



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

December 5, 1996

Mary Burnett
Clerk-Treasurer
Town of Saluda
Saluda, South Carolina 29138

Re: Informal Opinion

Dear Ms. Burnett:

This Office has received your opinion request. Your request poses two questions. First, you advise that the Town of Saluda is contemplating hiring a clerk. Apparently, this clerk would assist you in your position of Clerk-Treasurer and assist the Saluda Police Department in filing and completing reports. Your question is whether that clerk may be permitted to do general paperwork, set up docket sheets, and receive payment for traffic fines for the Municipal Court and type warrants for the Assistant Judge. Secondly, you ask whether the Assistant Judge can do any and all the paperwork in relation to the Municipal Court. You advise that this would include receiving payment for traffic tickets.

In regards to your first question, in my opinion, it would not be appropriate for an individual to work simultaneously for the Police Department and the Municipal Court. Although, as I understand, the individual hired would primarily assist you in your position as Clerk-Treasurer, the individual's assistance to the Police Department would create the appearance that the individual is employed by the prosecutorial unit of the Town of Saluda. In South Carolina, it is well accepted that law enforcement officers may prosecute misdemeanor cases in municipal court. City of Easley v. Cartee, 309 S.C. 420, 424 S.E.2d 491 (1992). In addition, the individual's assistance to the Municipal Court would create the appearance that the individual is employed by the court system.

This Office has recognized in an opinion dated January 25, 1995,

[c]learly the prosecutor must, at all times avoid the appearance or reality of a conflict of interest. State v. Capps, 276 S.C. 59, 275 S.E.2d 872 (1981).

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Moreover, it has been stated elsewhere that

[t]he need to keep the prosecutorial function separate from the judicial function is obvious if we are to have an impartial judiciary.

In re Pending Cases, Augusta Jud. Dist., 234 Ga. 264, 215 S.E.2d 473 (1975)[dissenting opinion]. Another authority has recognized that a court "must not violate the basic principle that in our system of justice the judicial and prosecutorial functions are separate and distinct and are not to be merged." U.S. v. Jacquillon, 469 F.2d 380 (5th Cir. 1972). The same principle requiring separation is applicable to court employees who must "maintain a disinterested attitude." 21 C.J.S., Courts, § 107.

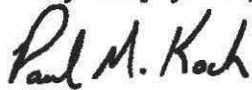
This Office cannot tell the Town of Saluda how its municipal court system must be structured. I can only comment generally that when an individual works for the Police Department and the Municipal Court, such will subject the Municipal Court to legal attack and is inconsistent with the principle of judicial and prosecutorial independence. As a general rule, prosecutorial functions should be kept completely separate from judicial functions and should be performed by different persons.

In regards to your second question, this Office has been advised by Court Administration that this is a common practice in South Carolina and I defer to their judgment in this matter. If you are in need of any further clarification on this subject, I would recommend that you contact Court Administration at (803) 734-1800.

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