

1979 WL 43500 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 1, 1979

*1 Richard P. Ruonala
Chief of Police
Town of Andrews
Police Department
Andrews, South Carolina 29510

Dear Chief Ruonala:

You have asked the opinion of this Office on whether it would be a violation of the constitutional provision prohibiting dual office holding for an individual currently holding a commission as a Deputy Wildlife Conservation Officer to serve as a municipal recorder. Also, you asked the same question with regard to a mayor serving as a municipal recorder.

[Article XVII, § 1A of the South Carolina Constitution](#) provides that ‘. . . no person shall hold two offices of honor and profit at the same time.’ [Also see Article VI, § 3](#). For this provision to be violated, a person must hold at the same time two public offices which have duties involving an exercise of some part of the sovereign power of the State. [Sanders v. Belue, 78 S.C. 171 \(1907\)](#).

Thus, it will be necessary to review the statutes relating to the positions noted in your opinion request to determine if they are offices within the meaning of [Article XVII, § 1A](#).

As expressed in numerous opinions by this Office, the position of municipal recorder is an office within the meaning of [Article XVII, § 1A](#). [Section 14-25-920 of the Code of Laws of South Carolina, 1976](#), creates the ‘office’ of municipal recorder. [Section 14-25-970](#) sets forth the substantial powers and duties of this office, and in discharging these powers and duties, a municipal recorder must exercise a portion of the sovereign power of the State.

Although Title 50 of the Code of Laws of South Carolina, which deals with fish, game and watercraft, does not specifically create the position of Deputy Wildlife Conservation Officer. [Sections 50-3-120 and 50-3-310 of Title 50](#) for years have been construed to permit the appointment of such officers. [See 1970 Ops. Att’y. Gen., No. 2827, pp. 41, 44](#). Generally, such officers have authority to enforce all fish and game laws and to prosecute violators of those laws and possess all of the powers held by constables. [Sections 50-3-340, 50-3-390 and 50-3-400, CODE](#). Thus, the position of Deputy Wildlife Conservation Officer is an office created by statute and provided thereby with duties which involve an exercise of a portion of the sovereign power of the State.

The position of mayor is clearly an office within the meaning of [Article XVII, § 1A](#). It is created by statute and provided thereby with numerous duties which involve an exercise of a portion of the sovereign power of the State. [See Title 5, Chapters 7, 9, 11, 13 and 15, CODE](#).

Further with regard to the mayor serving as the municipal recorder, reference should be made to [Section 14-25-920](#). It provides that the mayor and council shall elect the municipal recorder. This language may imply that the recorder would be elected from persons other than the council and mayor.

Two additional statutes also may be relevant to the question of whether a mayor may serve as municipal recorder. [Section 5-7-180](#) provides:

*2 Except where authorized by law, no mayor or councilman shall hold any other municipal office or municipal employment while serving the term for which he was elected.

Section 5-7-230 states:

. . . No mayor or councilman shall be . . . elected or appointed as municipal judge during his term of office. . . . [T]his section [does] not apply to a mayor who presides over a mayor's court in his capacity as mayor as authorized in [Section] 5-7-90.

Both of these statutes could be interpreted as prohibiting a mayor from serving as a municipal recorder. However, as noted in these two sections, a mayor may serve as the presiding official of a mayor's court pursuant to Section 5-7-90 and Sections 14-25-10 *et seq.* In doing so, the mayor would not violated [Article XVII, § 1A](#), in that it does not prohibit executive officials such as a mayor from serving *ex officio* [by virtue of their office] in separate but related offices as permitted by statute. See [Ashmore v. Greater Greenville Sewer Dist., 211 S.C. 77 \(1947\)](#); [Willing v. Clinton-Newberry Natural Gas Authority, 221 S.C. 417 \(1952\)](#).

Based on the foregoing reasons it is the opinion of this Office that it would be a violation of [Article XVII, § 1A](#) for a Deputy Wildlife Conservation Officer or a mayor to serve as a municipal recorder. Although it is not necessary in order to answer the questions posed by you and this Office is not expressing an opinion thereon, it should be noted that [Sections 5-7-230, 5-7-180](#) and [14-25-920](#) also may prohibit the mayor from serving as a municipal recorder. However, neither these sections, nor [Article XVII, § 1A](#) would be contravened by the mayor serving as a judicial officer pursuant to Sections 5-7-90 and 14-25-10 *et seq.*

Sincerely,

James M. Holly
State Attorney

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