

1978 WL 34755 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 9, 1978

\*1 Kelly F. Zier, Esquire  
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Post Office Box 6516  
North Augusta, South Carolina 29841

Dear Mr. Zier:

In response to your request for an opinion from this Office as to whether or not a municipality is authorized to appoint an assistant or associate judge who would be empowered to act only in the absence of the chief municipal judge, my opinion is that a municipality is so authorized.

[Section 5-7-230, CODE OF LAWS OF SOUTH CAROLINA](#), 1976, provides in part:

. . . city council may elect or appoint . . . a judge or judges of the municipal court, whose duties shall be as prescribed by law. [Emphasis added.]

This language empowers a city council to appoint or elect more than one municipal judge and I see no reason why one of those judges cannot be designated as an associate or assistant judge to act only in case of the absence, disability or other disqualification of the chief judge. [Sections 14-25-910 et seq., CODE OF LAWS OF SOUTH CAROLINA](#), 1976, relating to the establishment of municipal courts, of course, remain part of the general law of the State but, to the extent that they conflict with later statutory provisions, they should be construed as having been impliedly repealed thereby. For example, Section 14-25-920 states that the mayor and aldermen are to elect a recorder; [Section 5-7-230](#), however, authorizes the city council to elect or appoint a judge or judges of the municipal court. I think that, just as the city council is now free to elect or appoint a judge, it is also free to elect or appoint more than one judge and to provide that the second one is to act only in place of the first. Moreover, the language of Section 14-25-940 is permissive, *i.e.*, it states that the mayor ‘may’ appoint an acting recorder. Although the language in Section 14-25-930 is mandatory (the municipal court ‘shall’ be held by the mayor, mayor pro tem or an alderman in the event of a temporary absence or disability of the recorder), Section 14-25-940 allows the mayor the discretion to appoint someone other than the officials named in Section 14-25-930 to hold municipal court. Similarly, [Section 5-7-230](#) allows a city council to elect or appoint more than one municipal court judge to begin with, and, to me, represents another alternative to the mandate of Section 14-25-930.

With kind regards,

Karen LeCraft Henderson  
Assistant Attorney General

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