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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

February 8, 2005

The Honorable Mark E. English
Chief Magistrate, Newberry County
3239 Louis Rich Drive
Newberry, South Carolina 29108

Dear Judge English:

In a letter to this office you indicated that there is a municipal judge, an attorney in Newberry County, who is also employed by the solicitor's office as a prosecutor in the family court. I am assuming that the prosecutor is in fact considered an assistant solicitor. You have questioned whether holding such positions simultaneously constitutes a conflict of interest.

Article XVII, Section 1A of the State Constitution provides that "no person may hold two offices of honor or profit at the same time..." with the exception for an officer in the militia, a member of a lawfully and regularly organized fire department, a constable, or a notary public. For this provision to be contravened, a person concurrently must hold two offices which have duties involving an exercise of some portion of the sovereign power of the State. Sanders v. Belue, 78 S.C. 171, 58 S.E. 762 (1907). Other relevant considerations are whether statutes, or other authority, establish the position, prescribe its duties or salary, or require qualifications or an oath for the position. State v. Crenshaw, 274 S.C. 475, 266 S.E.2d 61 (1907).

A prior opinion of this office dated May 30, 1997 cited prior opinions of this office which found that the position of part-time municipal judge would be considered an office for dual office holding purposes. See: Ops. Atty. Gen. dated February 1, 1984 and September 19, 1994. That opinion also cited prior opinions that determined that the position of assistant solicitor would be considered an office for dual office holding purposes. See: Ops. Atty. Gen. dated October 19, 1990 and March 27, 1995. As a result, the May 30, 1997 opinion determined that an individual who serves simultaneously as a part-time municipal judge and as an assistant solicitor would most probably hold dual offices in contravention with the dual office holding prohibitions of the State Constitution. See also: Ops. Atty. Gen. dated August 28, 1999, May 29, 1986 and May 3, 1982. Consistent with such, the individual cited in your letter simultaneously serving as a municipal judge and as an assistant solicitor in the family court would also most probably hold dual offices in conflict with the referenced provisions of the State Constitution.

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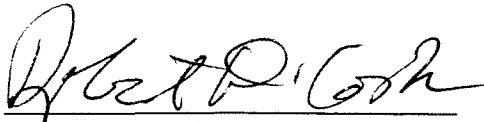
You may also wish to contact the Advisory Committee on Standards of Judicial Conduct with regard to whether holding both of the referenced positions may conflict with judicial canons regulating judges in this State.

Sincerely,



Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Assistant Deputy Attorney General