

1974 WL 28006 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

November 22, 1974

*1 Roy McBee Smith, Esquire
County Attorney
P. O. Box 5306
Spartanburg, South Carolina 29301

Dear Mr. Smith:

You have requested an opinion as to the applicability of Article 17, Section 1-A of the South Carolina Constitution of 1895 to the positions of Spartanburg Assistant County Attorney and City Recorder.

As you mention in your letter, this office has previously rendered the opinion that the position of City Recorder is an office within the meaning of Article 17, Section 1-A. See, 1963-64 Ops. Atty. Gen. No. 1669 at 110. Contrariwise, this office has taken the position that the position of County Attorney, at least, in Florence County and Union County, is one of employment. See, 1964-65 Ops. Atty. Gen. No. 1814 at 62; 1959-60 Ops. Atty. Gen. No. 63 at 156. These opinions were grounded on the fact that those positions were not created by statute or ordinance. The position of County Attorney in Spartanburg County, however, was statutorily created pursuant to Section 14-3304, CODE OF LAWS OF SOUTH CAROLINA, 1962, as amended; we are of the opinion, moreover, that that statute continues in effect notwithstanding the passage of Act No. 1035 of 1968. 55 STAT. 1035 at 2455 (1968). Sections 9(n) and (o) of Act No. 1035 are significant in our reaching the conclusion that Section 14-3304 has not been impliedly repealed by the latter Act.

The position of Assistant County Attorney, on the other hand, has not been created by statute or ordinance and, consequently, is, in our opinion, a position of employment.

The opinion of this office is, therefore, that Article 17, Section 1-A of the State Constitution does not apply to the positions of City Recorder and Spartanburg Assistant County Attorney.

With kind regards,

Karen LeCraft Henderson
Assistant Attorney General

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