

1974 WL 27828 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 25, 1974

*1 Mr. Felix Turner, Jr.
125 W. Main Street
Duncan, S. C. 29334

Dear Mr. Turner:

Attorney General McLeod has referred your letter of June 12, 1974, to me for research and reply. You have inquired as to the following:

1). Would a person simultaneously holding the office of a city councilman and State Constable violate the prohibitions contained in S. C. Constitution Article XVII, Section 1A?

Article XVII, Section 1A states in part:

‘ . . . no person shall hold two offices of honor or profit at the same time . . . ’

This Office has previously construed the position of State Constable to be an ‘office’ within the mandate of Section 1A. 1968 Op.A.G. 229. (Copy Enclosed) It has also been our opinion that the position of town councilman falls within the meaning of Section 1A. 1963 Op.A.G. 112. (Copy Enclosed) It would seem apparent that if both of these positions constitute ‘offices’ under Article XVII, § 1A then to hold both at the same time would be violative of the constitutional proscription.

The office of town or city councilman, although municipal in nature, is necessarily a State office as the municipality derives its existence and authority from the State. The South Carolina Supreme Court has held that the prohibition against holding two offices is not limited to state wide offices but applies to municipal offices as well. [Darling v. Brunson, 94 S.C. 207, 77 S.E. 860 \(1913\)](#).

2). May a city pro-rate a business license tax according to how many months are left in the city's fiscal year?

Section 47-271, S. C. Code of Laws provides for cities of over one thousand (1,000) inhabitants to levy a license tax on businesses within the corporate limits. Our research has failed to turn up any statutory authority for the proration of these taxes or any statutes which treat the matter at all. If you desire to implement a system of this sort, I advise you contact your city attorney as to the legal implications of such of procedure.

If we may be of further assistance to you, please advise us.

Yours truly,

Cameron B. Littlejohn, Jr.
Law Clerk

1974 WL 27828 (S.C.A.G.)