

1982 WL 189501 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

December 10, 1982

*1 Paul M. Burch, Esquire
Attorney at Law
Post Office Box 276
Pageland, South Carolina 29728

Dear Mr. Burch:

You have requested the opinion of this Office on the question of whether it would be a violation of the dual office holding provisions of the South Carolina Constitution for a county councilman to also serve as town attorney.

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.’ 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 relevant considerations are whether statutes, or other such authority, establish the position, prescribe its tenure, duties or salary, or require qualifications or an oath for the position. [State v. Crenshaw, 266 S.E.2d 61 \(1980\)](#).

This Office has previously concluded that the position of municipal attorney is a public office within the meaning of [Article XVII, Section 1A](#); see 1977 Op. Att’y. Gen. No. 77-137. This conclusion is based on the fact that there is statutory authority for the appointment or election of persons to these positions contained in [Section 5-7-230 of the Code of Laws of South Carolina, 1976](#), as amended.

As well, positions on county councils are clearly public offices within the meaning of the dual office provisions as prior opinions of this Office indicate. 1977 Op. Att’y. Gen. No. 77-99; Opinion dated January 12, 1979 to H. Michael Spivey (copy enclosed). Therefore, you could not serve concurrently in both of these positions without violating the dual office holding provisions of the South Carolina Constitution. This is the result that must be reached if you regularly advise the town on its affairs or regularly provide legal services to the town such as are generally provided by municipal attorneys. This Office cannot authorize any other arrangement you might make with the town which would have the effect of circumventing the Constitution.

Very truly yours,

Helen T. Zeigler
Assistant Attorney General

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