

4929 Liberty

The State of South Carolina



Office of the Attorney General

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August 5, 1992

Thomas E. Smith, Jr., Esquire
Pamplico City Attorney
Post Office Box 308
Pamplico, South Carolina 29583

Dear Mr. Smith:

By your letter of July 29, 1992, you have requested the opinion of this Office as to whether an individual may serve simultaneously as Municipal Clerk and City Recorder for the City of Pamplico without contravening the dual office holding prohibitions of the state Constitution.

Article XVII, Section 1A of the state Constitution provides that "no person may hold two offices of honor or profit at the same time ...," with exceptions specified for an officer in the militia, member of a lawfully and regularly organized fire department, constable, or a notary public. For this provision to be contravened, a person concurrently must hold two public offices which have duties involving an exercise of some portion of the sovereign power of the State. Sanders v. Belue, 78 S.C. 171, 58 S.E. 762 (1907). Other relevant considerations are whether statutes, or other such authority, establish the position, prescribe its tenure, duties or salary, or require qualifications or an oath for the position. State v. Crenshaw, 274 S.C. 475, 266 S.E.2d 61 (1980).

This Office has previously advised that a City Recorder would be deemed to hold an office for dual office holding purposes. Enclosed is a copy of an opinion dated February 1, 1984, so concluding.

This Office has also previously concluded that one who would serve as a Municipal Clerk (Town Clerk, City Clerk, by whatever name called) would be considered an office-holder

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for dual office holding purposes. Enclosed is a copy of an opinion dated March 14, 1983, so concluding.

Based on the foregoing, it is the opinion of this Office that one who would serve simultaneously as a City Recorder and as a Municipal Clerk would most probably contravene the dual office holding prohibitions of the state Constitution. In so concluding, we are in agreement with the advice you have provided as City Attorney.

Enclosed with your letter was an opinion issued by the Advisory Committee on Standards of Judicial Conduct, concerning other activities of a part-time magistrate. That opinion construed a portion of the Canons of Judicial Conduct, which is an entirely separate consideration from dual office holding, which involves a portion of the state Constitution. As the advisory opinion was not rendered on the specific issue considered herein, the City Recorder may wish to ask the Advisory Committee to review the situation presented herein, in light of the Canons; in any event, the City Recorder is subject to the provisions of the state Constitution, as are all of the state's citizens, in addition to the Canons.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/an
Enclosures

REVIEWED AND APPROVED BY:

Robert D. Cook

Robert D. Cook
Executive Assistant for Opinions