

1973 WL 26993 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

December 5, 1973

*1 John P. Hazzard, IV, Esquire
P. O. Box 897
Georgetown, South Carolina 29440

Dear John:

In our recent telephone conversation you requested an opinion as to whether you might hold the position of City Judge or City Recorder of Georgetown and additionally hold the office of Judge of the Family Court of Georgetown County. You called to my attention Section 15-1095.3(e) Code of Laws of South Carolina, 1962 (1971 Cumulative Supplement) of the Family Court Act which states as follows: 'Nothing in this chapter shall prevent the judge from also serving in another judicial or quasi-judicial capacity'.

You inquired as to whether holding both offices would be dual office holding in violation of Article 17 § 1A of the Constitution which provides that no person shall hold two offices of honor or profit at the same time. The term 'public officer' has been defined by case law as:

One who is charged by law with duties involving an exercise of some part of the sovereign power, whether great or small, in the performance of which the public is concerned and which are continuing and not occasional or intermittent. [Sanders v. Belue](#), 78 S. C. 171, 58 S. E. 762.

This office has issued numerous opinions stating that the position of city or town recorder is an office of honor or profit. The office of family court judge would clearly fall within the definition of public officer as defined in the [Sanders](#) case cited above. In both positions the holder would be charged by law with duties involving the exercise of the sovereign power; and both would be continuing and not occasional or intermittent.

The statutory provision which you called to my attention clearly would not be controlling in view of the constitutional provision and the case law defining public officer. The cases generally hold that the determination of a position being a 'public office' is made independently of any legislative declaration concerning the same. See [Coulter v. Pool](#), 187 Cal. 181, 201 P. 120. Article 17 § 1A further contains a proviso exempting circuit judges under certain circumstances which further strengthens my conclusion.

It is, therefore, the opinion of this office, that the same person may not, pursuant to the constitutional provision, occupy the office of city judge or city recorder and family court judge without vacating the former office.

With kindest personal regards,
Yours very truly,

Emmet H. Clair
Assistant Attorney General

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