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The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON  
ATTORNEY GENERAL

May 30, 1997

R. Allen Young, Esquire  
Town Attorney  
Town of Mount Pleasant  
Post Office Box 745  
Mount Pleasant, South Carolina 29465

Re: Informal Opinion

Dear Mr. Young:

This Office has received your opinion request dated May 30, 1997. In your request, you state that an assistant solicitor working in the Berkeley County Office for the Ninth Circuit Solicitor (Charleston/Berkeley Counties) has applied, with the Solicitor's consent and approval, and is being considered for the position of part-time municipal court judge. You ask whether the appointment of the solicitor to the position of part-time municipal court judge for Mount Pleasant would violate the dual office holding prohibitions of the South Carolina Constitution.

Article XVII, Section 1A of the State Constitution provides that "no person may hold two offices of honor or profit at the same time ...," with exceptions specified for an officer in the militia, member of a lawfully and regularly organized fire department, constable, or notary public. 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, 58 S.E. 762 (1907). Other relevant considerations are whether statutes, or other such authority, establish the position, prescribe its duties or salary, or require qualifications or an oath for the position. State v. Crenshaw, 274 S.C. 475, 266 S.E.2d 61 (1980).

This Office has previously found that the position of part-time municipal court judge would be considered an office for dual office holding purposes. Ops. Atty. Gen.

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dated February 1, 1984 and September 19, 1994. (Copies enclosed). Further, this Office has also found that the position of assistant solicitor would be considered an office for dual office holding purposes. Ops. Atty. Gen. dated October 19, 1990 and March 27, 1995. (Copies Attached). Thus, it must be concluded that one who would serve simultaneously as part-time municipal court judge and assistant solicitor would most probably hold dual offices in contravention of the dual office holding prohibitions of the state Constitution.

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 kindest regards, I remain

Very truly yours,



Paul M. Koch  
Assistant Attorney General