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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

May 27, 2003

H. Frank Ables, Vice Chair
Oconee County Council
415 South Pine Street
Walhalla, South Carolina 29691

Dear Councilman Ables:

In your recent letter, you note that the Oconee County Grand Jury "indicted Mrs. Anna Hughes on three counts of embezzlement and one count of misuse of office Tuesday May 20, 2003." You further state that "Governor Sanford suspended Mrs. Hughes as Oconee County Supervisor and appointed Mr. Harry R. Hamilton as interim Supervisor." Your question is "whether Mrs. Hughes should be suspended with or without pay."

Law/Analysis

This Office has, over the period of many years, consistently concluded that a public officer who is lawfully suspended for the alleged commission of a crime does not generally receive compensation during this time period. For example, in Op. S. C. Atty. Gen., Op. No. 85-101 (September 18, 1985), we recognized the time honored rule that "a public officer or employee lawfully suspended is generally not entitled to compensation during the period of his suspension." (Citing 67 C.J.S., Officers, § 221 at 712; 63A Am. Jur. 2d, Public Officers and Employees, § 473.) In that same opinion, we added that

[f]ollowing the general authority, this Office has previously concluded that if a public employee is lawfully suspended after being charged with a crime and the suspension is thereafter terminated because of acquittal of the employee, the employee is not entitled to compensation for the period of time he was suspended. 1972 Op. Atty. Gen., No. 3281; Op. Atty. Gen. (December 16, 1981). . . .

In the December 16, 1981 [No. 81-96] opinion, we concluded that a member of the Beaufort County school board was not "entitled to be paid during the period under which he was suspended"

Respectfully,
Henry McMaster

Councilman Ables

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even though the charges against him were subsequently dismissed. Our opinion stated that "[t]he general rule is that an officer who is suspended from an office is not entitled to compensation during the period of his suspension unless the suspension was illegally or unlawfully made." The same conclusion was reached by this Office in Op. S.C. Atty. Gen., May 17, 1976. There, we concluded that the individual in question who was suspended was "not entitled to pay while under suspended status." These earlier opinions remain the opinion of this Office.

Art. VI, § 8 of the South Carolina Constitution requires the Governor to suspend upon indictment any officer of the State or its political subdivision who is indicted for embezzlement "or the appropriation of public funds to private use." The same provision of the State Constitution authorizes the Governor to suspend State and local officers who are indicted "for a crime involving moral turpitude." Thus, upon an indictment of the Oconee County Supervisor for embezzlement, there can be no question that the suspension by the Governor is required by the State Constitution.

Accordingly, based upon the longstanding opinions of this Office, it is our opinion that the Oconee County Supervisor is not entitled to compensation while under suspension.

Sincerely,

A handwritten signature in black ink, appearing to read "RDC", is written over the word "Sincerely,".

Robert D. Cook

Assistant Deputy Attorney General

RDC/ph