

1973 WL 27012 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

December 20, 1973

*1 Mr. H. N. Caldwell
Councilman
P. O. Box 209
Woodruff, South Carolina 29388

Dear Mr. Caldwell:

Thank you for your letter of November 28, 1973, concerning who may serve as Town Recorder when the Recorder resigns. South Carolina Code of Laws, 1962 Section 15-1005 establishes the procedure to be followed should a vacancy occur in this office. It states in part

In case of a vacancy in the office of recorder in any city the mayor and alderman of such city may elect a successor to fill the unexpired term.

This section goes on to state that in case of ‘ . . . temporary absence, sickness or disability of the recorder the municipal court shall be held by the mayor, the mayor pro tempore or an alderman reelected by the city council.’ Section 15-1006 provides an alternate provision for appointing an acting recorder in the event of ‘ . . . absence, sickness, incapacity or disqualification for any reason whatsoever . . . ’ by providing that an acting recorder may be appointed by the mayor of a disinterested practicing attorney or any other competent person residing in the city.

The mayor, mayor pro tempore or an alderman therefore should serve only in the case of a temporary absence; if the office becomes permanently vacant a successor should be appointed. A mayor, mayor pro tempore or an alderman would be prohibited from permanently holding both offices as this would constitute dual office holding.

You further inquired into the terms of office for the recorder. Section 15-1003 states that the recorder is elected by the mayor and alderman for a period of four (4) years. The code does not establish a procedure for removing a recorder; however, general provision of law provide that a public officer may be removed by the Governor or in certain specified situations by established code provisions; but cause would have to be shown, such as conviction of a crime. Whether or not sufficient grounds exist to remove an officer would have to be decided case by case.

If this office can be of any further assistance please do not hesitate to contact me.

Sincerely,

Treva Ashworth
Staff Attorney

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