

1982 WL 189277 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 3, 1982

\*1 The Honorable Francis X. Archibald  
Member  
House of Representatives  
Room 308-B  
Blatt Building  
Columbia, South Carolina 29211

Dear Representative Archibald:

You have requested the opinion of this Office on the question of whether a person concurrently serving as an Associate Judge for the City of North Charleston and the City Prosecutor for the City of Hanahan would be in violation of the dual office holding provision of the South Carolina Constitution.

It is provided in [Article XVII, § 1A of the South Carolina Constitution](#) that ‘. . . no person shall hold two offices of honor or profit at the same time.’ Also see Article VI, § 3. For this provision to be contravened, a person concurrently must hold two offices which are charged by law with 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, duties, salary, oath, etc. also may be relevant. [State v. Crenshaw, 266 S.E.2d 61 \(1980\)](#).

[Section 14-25-5 of the Code of Laws of South Carolina](#), 1976, as amended, provides for the establishment of municipal courts in each municipality in the State and the appointment of full or part-time municipal judges. The terms of office, qualifications, powers and duties thereof are further delineated in § 14-25-15, *et seq.* The performance of a judicial function in the State Court system involves an exercise of an important element of state sovereignty, and thus an associate municipal judge would hold an office under the South Carolina Constitution. This conclusion is in accord with a previous opinion of this Office which concluded that the position of part-time municipal judge in the Town of Pine Ridge was an office under the South Carolina Constitution. *See*, 1975 Opinion Atty. Gen'l., No. 4173 at 230. (Copy attached hereto.)

In researching the position of City Prosecutor, I was unable to locate any specific statutory provision or local ordinance establishing this position in the City of Hanahan. It appears that the City of Hanahan has simply divided the functions of the Municipal Attorney into two separate offices, with the City Prosecutor performing only a portion of the duties traditionally exercised by the municipal attorney. Since the enactment of [Section 5-7-230 of the Code of Laws of South Carolina](#), 1976, this Office has consistently found the position of municipal attorney to be an office under the South Carolina Constitution. *See*, 1977 Op. Atty. Gen'l., No. 77-137 at 114; 1979 Op. Atty. Gen'l., No. 79-109, at 156; and Op. Atty. Gen'l. issued July 6, 1981 to C. David Sawyer, Jr., Esq. (copies attached hereto). The City Prosecutor would also, therefore, be considered an office holder since this position is merely a subdivision of the municipal attorney's office and involves the exercise of a portion of the sovereign power of the State.

Based on the foregoing, it is the opinion of this Office that a person concurrently serving as an Associate Municipal Judge and a City Prosecutor would be in violation of the dual office holding provisions of the South Carolina Constitution.

Very truly yours,

\*2 Helen T. Zeigler

Staff Attorney

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