

1977 WL 37393 (S.C.A.G.)
Office of the Attorney General
State of South Carolina
July 7, 1977

***1 In Re: Dual Officeholding**

Mr. Harold W. Detwiler
Attorney at Law
Post Office Box 131
Summerton, South Carolina 29148

Dear Mr. Detwiler:

Your letter of June 20, 1977, requests the opinion of this Office on whether or not a person may serve as magistrate and town attorney at the same time.

The position of magistrate is undoubtedly an office. The position of municipal attorney is provided for under the Home Rule Act of 1975 by Section 47-52 of the 1962 Code of Laws, which states, in part:

'The city council may elect or appoint a municipal attorney and a judge or judges of the municipal court, whose duties shall be as prescribed by law.'

This Office has heretofore expressed the opinion on numerous occasions that where a position is created by law with regard to attorneys, such a position is an office within the meaning of the dual officeholding provision of the State Constitution. A copy of a typical opinion is enclosed herewith.

This matter comes up continually and I would like to see a decision by the courts on the matter. You may want to consider whether or not the procedure of a declaratory judgment would be feasible. The Supreme Court has failed to consider the matter on one occasion, which concerned a city policeman and a Governor's appointment as constable without compensation, but the Court declined to pass on the matter because the Governor was withholding the appointment as constable on our advice that it most probably constituted an office. Judge Nicholson held that each of the positions constituted an office but the Court would not reach the issue. It might decide the matter if the town should say that it will make the appointment and tender the appointment, at which point a declaratory judgment might have a better chance of reaching a point of decision. If you feel inclined to follow this procedure, you might try it, but, if not, it is my opinion that you would face some degree of jeopardy if you accepted appointment as town attorney while holding the office of magistrate.

With best wishes,
Cordially,

Daniel R. McLeod
Attorney General

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