

May 30, 2008

Melvin B. McKeown, Jr., Esquire  
York County Attorney  
P. O. Drawer 299  
York, South Carolina 29745

Dear Mr. McKeown:

In a letter to this office you referenced that York County Coroner Douglas McKown was indicted in 2006 on one count of distribution of a controlled substance, one count of unlawful possession of a controlled substance, one count of conspiracy and one count of unlawful possession of a prescription drug. You stated that Governor Sanford issued an Executive Order suspending McKown "...from the office he holds as York County Coroner." The Order further states that "[t]his suspension shall remain in effect until such time as he shall be formally acquitted or convicted." By that same Order, Governor Sanford appointed Sabrina Helms Gast as Coroner with the provision that "[t]his appointment shall remain in effect until such time as Mr. McKown is formally acquitted or convicted."

Mr. McKown was tried on the referenced indictments and was found not guilty of all charges except one count of unlawful possession of a prescription drug.

As set forth in your letter, the Governor suspended Mr. McKown pursuant to Article VI, § 8 of the State Constitution and S.C. Code Ann. § 8-1-100. The referenced constitutional provision states in part that

[a]ny officer of the State or its political subdivisions, except members and officers of the Legislative and Judicial Branches, who has been indicted by a grand jury for a crime involving moral turpitude or who has waived such indictment if permitted by law may be suspended by the Governor until he shall have been acquitted. In case of conviction the office shall be declared vacant and the vacancy filled as may be provided by law.

Section 8-1-100 provides that

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[e]xcept as provided in Section 8-1-110, any state or county officer who is indicted in any court for any crime may, in the discretion of the Governor, be suspended by the Governor, who in event of suspension shall appoint another in his stead until he shall be acquitted. In case of conviction, the office shall be declared vacant by the Governor and the vacancy filled as provided by law.

Referencing such, you have raised the following questions:

1. What is the effect of the conviction of Mr. McKown of one count of unlawful possession of a prescription drug on his service as coroner?
2. Under Article VI, § 8 of the South Carolina Constitution and the provisions of Section 8-1-100, who now holds the office of coroner of York County Coroner for the remainder of the unexpired term?
3. To whom shall the salary and benefits of the coroner be paid or applied?
4. What action, if any, is required by county officials and state officials with respect to the office of coroner under the facts and circumstances described in this letter?

As set forth above, Article VI, § 8 of the State Constitution provides that the Governor may suspend an officer upon indictment “for a crime involving moral turpitude.” Section 8-1-100 provides that a county officer, upon indictment for any crime, may, in the discretion of the Governor, be suspended. It further states that the Governor “...in event of suspension shall appoint another in his stead until he shall be acquitted.” A prior opinion of this office dated March 16, 2004 cited another prior opinion of this office dated June 6, 1979 which concluded that Section 8-1-00 “must be read in conjunction with Article VI, Section 8, of the Constitution, which contains the same general language but restricts the power of the Governor to remove an indicted officer only for crimes involving moral turpitude.” See also: Ops. Atty. Gen. dated February 3, 1998; March 30, 1983.

As set forth, the authority of the Governor to suspend an officer upon indictment is limited to an offense involving moral turpitude. That suspension lasts only until the officer is acquitted. The referenced constitutional provision specifically provides that “[i]n case of conviction the office shall be declared vacant and the vacancy filled as may be provided by law.” In the situation involving Coroner McKown, he was only convicted of unlawful possession of a prescription drug. Prior decisions of the State Supreme Court in State v. Ball, 292 S.C. 71, 354 S.E.2d 906 (1987) and State v. Carriker, 269 S.C. 553, 238 S.E.2d 678 (1977) have specifically determined that the unlawful possession of a prescription drug is not an offense involving moral turpitude. As a result, in the opinion of this office, McKown’s conviction for such offense would not prevent him from regaining his office upon acquittal of the other offenses. Therefore, as to your question of pursuant to Article VI, § 8 and Section 8-1-100, who now holds the office of coroner of

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York County Coroner for the remainder of the unexpired term, in the opinion of this office, Coroner McKown would now hold the office of coroner for the remainder of his unexpired term. By holding such office, he would be entitled to the salary and benefits pertinent to that office.

As to your question of what action, if any, is required by county or state officials with respect to the office of coroner under the referenced facts and circumstances, the March 16, 2004 opinion cited above referenced other prior opinions of this office which "...reflect that, upon acquittal, 'the order of suspension [by the Governor] will terminate' ... Thus, if the jury returns a verdict of acquittal as to all charges, Article VI, § 8 mandates that the suspension order of the Governor is automatically discharged." Another opinion of this office dated July 1, 1983 stated that "...the Constitution provides that the person the Governor appoints shall continue to hold the office until the person has been acquitted or the office declared vacant upon a conviction." Inasmuch as Coroner McKown was acquitted on all charges except the offense of unlawful possession of a prescription drug, which again is not an offense involving moral turpitude, he would be entitled to regain his office and no further action by county or state officials would be required.

If there are any questions, please advise.

Sincerely,

Henry McMaster  
Attorney General

By: Charles H. Richardson  
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:

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Robert D. Cook  
Deputy Attorney General