

1979 WL 42749 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 11, 1979

*1 Albert E. Wheless, Esquire
City Attorney
City of North Myrtle Beach
Box 1038
North Myrtle Beach, South Carolina 29582

Dear Mr. Wheless:

You have recently asked the opinion of this Office as to whether a city recorder also may serve as a city attorney.

The question presented by you raises the issue of whether a person who holds the position of city recorder and the position of city attorney does so in contravention of [Article XVII, § 1A of the South Carolina Constitution](#). This provision states that ‘ . . . no person shall hold two offices of honor and profit at the same time . . . ’ Also see Article VI, § 3. Thus, our opinion must focus on whether these two positions constitute offices.

It is clear that the position of city recorder is an office within the meaning of [Article XVII, § 1A. Section 14-25-310 of the Code of Laws of South Carolina](#), 1976, creates the ‘office of ministerial recorder.’ Section 14-25-320 sets forth the powers of this office, and in discharging these duties, a recorder must exercise a portion of the sovereignty of the State. [Sanders v. Belue](#), 78 S.C. 171, 58 S.E. 762 (1907); 1963-1964 Ops. Att’y. Gen., No. 1639, p. 72, and No. 1669, p. 110; 1973-1974 Ops. Att’y. Gen., No. 3778, p. 154; 1974-1975 Ops. Att’y. Gen., No. 4012, p. 84; also see Section 8-1-10 [‘Public Officers’ defined].

Section 5-7-230 provides that a ‘city council may elect or appoint a municipal attorney . . . whose duties shall be as prescribed by law.’ Based on this statute, our Office has concluded that the position of municipal or city attorney is an office within the prohibition of [Article XVII, § 1A](#). 1977 Ops. Att’y. Gen. No. 77-137, p. 114; 63 Am.Jur.2d, Public Offices and Employees, Section 1-33.

Based on the foregoing reasons, it is the opinion of this Office that a person who holds the offices of city recorder and city attorney would be in violation of [Article XVII, § 1A of the South Carolina Constitution](#).

Sincerely yours,

James M. Holly
State Attorney

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