

1980 WL 120745 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 25, 1980

*1 Ms. Dorothy A. Manigault, Esquire
Executive Assistant for Legal Affairs
Office of the Governor
State of South Carolina
Post Office Box 11450
Columbia, South Carolina 29211

Dear Ms. Manigault:

You have recently asked the opinion of this Office concerning whether a conflict of interest exists in Allendale, South Carolina, where the town Judge operates a service station, garage, and wrecker service and receives approximately 60% of the wrecker service from the city police and the highway patrol. It is our assumption, following a telephone conversation with you, that the business generated from the Judge's wrecker service occurs when the local police and the State Highway Patrol are removing a wreck from the scene of an accident.

It is the opinion of this Office that no conflict of interest exists in the question presented. There is no contract involved in the business which is being given to the wrecker service, so the applicable statute for conflicts of interest with municipal offices or employees does not apply. See [Section 5-7-130, Code of Laws of South Carolina \(1976\)](#). Furthermore, this business occurs on a case by case basis, with discretion being given to the policeman or patrolman choosing the wrecker service to be called. It should be noted that in this situation, the town Judge has not received a monopoly on this business, but has instead received approximately 60% of the business.

The situation at issue is similar to that considered in a recent advisory opinion by the State Ethics Commission. In Advisory Opinion 80-023, the Commission advised a City police officer that a sandwich shop owned by the officer may provide meals to city prisoners provided that the officer is not involved in determining whether his business will provide such meals and provided that the officer does not take any action to enhance the position of the shop to obtain or continue such business. The town Judge is in a similar position in this case in that he has no control over the policeman or highway patrolman making the choice of wrecker services. A copy of the Ethics Commission's Advisory Opinion is enclosed for your consideration.

It is also the opinion of this Office that no special conflict is presented by the fact that a town Judge is involved. Presumably, the choice of the wrecker service and the removal of the wreck from an accident scene occurs and is completed before the Judge becomes involved with the possible criminal case underlying the accident. However, if at the time that the case was before the Judge, some bias, prejudice, or conflict existed, the Judge would be forced to take the appropriate action required by Rules 33 and 34 of the Supreme Court Rules. This type of situation would need to be considered on a case by case basis, for which no general rule could be formulated.

Since your question involves a member of the Judiciary, your opinion request, along with a copy of this answer, is being forwarded to the Judicial Standards Commission. However, insofar as this office is concerned, no general conflict of interest is presented by the question as outlined in your letter of May 23, 1980.

Sincerely,

*2 Keith M. Babcock

Assistant Attorney General

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