

1974 WL 27532 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

December 10, 1974

\*1 Mr. Francis G. Holliday, Jr.  
Attorney at Law  
Post Office Box 2  
Chester, South Carolina 29706

Dear Francis:

Thank you very much for your letter of December 6, 1974, posing the following questions which concern the possibility that a councilman now serving may seek appointment to the office of City Manager. The questions are as follows:

1. Should the councilman in question participate in the decision on involuntary retirement of the present City Manager?

The councilman may participate in the decision but, as noted below, he is not eligible for appointment as City Manager while he is serving as a member of the Council. If it is his intent to vote for retirement of the present City Manager, then resign and seek the job for himself, his participation in the decision to enforce retirement of the City Manager may be legally correct, but it is ethically wrong.

2. In the event that council would vote for an involuntary retirement of the present City Manager, should this particular councilman participate in the election of himself as a new City Manager?

No. See [Bradley v. City Council of Greenville](#), 212 S.C. 389, 40 S.E.2d 291, in which the Supreme Court stated that it is 'contrary to public policy to permit an officer, having an appointing power, to use such power as a means of conferring an office upon himself, or to permit an appointing body to appoint one of its own members.'

3. Should the councilman in question resign prior to his name being placed before the council as a candidate for City Manager?

Yes. Even if a resignation is made, a serious question as to the violation of the above quoted rule of law could be presented should he then be elected as City Manager. I recognize that some circumstances could exist where a resignation and subsequent election of the former member could be accomplished in a bona fide manner.

4. In the event the councilman in question should be elected City Manager, could he then serve as a member of City Council and City Manager?

No. Such circumstances place the individual in the dual capacity of master and servant, which public policy forbids. [Sanders v. Belue](#), 78 S.C. 171, 58 S.E. 762.

With best wishes,  
Cordially,

Daniel R. McLeod  
Attorney General

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