

1976 WL 30597 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 12, 1976

*1 Mr. Russell B. Shetterly
Executive Director
South Carolina Association of Counties
Suite 808
SCN Center
Columbia, South Carolina 29201

Dear Mr. Shetterly:

You have requested an opinion from this office as to whether or not a county councilman who is currently serving the last two years of a four year term can offer for election to fill a vacancy on the council without resigning his current seat.

There is no provision in the State Constitution nor in the Code of Laws of this State that requires a person who holds a non-judicial, elective office to resign his office before seeking election to another office. Article XVII, Section 1A of the State Constitution does prohibit a person from holding more than one office of honor or profit at the same time, however, so that if the councilman is successful in his bid to win the vacant seat, he must, of course, forfeit his original seat upon assuming the vacant one. He is free, nevertheless, to run for the vacant seat without first having to resign from his current seat.

Act No. 283 of 1975, the 'home rule.' legislation, will not alter the councilman's situation for, while Section 3(a) thereof specifically allows him to seek election to membership on the new governing body (Section 3(a) provides that '[p]ersons serving terms may seek election to the council and assume office if elected prior to the expiration of their terms'), nothing in the Act requires him to resign from his current seat before seeking election to a seat on the new governing body.

With kind regards,

Karen LeCraft Henderson
Assistant Attorney General

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