge his bond in the form prescribed by law in the penalty of five hundred dollars, with good sureties, not less than two nor more than five, to be approved in writing by the clerk. Upon taking the oaths herein prescribed such person shall be entitled to a certificate from the clerk that he has filed his bond and taken the requisite oaths and shall thenceforth be regarded as a regularly qualified constable. No person not so qualified shall exercise the powers of a constable, except as otherwise expressly provided and except that nothing herein contained shall prevent a presiding judge, a magistrate or a coroner from appointing a constable to act by virtue of such appointment only on a particular occasion, to be specified in writing.

HISTORY: 1962 Code Section 43‑307; 1952 Code Section 43‑307; 1942 Code Section 3735; 1932 Code Section 3735; Civ. C. '22 Section 2268; Civ. C. '12 Section 1472; Civ. C. '02 Section 1047; G. S. 864; R. S. 901; 1839 (11) 80; 1873 (15) 512; 1886 (19) 532.

**SECTION 22‑9‑30.** Oath.

 Every constable shall, before receiving the certificate provided for in Section 22‑9‑20 take the following oaths: The oath prescribed by the Constitution for civil officers and also the additional oath prescribed by Section 8‑3‑20.

HISTORY: 1962 Code Section 43‑314; 1952 Code Section 43‑314; 1942 Code Section 3736; 1932 Code Section 3736; Civ. C. '22 Section 2269; Civ. C. '12 Section 1473; Civ. C. '02 Section 1048; G. S. 865; R. S. 902; 1839 (11) 80; 1829 (6) 384.

**SECTION 22‑9‑40.** Removal upon conviction by indictment.

 Upon the conviction of any constable by indictment, the judge before whom the case may be tried may, by order, declare the convict to be removed from office, whereupon his office shall be deemed vacant.

HISTORY: 1962 Code Section 43‑315; 1952 Code Section 43‑315; 1942 Code Section 1553; 1932 Code Section 1553; Cr. C. '22 Section 501; Cr. C. '12 Section 573; Cr. C. '02 Section 416; G. S. 870; R. S. 331; 1835 (11) 81.

**SECTION 22‑9‑50.** Entitlement to act throughout county.

 When not otherwise specially provided by law every qualified constable shall be entitled to exercise his office throughout the county in which he may be elected or appointed.

HISTORY: 1962 Code Section 43‑316; 1952 Code Section 43‑316; 1942 Code Section 3737; 1932 Code Section 3737; Civ. C. '22 Section 2270; Civ. C. '12 Section 1474; Civ. C. '02 Section 1049; G. S. 866; R. S. 903; 1839 (11) 80.

**SECTION 22‑9‑60.** Execution of orders of governing bodies; fees.

 Constables shall execute all legal orders to them directed by the governing bodies of the several counties, or the chairmen thereof, and shall receive therefor the same fees and costs allowed in other cases.

HISTORY: 1962 Code Section 43‑317; 1952 Code Section 43‑317; 1942 Code Section 3862; 1932 Code Section 3862; Civ. C. '22 Section 1103; Civ. C. '12 Section 982; Civ. C. '02 Section 797; R. S. 679; 1893 (21) 489.

**SECTION 22‑9‑70.** Attending circuit courts; service as officer of court; compensation.

 All or so many of the constables of any county as may be thereto required by the sheriff shall be bound to attend any of the circuit courts, shall be officers of court and shall perform the appropriate duties and services assigned them by the sheriff and presiding judge. And each constable so attending shall be entitled to receive the compensation of one dollar and fifty cents for each day's attendance.

HISTORY: 1962 Code Section 43‑318; 1952 Code Section 43‑318; 1942 Code Section 3743; 1932 Code Section 3743; Civ. C. '22 Section 2276; Civ. C. '12 Section 1480; Civ. C. '02 Section 1055; G. S. 871; R. S. 913; 1816 (6) 29; 1839 (11) 81.

**SECTION 22‑9‑80.** Execution of process and return.

 A constable shall faithfully and promptly:

 (1) Execute all processes lawfully directed to him by competent authority; and

 (2) Make return, on oath, to the person issuing the process, to be endorsed in writing on it, of his proceedings by virtue of it.

 Every constable appointed by a magistrate shall be bound, when required, to execute every lawful order, judgment and determination of the magistrate or his court.

HISTORY: 1962 Code Section 43‑320; 1952 Code Section 43‑320; 1942 Code Section 3738; 1932 Code Section 3738; Civ. C. '22 Section 2271; Civ. C. '12 Section 1475; Civ. C. '02 Section 1050; G. S. 867; R. S. 904‑907; 1839 (11) 80.

**SECTION 22‑9‑90.** Service of process.

 The service by a constable of all process in the nature of a notice for personal appearance shall be by delivering to the party a copy of the process or by leaving it at his best‑known place of residence.

HISTORY: 1962 Code Section 43‑321; 1952 Code Section 43‑321; 1942 Code Section 3739; 1932 Code Section 3739; Civ. C. '22 Section 2272; Civ. C. '12 Section 1476; Civ. C. '02 Section 1051; G. S. 873; R. S. 908; 1839 (11) 80.

**SECTION 22‑9‑100.** Return of execution.

 Every constable with whom an execution is lodged for collection shall proceed forthwith to execute it according to its exigency, unless ordered by the party in whose favor it was issued to wait. Every execution shall be returned to the magistrate by whom it was issued within sixty days from date of its issue and the constable making such return shall set forth the full execution thereof or the reasons for his failure.

HISTORY: 1962 Code Section 43‑322; 1952 Code Section 43‑322; 1942 Code Section 3740; 1932 Code Section 3740; Civ. C. '22 Section 2273; Civ. C. '12 Section 1477; Civ. C. '02 Section 1052; G. S. 874; R. S. 910; 1846 (11) 360.

**SECTION 22‑9‑110.** Return when personalty is levied on or attached; advertisement of sale.

 When a constable may levy an execution or serve an attachment on personalty, he shall specify by endorsement on the execution or attachment or by schedule thereunto annexed a list of every article so levied on or attached and forthwith lodge a copy of such list with the person issuing the process under which he acts. In all cases of sale by a constable he shall give fifteen days' notice by advertisement at two of the most public places in the neighborhood of the time and place of sale.

HISTORY: 1962 Code Section 43‑323; 1952 Code Section 43‑323; 1942 Code Section 3738; 1932 Code Section 3738; Civ. C. '22 Section 2271; Civ. C. '12 Section 1475; Civ. C. '02 Section 1050; G. S. 867; R. S. 904‑907; 1839 (11) 80.

**SECTION 22‑9‑120.** Liability for neglect to enforce or return executions.

 When any constable fails to do his duty in the enforcement or return of an execution, the party in whose favor it may have been issued may apply to any magistrate for a rule against such defaulting constable, requiring him to show cause after the expiration of two days from the service of such rule why the execution has not been enforced or returned and on his failing to show cause sufficient the magistrate may order the rule to be made absolute and the constable shall be liable for the debt, interest and costs. If he be unable to pay it such liability shall be construed a breach of his official bond and the amount shall be recoverable in an action thereon against his sureties.

HISTORY: 1962 Code Section 43‑324; 1952 Code Section 43‑324; 1942 Code Section 3741; 1932 Code Section 3741; Civ. C. '22 Section 2274; Civ. C. '12 Section 1478; Civ. C. '02 Section 1053; G. S. 875; R. S. 911; 1846 (11) 360.

**SECTION 22‑9‑130.** Liability for failure to pay over funds.

 In default of paying over the amount of any debt collected to the party entitled or his lawful agent or to the magistrate upon demand or in default of returning to a defendant upon demand any overplus which may be in the hands of a constable, he shall be liable to pay, in either case, to the party in interest and entitled to receive it, the original sum and interest thereon at the rate of ten per cent per month, recoverable before a magistrate, if not more than one hundred dollars in amount, and if greater before the court of common pleas.

HISTORY: 1962 Code Section 43‑325; 1952 Code Section 43‑325; 1942 Code Section 3738; 1932 Code Section 3738; Civ. C. '22 Section 2271; Civ. C. '22 Section 1475; Civ. C. '02 Section 1050; G. S. 867; R. S. 904‑907; 1839 (11) 80.

**SECTION 22‑9‑140.** Penalty for failing to execute process of magistrate's court.

 A constable appointed by a magistrate must execute, when required, every lawful order, judgment, and determination of the magistrate and of any magistrate's court. A constable who fails to perform these duties is guilty of a misdemeanor and, upon conviction, must be fined in the discretion of the court or imprisoned not more than three years, or both.

HISTORY: 1962 Code Section 43‑326; 1952 Code Section 43‑326; 1942 Code Section 1551; 1932 Code Section 1551; Cr. C. '22 Section 499; Cr. C. '12 Section 571; Cr. C. '02 Section 414; G. S. 868; R. S. 329; 1835 (11) 81; 1993 Act No. 184, Section 195.

**SECTION 22‑9‑150.** Constable's causing magistrate to default in returning recognizances or other papers.

 In all cases in which magistrates shall fail to lodge in the offices of the clerks of the court of their respective counties recognizances taken before them for the appearance of witnesses, defendants or prosecutors before the court of general sessions for such county or information or other papers before them, returnable to such court, at least ten days before the meeting of the court, and such default shall arise from the neglect or improper delay of the constable or other officer charged with the execution of any warrant or other process pertaining to the court of general sessions, such constable shall be subject to a fine of five dollars for every such default if, upon a rule to show cause, he shall fail to excuse himself to the satisfaction of the court.

HISTORY: 1962 Code Section 43‑327; 1952 Code Section 43‑327; 1942 Code Section 1554; 1932 Code Section 1554; Cr. C. '22 Section 502; Cr. C. '12 Section 574; Cr. C. '02 Section 417; G. S. 2565; R. S. 340; 1878 (16) 584.

**SECTION 22‑9‑160.** Oppression in office or other misconduct; liability in civil action.

 For oppression in office, whether by undue personal violence, cruelty or taking an amount of property in an unreasonable proportion to the sum to be collected, or for any willful official misconduct, habitual negligence, habitual drunkenness or fraud, a constable shall be liable to an action for damages by the party aggrieved. But if in any such action the plaintiff fails to recover he shall be liable to be mulcted in double or treble costs, by order and at the discretion of the presiding judge.

HISTORY: 1962 Code Section 43‑329; 1952 Code Section 43‑329; 1942 Code Section 3742; 1932 Code Section 3742; Civ. C. '22 Section 2275; Civ. C. '12 Section 1479; Civ. C. '02 Section 1054; G. S. 869; R. S. 912; 1839 (11) 81.

**SECTION 22‑9‑170.** Oppression in office or other misconduct; punishment.

 For oppression in office, whether by undue personal violence, cruelty or taking an amount of property in unreasonable proportion to the sum to be collected, or for any willful official misconduct, habitual negligence, habitual drunkenness or fraud, when established to the satisfaction of a jury upon indictment, a constable shall be punished by imprisonment not exceeding one year and fined not exceeding one thousand dollars, at the discretion of the court.

HISTORY: 1962 Code Section 43‑330; 1952 Code Section 43‑330; 1942 Code Section 3742‑1; 1932 Code Section 1552; Cr. C. '22 Section 500; Cr. C. '12 Section 572; Cr. C. '02 Section 415; G. S. 869; R. S. 330; 1835 (11) 81.

**SECTION 22‑9‑180.** Certain constables authorized to carry pistols.

 Notwithstanding any other provision of law, magistrates' constables who have received the required training by the South Carolina Law Enforcement Division as set forth in Sections 22‑9‑180 to 22‑9‑210, shall be authorized to carry pistols on and about their persons when on official duty as such constables and when going to and from their places of residence. Provided, however, that the Chief of the South Carolina Law Enforcement Division, after hearing and for cause, may deny such privilege to any such constable who is guilty of using his pistol at any time in a manner inconsistent with accepted law enforcement procedures as determined by the Chief or who has been convicted of any crime for which a penalty of imprisonment for more than one year may be imposed. The term "conviction" shall include a plea of guilty, a plea of nolo contendere or forfeiture of bail.

HISTORY: 1976 Act No. 667, Section 1.

**SECTION 22‑9‑190.** Criminal justice training.

 Notwithstanding any other provision of law, all full‑time magistrates' constables shall attend the South Carolina Criminal Justice Training Academy within one year from June 29, 1976, or within one year from initial date of employment after June 29, 1976.

HISTORY: 1976 Act No. 667, Section 2.

**SECTION 22‑9‑200.** Promulgation of rules and regulations.

 The Chief of the South Carolina Law Enforcement Division shall promulgate rules and regulations necessary to implement the provisions of Sections 22‑9‑180 to 22‑9‑210.

HISTORY: 1976 Act No. 667, Section 3.

**SECTION 22‑9‑210.** Effect on constables' common law authority.

 Nothing in Sections 22‑9‑180 to 22‑9‑210 shall have the effect of infringing upon the authorities now possessed by constables pursuant to common law.

HISTORY: 1976 Act No. 667, Section 4.

ARTICLE 3.

 MISCELLANEOUS

**SECTION 22‑9‑320.** Deduction of certain payments to others from constable's salary.

 In all counties of the State wherein magistrates are allowed by law to appoint a constable, such constable so appointed receiving a salary from the county in lieu of all costs and fees in criminal cases, the governing body of the county shall deduct from the salary of such constable all sums paid to any other person for service rendered the county in criminal cases while acting under appointment by such magistrates on a particular occasion, unless it is proven to the satisfaction of the governing body that such services were rendered in an emergency wherein it was impossible for the constable entitled to the salary to perform the services.

HISTORY: 1962 Code Section 27‑454; 1952 Code Section 27‑454; 1942 Code Section 3861; 1932 Code Section 3861; Civ. C. '22 Section 1102; Civ. C. '12 Section 981; Civ. C. '02 Section 796; R. S. 678; 1893 (21) 489; 1899 (23) 10.