

1980 WL 121050 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

December 4, 1980

*1 Mr. John Patrick
Assistant Director
S.C. Court Administration
P.O. Box 11788
Columbia, S.C. 29211

Dear John:

In a letter to this Office you referenced that the Town of Pacolet wishes to contract with Spartanburg County to employ a Spartanburg County magistrate to preside over the Pacolet Municipal Court. Such arrangement is pursuant to a provision of Act No. 480 of 1980, which states in part:

“[a] municipality may contract ... with the county governing body to employ ... a magistrate to preside over its ... (municipal) ... court”. [Section 14-25-25].

You have asked whether such an arrangement would violate Article XVII, Section 1A and [Article VI, Section 3 of the South Carolina Constitution](#) which provide that no person shall hold two offices of honor or profit at the same time.

In the opinion of this Office, it would not be a violation of the referenced constitutional provisions for a magistrate to preside over a municipal court pursuant to a contractual arrangement as authorized by Section 14-25-25 of Act No. 480 of 1980. Such section provides for a contract between a county and a municipality whereby a county magistrate is employed to preside over the municipal court. As a result of such an arrangement, a determination may be made that the magistrate serves as a municipal judge ex officio.

This Office in an earlier opinion referencing the decision of the South Carolina Supreme Court in [Ashmore v. Greater Greenville Sewer District; 211 S.C. 77, 44 S.E.2d 88 \(1947\)](#) determined that certain county commissioners could serve as officers of a proposed county service district if the additional duties were placed upon them ex officio. The opinion stated:

“[e]x officio membership is not violative of the constitutional provision relating to dual officeholding where the duties of the office are related to the functions of the initial office held.” 1966 Op. Att’y. Gen. No. 2152.

The contract between a municipality and county governing body employing a county magistrate to preside over a municipal court does not result in a situation whereby the magistrate is appointed to the office of municipal judge in the typical sense. Instead, as a result of such an arrangement, additional powers and duties are annexed to the office of a particular magistrate. See, [McCullers v. Board of Wake County, 158 N.C. 75, 73 S.E. 816 \(1912\)](#).

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

Sincerely,

Charles H. Richardson
Assistant Attorney General

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