

1977 S.C. Op. Atty. Gen. 114 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-137, 1977 WL 24479

Office of the Attorney General

State of South Carolina

Opinion No. 77-137

May 4, 1977

*1 The enactment of Code Section 47-52 makes the position of municipal attorney an office subject to Constitutional restrictions on dual office holding.

TO: William K. Cox, Esquire

QUESTION PRESENTED:

Is the position of municipal attorney an office subject to Constitutional restrictions on dual office holding?

STATUTES, CASES, ETC:

South Carolina Constitution, Article XVII, Section 2A;

Code of Laws of South Carolina, 1962, as amended, Section 47-10.1, 47-52;

[Sanders, et al. v. Belue, et al.](#), 78 S. C. 171, 58 S. E. 762;

63 Am. Jur. 2d, Public Officers and Employees, Sections 1-33.

DISCUSSION:

The opinions of this Office for at least thirty years have examined the position of municipal attorney in the light of statutory authorization for such position to determine if the position was an office in the Constitutional sense.

If the Code of Laws of South Carolina or an appropriate municipal ordinance created the position of municipal attorney, then such position was determined to be an office in the Constitutional sense. If there was no statutory authorization then the position of municipal attorney was one of mere employment. The cases set forth in 63 Am. Jur. 2d, supra, support such a distinction, and this criteria is followed in various jurisdictions.

Code Section 47-52 reads in pertinent part:

Municipal Attorneys and Judges:

The city council may elect or appoint a municipal attorney and a judge or judges of the municipal court, whose duties shall be as prescribed by law.

This statewide statute now makes the position of municipal attorney an office subject to constitutional restrictions on dual office holding.

Code Section 47–52 applies to all municipalities as that term is defined within the Municipal Corporation Act, specifically Section 47–10.1. The definition is as follows:

The term ‘municipality’ where used in this chapter means any city or town which has been issued a certificate of incorporation or township which has heretofore been created by act of the General Assembly.

CONCLUSION:

The position of municipal attorney now created by Code Section 47–52, is an office subject to Constitutional restrictions on dual office holding.

George C. Beighley
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