



The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON  
ATTORNEY GENERAL

June 2, 2000

John F. McDonough, City Manager  
City of Beaufort  
Post Office Box 1167  
Beaufort, South Carolina 29901

**RE: Informal Opinion**

Dear Mr. McDonough:

Attorney General Condon has forwarded your opinion request to me for reply. You have informed this Office that the Beaufort City Attorney, who is appointed pursuant to the Beaufort City Code, serves as both city attorney and city prosecutor. You have asked whether this situation constitutes dual office holding in violation of state law.

Pursuant to Section 5-7-230 of the South Carolina Code of Laws "[t]he 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. ..." As you can see, city council possesses the power to dictate the duties of the municipal attorney. Generally, the duties of a municipal attorney require him to act as attorney, counsel, and legal advisor of every agency of the city, and of the heads of the departments. Op. Atty. Gen. dated September 15, 1977. Additionally, in most instances, the municipal attorney is the proper party to prosecute violations of municipal ordinances. McQuillin Municipal Corporations §27.30. Typically, in South Carolina, the municipal attorney is the prosecutor in municipal court. Op. Atty. Gen. dated August 27, 1996.

Your question is not really one of dual office holding. As provided by the statute, city council may prescribe the duties of the city attorney and these duties may include the role of city prosecutor. Thus, it appears in your situation that council is defining the role of city attorney rather than creating a separate office.

Mr. McDonough

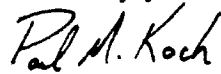
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This letter is an informal opinion only. It has been written by a designated assistant attorney general and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by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

With best personal regards, I am

Sincerely yours,

A handwritten signature in cursive script that reads "Paul M. Koch".

Paul M. Koch  
Assistant Attorney General