

1974 S.C. Op. Atty. Gen. 75 (S.C.A.G.), 1974 S.C. Op. Atty. Gen. No. 3718, 1974 WL 21237

Office of the Attorney General

State of South Carolina

Opinion No. 3718

February 20, 1974

\*1 The Honorable Frank Rogers, Jr.  
Judge  
Family Court for Lexington County  
Post Office Box 1007  
West Columbia, South Carolina 29169

Dear Judge Rogers:

Thank you for your letter of February 15 reading as follows:

'I have been appointed Judge of the Family Court for Lexington County by Governor West effective February 1, 1974. I am also serving as Municipal Judge for the City of Cayce.

'Although the Family Court Act appears to allow my holding both positions, I have serious doubts as to the legality of the same under our State Constitution.

'I would appreciate a letter of opinion from your Office relative to this matter.'

In my opinion, both of these judicial positions constitute offices, as that term is used in the dual office-holding provision of the Constitution of this State. I think it is clear that the same person cannot, at the same time, occupy two such offices and, in my opinion, the acceptance of the last has created a vacancy in the position first held. Until your successor is appointed and has qualified in the former judgeship, it is my view that you must continue in office and that your acts and doings are valid in that you are holding such position as a de facto officer.

I wish to congratulate you upon the appointment as Judge of the Family Court and I am certain that the office will be enhanced by your tenure.

With best wishes,  
Cordially,

Daniel R. McLeod  
Attorney General

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