

1978 WL 35241 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

November 27, 1978

*1 The Honorable Hubert E. Odom
Mayor
Town of Wellford
Wellford, South Carolina 29385

Dear Mayor Odom:

You recently wrote this Office requesting an opinion concerning an elected member of the Town Council who was appointed County Clerk of Court on October 27, 1978, and who has submitted a resignation to the Town Council effective January, 1979. You additionally inquired as to what procedure should be used to fill this vacancy on the Town Council.

The South Carolina Constitution in Article XVII, Section 1A states that ‘no person shall hold two offices of honor or profit at the same time.’ This provision has been held to apply to municipal offices. [Darling v. Brunson, 94 S.C. 207, 77 S.E. 860 \(1913\)](#). It also has been construed to provide that when a person holding an elective office of ‘honor and profit’ is appointed to another such office, he thereby vacates the first office upon accepting and qualifying for the second. [Walker v. Harris, 170 S.C. 242, 170 S.E. 270 \(1933\)](#); 63 *Am.Jur.2d*, ‘Public Officers and Employees’, Section 77. However, the vacation of the first office does not invalidate any actions taken by the person while remaining in that office. [Dove v. Kirkland, 92 S.C. 313, 75 S.E. 503 \(1912\)](#).

South Carolina Code of Laws, 1976, Section 5-7-200 provides that a vacancy in the office of a municipal governing council ‘shall be filled for the remainder of the unexpired term at the next regular election or at a special election if the vacancy occurs one hundred eighty days or more prior to the next general election.’ For the purposes of this statute, the ‘next regular election’ and the ‘next general election’ are synonymous. See [Section 7-1-20\(1\) of the Code](#).

With regard to the situation described in the first paragraph, the one hundred eighty day period provided in [Section 5-7-200 of the Code](#) would be counted from the date that the person accepted and qualified for the office of County Clerk of Court thereby vacating his office as a member of the Town Council. If the person is otherwise qualified for the office of County Clerk of Court, the date that the person was given his oath of office would be the date of acceptance. Thus, in the event this vacancy in the Town Council occurred less than one hundred eighty days prior to the next regular town election, it would be filled at that election. However, a special election to fill the vacancy must be called if this vacancy occurred one hundred eighty days or more prior to the next regular election of town officials. A special election would be called and governed by the provisions of Titles 5 and 7 of the Code.

Therefore, due to the provision in the South Carolina Constitution prohibiting dual office holding, it is the opinion of this Office that the person who was appointed County Clerk of Court is deemed to have vacated his office as a member of the Town Council as of the date he qualifies for and accepts the office of County Clerk of Court. The vacancy thereby created in the Town Council would be filled pursuant to the provisions of [Section 5-7-200 of the Code](#).

Sincerely yours,

*2 James M. Holly
Staff Attorney

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