

1973 S.C. Op. Atty. Gen. 164 (S.C.A.G.), 1973 S.C. Op. Atty. Gen. No. 3536, 1973 WL 21969

Office of the Attorney General

State of South Carolina

Opinion No. 3536

June 5, 1973

***1** 1. A county magistrate may not hold the office of Commissioner of the Columbia Housing Authority without violating provisions against dual officeholding in the South Carolina Constitution.

2. An officer has good title to the latest office to which he is appointed.

Columbia Magistrate

Thank you for your inquiry of May 15, 1973, in which you posed the question as to whether you may serve as Commissioner of the Columbia Housing Authority, a position to which you have been previously appointed, and at the same time as Columbia Magistrate. The following is a written confirmation of my opinion to you by telephone on May 18, 1973.

Article VI, Section 3 of the South Carolina Constitution as amended provides in part that "... no person shall hold two offices of honor or profit at the same time ...". In determining whether one is an office holder within the purview of the Constitution it has been stated that a factor to be considered is whether or not the individual exercises some portion of the sovereignty of the State. See 1962–64 Opinions of the Attorney General, No. 1669, page 110. It is unquestioned that a Magistrate is an officer within the contemplation of Article VI and this Office has so held on numerous occasions. As to a Commissioner of the Columbia Housing Authority Section 36–111 of the 1962 Code of Laws of South Carolina provides for the establishment of municipal housing authorities. Subsequent sections define the powers, duties, method of appointment and terms of office of commissioners of these authorities. It would appear, then, that there can be little doubt that the Commissioner of a Municipal Housing Authority exercises some portion of the sovereignty of the State. Such a commissioner is therefore an officer within the contemplation of Article VI of the Constitution.

As to the effect of acceptance of a subsequent office when one already holds a constitutionally incompatible office, the case of [McLure v. McElroy](#), 211 S.C. 106, 44 S.E.2d 101 (1947) states that an officer has good title to the latest office to which he is appointed and he is the incumbent de jure.

In summary it is the opinion of this Office that you may not hold the office of Commissioner of the Columbia Housing Authority and at the same time hold the office of Columbia Magistrate. Further, as between the two offices you are validly holding the office of Columbia Magistrate.

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