

1974 S.C. Op. Atty. Gen. 304 (S.C.A.G.), 1974 S.C. Op. Atty. Gen. No. 3876, 1974 WL 21375

Office of the Attorney General

State of South Carolina

Opinion No. 3876

October 28, 1974

***1 Re: Dolly Island Lagistrate—Dual Office holding**

Mr. William A. Dallis
Director
South Carolina Court Administration
South Carolina Supreme Court
Post Office Box 11788
Columbia, SC 29211

Dear Mr. Dallis:

Your letter of August 28, 1974, concerning § 14–1280, CODE OF LAWS OF SOUTH CAROLINA (1962) has been referred to me for answer. The prohibitions against holding two offices of ‘honor or profit’ are found in Article 6, section 3 and in Article 17, section 1A of the Constitution of the State of South Carolina (1895) 1973 supp.,. The only exceptions to the ‘dual office holding’ prohibition concern officers in the militia, notaries public, delegates to a Constitutional Convention and Circuit Judges under circumstances as set forth in Article 17, section 1A. There is no exception to allow a person to holding the position of magistrate and municipal judge.

As you point out in your letter, however, § 14–1280, CODE OF LAWS OF SOUTH CAROLINA (1962), clearly allows magistrates of Charleston County to try offenses arising from violations of ordinances of the township of Folly Beach. Since all acts of the Legislature are presumed constitutional, it follows that in enacting § 14–1280, the Legislature did not mean to create a new office, but rather extended the jurisdiction of Charleston County Lagistrates. This provision applies expressly to violations of ordinances of the township of Folly Beach; it does not apply to the municipality of Folly Beach.

Once the people of Folly Beach incorporate as a municipality, the municipality is entitled to a municipal judge or recorder. As explained in Mr. McLeod's letter of May 14, 1974, it would be dual office holding for a person to occupy the positions of magistrate and municipal judge or recorder. It is the opinion of this Office that § 14–1280, CODE OF LAWS OF SOUTH CAROLINA (1962) does not alter this prohibition for the municipality of Folly Beach.

Yours very truly,

M. Elizabeth Crum
Assistant Attorney General

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