

1981 WL 157867 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

July 14, 1981

*1 James C. Sanders, Esquire
P. O. Drawer 1027
Beaufort, South Carolina 29902

Dear Mr. Sanders:

In a letter to this Office you raised several questions concerning the authority of the Beaufort Township Magistrate to handle City of Beaufort Municipal Court matters.

As to your question concerning whether an individual could serve in the dual capacity of Beaufort Township Magistrate and City of Beaufort Municipal Judge, with the responsibilities of each office separated, I am in agreement with you that such an arrangement would not be authorized due to the provisions in the South Carolina Constitution prohibiting dual office holding, namely, Article XVII, Section 1A and Article VI, Section 3. This Office has determined in an opinion dated December 4, 1980, a copy of which is enclosed, that it would not be a violation of the constitutional provisions prohibiting dual office holding for a magistrate to preside over a municipal court pursuant to a contractual arrangement as authorized by [Section 14-25-25, Code of Laws of South Carolina](#), 1976, as amended. However, inasmuch as the offices of magistrate and municipal judge are in the usual sense considered to be separate offices, an individual would be prohibited from holding both positions simultaneously, assuming there are no other considerations, such as the above-referenced arrangement specifically permitted by [Section 14-25-25](#). This Office has in earlier opinions determined that the positions of magistrate and municipal judge constitute offices in the constitutional sense, and the acceptance of a second office by an individual holding such an office would violate the constitutional restrictions on dual office holding. See Opinions dated September 13, 1979, and October 16, 1980.

In your second question you asked whether the Beaufort Township Magistrate could serve as a Deputy Assistant Municipal Court Judge on those occasions when the Municipal Court Judge is absent. You also indicated that the responsibilities for each position would remain separate. While [Section 14-25-5, Code of Laws of South Carolina](#), 1976, as amended, does provide for the appointment of one or more full-time or part-time judges, any such appointment would, in the opinion of this office, be considered an appointment to an office with the result that the simultaneous holding of another separate office, such as magistrate, by the same individual would constitute dual office holding. See 1974-75 Ops. Att'y. Gen. No. 4173, p. 230.

As to your question concerning whether the Beaufort Township Magistrate could handle City of Beaufort Municipal Court matters on some type consolidation basis through an agreement between the County and City, it appears that such an arrangement would be permitted by [Sections 14-25-25 and 14-25-5\(C\)](#), *supra*. [Section 14-25-25](#) states in part:

(a) municipality may contract . . . with the county governing body to employ . . . a magistrate to preside over its . . . (municipal) . . . court.

*2 [Section 14-25-5\(C\)](#) states:

(a)ny municipality may prosecute any of its cases in any magistrate court in the county in which such municipality is situated upon approval by the governing body of the county.

As to how fines collected pursuant to such an arrangement may be handled, I am enclosing a copy of a previous opinion dated October 2, 1980, discussing such.

If there are any further questions concerning the above, please contact me.

Sincerely,

Charles H. Richardson
Assistant Attorney General

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