

1974 S.C. Op. Atty. Gen. 154 (S.C.A.G.), 1974 S.C. Op. Atty. Gen. No. 3778, 1974 WL 22431

Office of the Attorney General

State of South Carolina

Opinion No. 3778

May 14, 1974

***1** An individual may not serve simultaneously as magistrate and municipal judge as this would constitute a dual office holding prohibited by the S.C. Constitution.

Director
South Carolina Court Administration

Thank you for your letter of May 8, 1974, reading in part as follows:

“Please let me have your opinion as to whether or not the service by a magistrate as municipal court judge for a municipality in addition to his duties as magistrate, constitutes dual officeholding in violation of Article 2, Section 2, of the South Carolina Constitution.”

The position of municipal judge or municipal recorder is, in my opinion, an office and therefore one holding another office cannot serve as municipal judge or recorder while at the same time holding another office without violating the dual officeholding provisions of the State Constitution.

As noted in your letter, there are a number of ways in which city recorders or municipal judges are elected or appointed. Where a mayor serves as municipal judge, he acts in that capacity pursuant to the ex officio grant of authority conferred by Section 15–901. While serving as mayor and holding another office, such as that of magistrate, he is acting in violation of the constitutional provision referred to. Other positions of municipal judge or recorder are created in a different way, such as those provided for in Sections 15–1061, et seq. Such recorders, so far as I can discover, serve for definite terms of office, their duties are prescribed by law, and they undoubtedly exercise a portion of the sovereignty when they act as municipal judges. In my opinion, they possess all the indicia of an office, even though it may be optional with the municipality to employ or not to employ a recorder.

Therefore, in my opinion, a magistrate cannot at the same time occupy the position of municipal judge or city recorder, as this would involve a dual office relationship which is prohibited by the Constitution of South Carolina.

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