

The State of South Carolina



Office of the Attorney General

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September 9, 1991

The Honorable G. Thomas Ferguson
Chief Magistrate for Abbeville County
Post Office Drawer 1156
Abbeville, South Carolina 29620

Dear Magistrate Ferguson:

In a letter to this Office you questioned whether an individual serving as a municipal judge could also serve as county attorney.

Article XVII, Section 1A of the State Constitution states that "...no person shall hold two offices of honor or profit at the same time." For purposes of violation of such provision, an individual must concurrently hold two offices which have duties involving the exercise of some portion of the sovereign power of the State. See: Sanders v. Belue, 78 S.C. 171, 58 S.E. 762 (1907).

Enclosed are copies of several prior opinions which deal with the question of whether the referenced positions constitute offices for dual office holding purposes. The opinions dated October 18, 1988, February 1, 1984 and January 25, 1991 indicate that the position of municipal judge would be considered an office for dual office holding purposes.

As to the position of county attorney, prior opinions of this Office indicate that a county attorney has been considered as sometimes holding an office but sometimes not. See: Opins. dated June 1, 1987, January 17, 1985 and July 13, 1981. The 1981 opinion sets forth criteria which may be examined in determining whether a particular position of county attorney is an office for dual office holding purposes. Reference should be made to such criteria in examining the position at issue.

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Also, as referenced in the January 25, 1991 opinion, in considering possible conflicts of interest in the situation described, you may wish to contact the Ethics Advisory Committee of the State Bar regarding possible problems under the Code of Professional Responsibility. As to any conflicts with the Code of Judicial Conduct, consideration may be given to requesting an opinion of the Judicial Standards Commission. Regarding any possible conflicts with the State Ethics Act, §§8-13-10, et seq. of the Code, you may wish to contact the State Ethics Commission.

With kind regards, I am

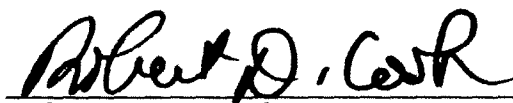
Sincerely yours,



Charles H. Richardson
Assistant Attorney General

CHR:klw
Enclosures

REVIEWED AND APPROVED BY:



Robert D. Cook
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