

1973 WL 26960 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

November 7, 1973

\*1 Mr. Casper H. Padgett  
Messrs. Padgett, Altman & Fuller, P.A.  
Attorneys at Law  
3972 Rivers Avenue  
North Charleston, South Carolina 29405

Dear Mr. Padgett:

Thank you for your letter of October 29 inquiring whether the dual officeholding situation would exist consequent upon your appointment as Municipal Judge of the City of North Charleston while you serve at the same time as a member of the Charleston County Zoning Board of Adjustment and as a member of the Tri-County Planning Board.

The position of member of the County Zoning Board of Adjustment, so far as I can determine, is made pursuant to the provisions of Section 14-368, Code of Laws, 1962, which requires that the governing body of the County provide for a Board of Adjustment of three to five members with staggered terms of fixed limits. The Board hears appeals taken from decisions of administrative offices or agencies pursuant to the County Planning Act.

In my opinion, the powers vested in the Board are an exercise of a portion of the sovereignty, and the members of the Board appointed pursuant to Section 14-368 are officers. Consequently, one who is a municipal judge, being also an officer, may not occupy both positions at the same time.

I am assuming that the Charleston County Zoning Board of Adjustment, to which you refer, is the board to which I have made reference herein; if you should have any other views, will you please advise. I am assuming also that the position of Municipal Judge is created pursuant to the authorizing statute applicable to cities of the population of North Charleston.

With respect to the Tri-County Planning Board, I am uncertain as to the authority for its creation and existence, and I would therefore appreciate receiving from you any information with respect to this.

Of course, the assumption of a second office has the effect of creating a vacancy in the prior office, but, in my opinion, you continue as a de facto member of the former office until your successor has been elected or appointed and has qualified.

Very truly yours,

Daniel R. McLeod  
Attorney General

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