

1974 WL 27738 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 2, 1974

\*1 Honorable Cody Owens  
Mayor of Whitmire  
P. O. Box 335  
Whitmire, South Carolina 29173

Dear Mr. Owens:

Thank you for your letter of April 15, 1974, in which you asked whether or not the holding of the two positions of policeman and Commissioner of Public Works constitutes dual office holding.

Whether or not the position of police officer is an office within the meaning of the Constitution is extremely vague and questionable. However, it has been the past opinion of this office that it probably does constitute an office. Therefore, it would be the opinion of this office that the holding of both positions would constitute dual office holding.

Additionally, you have asked whether or not an ordinance which has been passed 'complete with motion-second and majority of council' but not entered into the minutes will be legal. 62 C.J.S. Municipal Corporations § 448 states in part: An alleged unrecorded municipal ordinance cannot be properly held established without clear evidence thereof . . . . So the due enactment of an ordinance is prima facie established by introducing in evidence the original ordinance, or a copy thereof properly certified, or by production of the authorized record book of ordinances, containing the ordinance in question, or by printed book of ordinances purporting to be published by municipal authority . . . .

Therefore, apparently failure to record the ordinance will not be fatal if evidence can be shown which clearly establishes the existence of a properly passed ordinance.

Sincerely,

Treva Ashworth  
Staff Attorney

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