

1981 WL 157862 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

July 13, 1981

*1 John P. Henry, Esquire
Thompson & Henry
Post Office Box 1533
Conway, South Carolina 29526

Dear Mr. Henry:

You have asked the opinion of this Office on the question of whether it is violative of the dual office holding prohibition in the South Carolina Constitution for a person to serve concurrently as the County Attorney and the Master-In-Equity for Horry County. I understand that both of these positions are part-time.

[Article XVII, § 1A of the South Carolina Constitution](#) states that ‘. . . no person shall hold two offices of honor and profit at the same time.’ Also see Article VI, § 3. 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 \(1907\)](#). Other criteria such as tenure, salary, oath, etc., also may be relevant. [State v. Crenshaw](#), South Carolina Supreme Court, Op. No. 21189, 4-9-80.

Previously attorney General McLeod has opined that:

Whether or not a county attorney is an office would depend upon how the office itself is created. If the position is created by state statute or county ordinance and the duties of the position make it an ‘office’ rather than mere employment, it would be violative of the dual office prohibitions of the State Constitution for one individual to hold the office of county attorney and another office. Opinion to James I. Refearn, Esquire, dated August 28, 1974.

The position of attorney for Horry County is not created by an act of the General Assembly, and I am informed that it is not created by an ordinance of Horry County. Although there is a local act which assigns the county attorney for Horry County with the responsibility of advising the county treasurer on some matters, this standing alone is not sufficient to constitute the position a public office within the meaning of [Article XVII, § 1A](#). Act Number 169 of 1973.¹

Based on the foregoing, it is the opinion of this Office that the position of attorney for Horry County is not a public office within the meaning of the provisions of the South Carolina Constitution prohibiting dual office holding, and a person would not be prohibited by those provisions from concurrently serving as county attorney and part-time Master-In-Equity for Horry County.

This opinion does not deal with the conflicts of interest that may arise when the County is a party to or affected by matters pending before the Master. Inquiries on this topic should be directed to the judicial Standards Commission in the care of the Supreme Court.

Sincerely,

James M. Holly
Assistant Attorney General

Footnotes

- 1 Also see Act Number 865 of 1936 which should have been repealed by the implementation of the Home Rule Act [Act Number 283 of 1975] in Horry County.

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