

1983 WL 181713 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 17, 1983

*1 Mr. Timothy E. Brown
City Councilman
c/o Brown & Son Dental Lab
Post Office Box 1231
Bennettsville, South Carolina 29512

Dear Mr. Brown:

You have requested the opinion of this Office on the question of whether it would be a violation of the dual office holding provisions of the South Carolina Constitution for a mayor to serve concurrently as city attorney.

It is provided in [Article XVII, § 1A of the South Carolina Constitution](#) that ‘. . . no person shall hold two offices of honor or profit at the same time.’ 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 \(1907\)](#). Other relevant considerations are whether statutes, or other such authority, establish the position, prescribe its tenure, duties or salary, or require qualifications or an oath for the position. [State v. Crenshaw, 266 S.E.2d 61 \(1980\)](#).

This Office has previously concluded that both the positions of mayor and city attorney are offices within the meaning of [Article XVII, Section 1A](#). See, 1977 Op. Att’y. Gen. 137; Op. Att’y. Gen. dated July 6, 1981 to C. David Sawyer, Jr.; Op. Att’y. Gen. dated February 23, 1979 to Sheriff Metts. Therefore, the simultaneous holding of both of these positions would be a violation of the dual office holding provisions of the Constitution.

Furthermore, [Section 5-7-180 of the Code of Laws of South Carolina, 1976](#), forbids a mayor or councilman from holding any other municipal office or municipal employment during their term of office. This provision would be violated if a mayor also served as city attorney.

Based on the foregoing, it is the opinion of this Office that it would be a violation of the dual office holding provisions of the South Carolina Constitution and a violation of [§ 5-7-180 of the Code of Laws of South Carolina, 1976](#), for a mayor to serve concurrently as city attorney.

Very truly yours,

Helen T. Zeigler
Assistant Attorney General

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