

1983 S.C. Op. Atty. Gen. 137 (S.C.A.G.), 1983 S.C. Op. Atty. Gen. No. 83-84, 1983 WL 142753

Office of the Attorney General

State of South Carolina

Opinion No. 83-84

November 3, 1983

\*1 The Honorable Herbert Kirsh  
Member  
House of Representatives  
Box 31  
Clover, South Carolina 29710

Dear Representative Kirsh:

You have requested an opinion whether a County Coroner may lawfully appoint a Magistrate as 'Acting Coroner.' There is no specific position designated as 'Acting Coroner' in South Carolina law. There is, pursuant to Section 17-5-50, a deputy Coroner.

There are two separate and distinct statutory provisions permitting, under certain circumstances, another individual to exercise a Coroner's duties. Section 17-5-50, discussed above, allows the Coroner to appoint a deputy Coroner. The Coroner's appointment must be approved by the judge of the circuit or by any circuit judge presiding in the county. The appointed deputy must take an oath prior to beginning his duties and the appointment must be evidenced by a certificate signed by the Coroner. This appointment allows the deputy Coroner to perform all duties of the Coroner.

If, as your inquiry suggests, the Coroner wishes to 'appoint' a Magistrate, pursuant to Section 17-5-50, as an 'Acting Coroner' or deputy, there would be a violation of the dual office-holding provision of the South Carolina Constitution.

[Article XVII, § 1A of the South Carolina Constitution](#), provides that ' . . . no person shall hold two offices of honor or profit at the same time.' 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.2d 762 (1907). Other relevant considerations are whether statutes, or other such authority, established position, prescribed its tender, duties or salaries, 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 consistently held in previous opinions that the position of Coroner or deputy Coroner is an office for purposes of this provision. Op. Atty. Gen'l., April 20, 1982; Op. Atty. Gen'l., January 2, 1980; 1977 Op. Atty. Gen'l., No. 77-372, page 297. This Office has also consistently held that a Magistrate is an office within the meaning of the dual office-holding provision. Op. Atty. Gen'l., September 3, 1982; 1977 Op. Atty. Gen'l., No. 77-397, page 325.

Therefore, it is the opinion of this Office that a Coroner's appointment, pursuant to Section 17-5-50, of a Magistrate as 'Acting' or deputy Coroner, would violate the dual office-holding provision of the South Carolina Constitution.

Section 17-5-80 is also relevant, authorizing another to perform the Coroner's duties. Section 17-5-80 applies only to the Magistrate; and it does not concern the Coroner's appointment power. It allows a Magistrate to exercise the powers and duties of the Coroner in certain cases.

Section 17-5-80 provides:

Any Magistrate of a county shall exercise all the powers and discharge all the duties of the Coroner in holding inquests over the body of deceased persons and taking all proper proceedings therein in all cases when the Coroner of the county is sick or absent or at a greater distance than fifteen miles from the place for such inquiry or when the office is vacant.

\*2 Therefore, when the Coroner is (1) sick, (2) absent, (3) when the office is vacant or (4) when the Coroner is at a greater distance than fifteen miles from the place of inquiry, the Magistrate shall 'exercise all powers and discharge all the duties of the Coroner is holding inquests over the body of deceased persons and tak[e] all proper proceedings . . .'

Thus, the Magistrate may in certain cases exercise these duties of the Coroner. (This is not violative of the dual office-holding provision, which is inapplicable when the office holder is merely performing additional duties assigned by law. [Ashmore, et al. v. Greater Greenville Sewer District](#), 211 S.C. 77, 92, 44 S.E.2d 88 (1947).) The Magistrate, however, is not acting pursuant to an appointment; a Magistrate need not be 'appointed' by a Coroner to act in these limited circumstances. The Magistrate's actions are based on his statutory authority when the Coroner is sick, absent or unavailable as specified in the statute.

Very truly yours,

Stephen S. Seeling  
State Attorney

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