



The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON  
ATTORNEY GENERAL

June 22, 1998

Gregory D. DeLoach, Esquire  
Legal Department Director  
Town of Hilton Head Island  
One Town Center Court  
Hilton Head Island, South Carolina 29928

Re: Informal Opinion

Dear Mr. DeLoach:

Your opinion request has been forwarded to me for reply. You have informed this Office that the Town of Hilton Head Island operates a municipal court. The court's associate judge is on medical leave and its town appointed judge has sought additional help until such time as the associate judge resumes his duties. The appointed judge's law partner has volunteered (no pay) to assist by assuming judicial responsibilities. The law partner is a member of county council. You have asked whether the dual office holding prohibitions of the State Constitution would be violated if this individual were to serve as interim associate judge.

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 exceptions specified for an officer in the militia, member of a lawfully and regularly organized fire department, constable, or notary public. 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. Belue, 78 S.C. 171, 58 S.E. 762 (1907). Other relevant considerations are whether statutes, or other such 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 (1980).

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This Office has previously concluded that the position of part-time or associate municipal court judge would be considered an office for dual office holding purposes. Ops. Atty. Gen. dated May 30, 1997 and May 3, 1982. We have also advised on numerous occasions that a member of county council would be considered an office holder for dual office holding purposes. Ops. Atty. Gen. dated June 27, 1997, May 16, 1995, and December 20, 1993. Accordingly, if an individual were to simultaneously serve as an associate municipal court judge and as a member of county council, the dual office holding prohibitions of the Constitution would be violated.

This letter is an informal opinion only. It has been written by a designated assistant attorney general and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kindest regards, I remain

Very truly yours,



Paul M. Koch

Assistant Attorney General