

1981 S.C. Op. Atty. Gen. 62 (S.C.A.G.), 1981 S.C. Op. Atty. Gen. No. 81-41, 1981 WL 96567

Office of the Attorney General

State of South Carolina

Opinion No. 81-41

April 24, 1981

*1 Honorable Frank H. McGill
Member
South Carolina Senate
Box 759
Kingstree, South Carolina 29566

Dear Senator:

You have inquired as to the procedures that should be followed consequent upon the expected resignation of Honorable Hugh McCutchen, Supervisor for Williamsburg County.

It is my understanding that Mr. McCutchen, because of physical disabilities, intends to resign, effective prior to the expiration of his present term, which will occur January 1982.

In my opinion, the resignation must be accepted by the appropriate body prior to becoming effective so as to create a vacancy. The governing body of Williamsburg County is such appropriate body. While there is some considerable authority contrary to the position which I adopt, I believe that the case of Bradford v. Byrnes demonstrates that in this State a vacancy will be created. Because the term of office will not expire for more than one hundred eighty days after the acceptance of the resignation by the governing body, neither the Governor nor anyone else has the authority to fill that vacancy until the next special election. [Section 4-9-90, Code of Laws, 1976](#). A different conclusion would be applicable should the term expire in less than one hundred eighty days as is clearly prescribed by the statute to which reference is made.

In Mr. McCutchen's circumstances, a special election must be called for the purpose of electing someone for the unexpired portion of the term but there is no provision made for filling of the vacancy with an interim appointee pending the holding of the special election. The cases cited below are the bases upon which this conclusion is reached.

If there is any further information I may give in this respect, please feel free to call upon me.

With best wishes,
Very truly yours,

Daniel R. McLeod
Attorney General

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