

1979 WL 42752 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 12, 1979

\*1 H. Michael Spivey, Esquire  
Younts, Spivey & Gross  
Attorneys and Counselors at Law  
512 East North Street  
Greenville, South Carolina 29601

Dear Mr. Spivey:

You have recently asked the opinion of this Office as to whether a person holding the positions of city attorney and county councilman would be in violation of the provision prohibiting dual office holding in the South Carolina Constitution.

[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](#). Thus, our opinion must determine whether the positions of city attorney and county councilman are offices.

It is clear that the position of county councilman is an office within the meaning of [Article XVII, § 1A](#). Chapter 9, Title 4 of the Code of Laws of South Carolina, 1976, as amended, creates the office of county councilman and provides the office with numerous powers which involve the exercise of the sovereignty of the State. [Sanders v. Belue, 78 S.C. 171, 58 S.E. 762; 1977 Ops. Att’y. Gen., No. 77-99, p. 87; 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 Officers and Employees, Sections 1-33.

Based on the foregoing reasons, it is the opinion of this Office that the holding of the offices of city attorney and county councilman would be prohibited by [Article XVII, § 1A of the South Carolina Constitution](#).

Sincerely yours,

James M. Holly  
State Attorney

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