

1973 S.C. Op. Atty. Gen. 13 (S.C.A.G.), 1973 S.C. Op. Atty. Gen. No. 3443, 1973 WL 20908

Office of the Attorney General

State of South Carolina

Opinion No. 3443

January 8, 1973

**\*1 A magistrate may not, during the tenure of his office, serve also as a Municipal Judge.**

Magistrate  
Saluda County

You have inquired as to whether a duly appointed Saluda County Magistrate may also serve as a Municipal Judge of the Town of Saluda, South Carolina.

Article XVII, Section 1A of the South Carolina Constitution as amended provides in part that ‘. . . no person shall hold two offices of honor or profit at the same time . . .’

It is unquestioned that a Magistrate is an officer within the contemplation of Article XVII and this Office has so held on numerous occasions. A Magistrate, therefore, during the time he is serving in this capacity may not hold any other office which may be considered ‘an office of honor or profit’, i.e., a public office.

In determining whether one is an office holder within the purview of the constitution, it has been stated that a factor to be considered is whether or not the individual exercises some portion of the sovereignty of the State. See 1962–64 Ops. Att's Gen., No. 1669, p. 110. Additionally, Section 50–1 of the South Carolina Code in defining a public officer provides as follows: ‘The term ‘public officers’ shall be construed to mean all officers of the State that have heretofore been commissioned and trustees of the various colleges of the State, members of various State boards and other persons whose duties are defined by law.’ (emphasis added)

Although I have not reviewed the Saluda Municipal Ordinances, I must assume that the position of Municipal Judge is one which is defined by law. This Office has previously stated that the Constitutional prohibition against dual office-holding applies regardless of whether the office is created by statute or municipal ordinance. I believe that there can be little doubt that a Municipal Judge exercises some portion of the sovereignty of the State.

In previous opinions of this Office, it has been held that the offices of Town Assessor, City Treasurer, City Recorder and City Attorney are all offices within the meaning of the above constitutional provision and I am of the view that the office of Municipal Judge is likewise an office within the meaning of this provision. It is, therefore, the Opinion of this Office that a Magistrate may not, during the tenure of his office, serve also as a Municipal Judge.

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