

1981 WL 158080 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

December 21, 1981

*1 Baety O. Gross, Jr., Esquire
Municipal Judge-Town of Simpsonville
Gross & Gault, Attorneys at Law
P. O. Box 507
Fountain Inn, S. C. 29644

Dear Judge Gross:

In a letter to this office you raised the following questions:

1. In a municipality, where the Judge or City Attorney is elected by council, would there be any legal or ethical problem in the Judge or Attorney being the son or daughter of a member of council or the Mayor?
2. Would it be legal or proper for a municipality to designate a law firm as City Attorneys in order that more than one attorney be qualified and ready to act on the Town's behalf?

As to your first question, I can only advise that I am unaware of any State statute directly forbidding such a relationship. This office in an earlier opinion, 1963-64 Op. Att'y Gen. No. 1861, determined that the [Section 8-5-10, Code of Laws of South Carolina](#), 1976, the State anti-nepotism statute, does not apply to municipalities. A state statute which may have a bearing on your referenced situation is [Section 8-13-460, Code of Laws of South Carolina](#), 1976, as amended. Such section basically outlines the procedures to be followed by a public official in making decisions which may affect his financial interest or those of a member of his household. I suggest that such statute be reviewed as to whether it would control in your situation. As to whether your referenced situation insofar as it concerns a municipal judge would be in violation of any of the canons of judicial conduct, I can only suggest that you contact the South Carolina Judicial Standards Commission, 1231 Gervais Street, P. O. Box 11330, Columbia, S. C. 29211 for their advice. In my response I am assuming that your town does not have an anti-nepotism ordinance prohibiting the appointment in the circumstances outlined in your letter.

In your remaining question, you asked whether a municipality may designate a law firm as city attorney in order that more than one attorney may be qualified to act on a town's behalf. [Section 5-7-230, Code of Laws of South Carolina](#), 1976, provides in part: '(t)he city council may elect or appoint a municipal attorney and a judge or judges of the municipal Court . . .'

This office previously has concluded that the position of municipal attorney created by [Section 5-7-230, supra](#), is a public office within the meaning of [Article XVII, Section 1A of the State Constitution](#). See Op. dated July 6, 1981. Referencing such, it would appear to be difficult to conclude that a law firm may be considered as a public officer.

In construing statutes, it is generally held that:

' . . . where the terms of a statute are clear and not ambiguous, there is no room for construction. . . . ' [Jones v. S. C. State Highway Department](#) 247 S. C. 132 at 136 (1966).

As is obvious, [Section 5-7-230](#), supra, provides for the appointment of a municipal attorney. South Section appears to be clear and unambiguous. It may especially be argued that the intent is clear inasmuch as the appointment of more than one municipal judge is provided by the same statute.

*2 While the statute is apparently quite clear in its authorization for the appointment of only a single individual as municipal attorney, therefore precluding the appointment of a law firm as city attorney, there apparently is no prohibition against additional attorneys aiding and assisting the city attorney. Such individuals may be considered either as assistants or as deputies to the city attorney. See generally 63 Am. Jur. 2d, Public Officers and Employees, Sections 483-492, pp. 924-929. Generally, deputies are considered as agents of a principal with the acts of such agents being considered as acts of the principal for which the latter is responsible. An assistant is usually defined as one who aids, helps, or assists another. See also 56 Am. Jr. 2d, Municipal Corporations, Etc., Section 242, p. 301. Therefore, referencing the above, while [Section 5-7-230](#), supra, does not in itself authorize the appointment of a law firm as city attorney, members of a firm could theoretically assist a member of a firm named as city attorney.

If there are any questions, please advise.

Sincerely,

Charles H. Richardson
Assistant Attorney General

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