

1980 WL 121076 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 6, 1980

*1 Ms. Virginia D. Lathan
County Administrator
County Council of Hampton County
Post Office Box 103
Hampton, South Carolina 29924

Dear Ms. Lathan:

You have requested an opinion from this Office on whether the attorney for the Hampton County Council may serve concurrently as a magistrate for Hampton County.

[Article XVII, § 1A of the South Carolina Constitution](#) provides 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 must hold concurrently two public offices which have duties involving an exercise of some part of the sovereign power of the State. See [Sanders v. Belue](#), 78 S.C. 171 (1907).

Previously Attorney General McLeod has stated 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 the Hampton County Council is not provided for by an act of the General Assembly, and I am informed that it is not created by an ordinance of Hampton County. Thus, the following quotation from [Sanders v. Belue](#) is applicable to that position:

. . . one who merely performs the duties required of him by persons employing him under an express contract or otherwise, though such persons be themselves public officers, and though the employment be in or about public work or business, is a mere employee. Id., p. 174.

Based on the foregoing, it is the opinion of this Office that the position of attorney for the Hampton County Council is not a public office within the meaning of the provision of the South Carolina Constitution prohibiting dual office holding.

If the Council has any questions concerning whether the holding of the aforementioned positions would create a conflict of interest, these should be addressed to Gary Baker, Executive Director of the State Ethics Commission, Post Office Box 11627, Columbia, South Carolina 29211.

Please excuse our delay in responding to your request, but it was necessary for us to examine several old acts of the General Assembly pertaining to the Hampton County Board of Commissioners.

Sincerely,

James M. Holly

State Attorney

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