

1975 S.C. Op. Atty. Gen. 230 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 4173, 1975 WL 22468

Office of the Attorney General

State of South Carolina

Opinion No. 4173

November 5, 1975

**\*1** The position of part-time municipal judge constitutes an office in the constitutional sense, and the acceptance of a second office would violate the constitutional restriction on dual office holding.

TO: Stancel E. Kirkland  
Pine Ridge Municipal Judge

QUESTION PRESENTED:

Does the position of part-time municipal judge constitute an office within the constitutional sense, so that acceptance of another office by the municipal judge results in dual office holding.

STATUTES, CASES, ETC:

South Carolina Constitution, Article XVII, Section 1A and Article V, Section 1;

Code of Laws of South Carolina, 1962, Sections 15–901, et seq., and 15–1002, et seq.;

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

[Edge v. Town of Cayce](#), 187 S. C. 172, 197 S. E. 216;

[Ashmore v. Greater Greenville Sewer District](#), 211 S. C. 77, 44 S. E. 2d 88.

DISCUSSION OF ISSUES:

Article XVII, Section 1A of the South Carolina Constitution provides that no person shall hold two offices of honor or profit at the same time. An office has been defined by the South Carolina Supreme Court in [Sanders, et al. v. Belue, et al.](#), 78 S. E. 171, 58 S.E. 762, as follows:

One who is charged by law with duties involving an exercise of some part of the sovereign power, either small or great, in the performance of which the public is concerned, and which are continuing and not occasional or intermittent, is a public officer.

It has previously been the opinion of this office that a municipal judge constitutes an office within the [Sanders](#) definition. See 1973 Att'y. Gen. Op. No. 3443, p. 13. The question in the instant case is whether serving in a part-time capacity would remove the position in question from the Sanders definition.

Code of Laws of South Carolina, 1962, Section 15–1002, et seq., provides for the establishment of municipal courts in municipalities of 1,000 and over, and sets forth the duties and terms of office therefore. However, a cursory check of 1975–76 population figures shows that the town of Pine Ridge has a population of around 650 people, excluding it from

the provisions of Section 15–1002 et seq. Therefore, it must be assumed that the Pine Ridge Court is set up pursuant to Code Section 15–901, which gives the mayor or intendant pro tempore the power to try offenders against the ordinances or laws of the town.

In the instant fact situation the position of part-time municipal judge is filled by an individual appointed by resolution of the mayor and town council. The individual chosen serves at the pleasure of mayor and council. Assuming without deciding that such procedure is legal, the position created is an office because an important element of state sovereignty is exercised on a continuing basis. The public unquestionably has great concern with the municipal judicial function. The fact that court meets only a few times a month does not defeat the 'continuing basis' requirement. Such position of authority is defined by law and continues at the pleasure of the appointing body, and need not be exercised on a daily basis to constitute an office. See [Ashmore v. Greater Greenville Sewer District](#), 211 S. C. 77, 44 S. E. 2d 88.

CONCLUSION:

**\*2** Assuming a municipality has the authority to create the position of part-time municipal judge, such position constitutes an office in the constitutional sense, and the holder would violate dual office holding restrictions by accepting a second position which also qualifies as an office.

George C. Beighley  
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