

1973 WL 26957 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

November 6, 1973

***1 re: Eastover City Recorder**

Mr. J. Lewis Cromer
Attorney at Law
1225 Pickens Street
Columbia, South Carolina 29201

Dear Lewis:

Thank you for your letter of October 17, to which I have just now had an opportunity to reply.

You inquire if you may serve as Recorder for the Town of Fastover and as Town Attorney. In the latter capacity, you state that neither you nor any member of your firm would be engaged in any way in the prosecution of cases in the Town Recorder's Court.

I do not find that the position of Attorney for the Town of Fastover is created by statute, and in the view which this Office has taken for many years, such a position is therefore an employment, and does not constitute an office. I do not think that there is any conflict of interest nor do I think that there is any dual officeholding relationship involved in the two positions.

It is questionable, however, as to whether the Town has authority to establish a municipal court. I assume that the Mayor acts under the provisions of Section 15-901, Code of Laws, 1962, although denominated as 'Town Recorder.' The only provision for a substitute is for the mayor pro tempore to act in the place of the mayor. Section 15-1002 authorizes towns of more than 1,000 population to create municipal courts and to elect a recorder. The population of Fastover, according to the 1970 census, is less than 1,000. The need for authorizing legislation seems indicated by the fact that towns, such as Blenheim, with a population of 200+, has secured a specific statute authorizing the creation of a recorder's court.

It appears to me that only the mayor or the mayor pro tem is authorized to act as trial officer under the provisions of Section 15-901, and that this is the possible defect in the assumption of office by you rather than the question of dual officeholding or conflict of interest. If a recorder's court should be established, I see no reason why you would not be eligible for appointment to that office while serving as Town Attorney, so long as the latter position is not created by statute and so long as you, or any member of your firm, is not engaged in the prosecution of cases or the defense of cases arising in the recorder's court.

Please check these statutes and if you have any different conclusions, feel free to call upon me.

Cordially,

Daniel R. McLeod
Attorney General

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