

# The State of South Carolina



## Office of the Attorney General

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January 25, 1991

J. D. O'Bryan, Jr., Esquire  
Lane Town Attorney  
P. O. Box 1105  
Kingstree, South Carolina 29556

Dear Mr. O'Bryan:

In a letter to this Office you referenced that presently you serve as attorney for the Town of Lane while your nephew and associate serves as municipal judge for the Town of Kingstree. You indicate that the Town of Lane has approached your nephew-associate as to assuming the position of municipal judge for Lane. You have questioned whether in such circumstances there is any conflict of interest or dual office holding prohibition involved.

The position of municipal judge or recorder is authorized pursuant to Sections 14-25-5 et seq. of the Code. I am enclosing a copy of a prior opinion of this Office dated April 17, 1979 which indicates that an individual who serves as municipal judge for two different municipalities would violate State Constitutional provisions prohibiting dual office holding. However, Section 14-25-25 of the Code, a provision enacted in 1980, states in part

A municipality may contract with any other municipality in the county or with the county governing body to employ the municipal judge of the other municipality or a magistrate to preside over its court.

I am enclosing copies of prior opinions of this office dated December 4, 1980 and July 14, 1981 which indicate that the situation whereby a magistrate or municipal judge is employed by contract to preside over a different municipal court does not result in the magistrate or municipal judge being considered as having been appointed to another office. Instead, as the 1980 opinion notes, "additional powers and duties are annexed" to the original office.

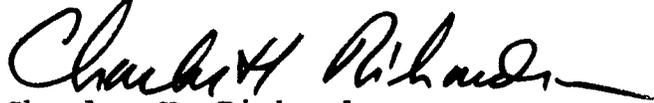
Mr. O'Bryan  
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Therefore, in circumstances where there is contractual employment, as opposed to a separate appointment, the dual office holding prohibition is avoided.

As to your questions regarding any conflicts of interest in the circumstances described above, you should contact the Ethics Advisory Committee of the State Bar as to any potential problems pursuant to the Code of Professional Responsibility. As to any potential conflicts with the Code of Judicial Conduct you should contact the Judicial Standards Commission. Also, as to any questions regarding possible conflicts with the State Ethics Act, Sections 8-13-410 et seq. of the Code, you should contact the State Ethics Commission.

With kind regards, I am

Very truly yours,



Charles H. Richardson  
Assistant Attorney General

CHR/an  
Enclosures

REVIEWED AND APPROVED BY:



Robert D. Cook  
Executive Assistant for Opinions