

1980 S.C. Op. Atty. Gen. 41 (S.C.A.G.), 1980 S.C. Op. Atty. Gen. No. 80-18, 1980 WL 81902

Office of the Attorney General

State of South Carolina

Opinion No. 80-18

February 6, 1980

**SUBJECT: Public officers, moral turpitude, suspension is not authorized when charged in an Information rather than an indictment; Court procedure, Information rather than an indictment, Public officer can not be suspended on an Information; Public officers, moral turpitude, Information rather than an indictment, officer can not be suspended on an Information; Governor, authority, suspending an officers on an Information;**

\*1 The Governor may not suspend a public officer who has been charged in an Information rather than by Indictment with a crime involving moral turpitude, but upon the conviction of such officer, the office shall be declared vacant.

Mr. O.W. Bannister, Jr.  
Messrs. Hill, Wyatt & Bannister  
Attorneys at Law  
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Greenville, South Carolina 29602

Dear Mr. Bannister:

Governor Riley has forwarded to me your letter of January 21, 1980, and has requested that I respond to it.

By letter dated January 16, 1980, I advised Governor Riley that, in my opinion, he did not have the authority to suspend the coroner of Greenville County after an Information had been filed in the federal courts alleging a violation by him of [26 USC § 7203](#) (failure to make income tax returns for the years 1974, 1975 and 1976). This opinion was predicated upon my construction of [Article VI, Section 8, of the Constitution of South Carolina](#), which recites essentially that the Governor may suspend an officer when he has been indicted by a grand jury for a crime involving moral turpitude, and, in that the coroner had not been indicted but was being charged by an Information, the strict commands of the Constitution did not grant the authority to make a suspension in his case. This is a newly adopted provision of the Constitution and the drafters apparently did not consider the circumstance of prosecutions being commenced on Information rather than by Indictment.

The question presented by you to the Governor and to which he has asked that I respond to you, is thus stated:

“If the statute does not grant to the Governor the authority to suspend the Coroner upon the filing of an information, does it give the Governor the authority to suspend the Coroner if he is convicted or enters a plea of guilty?”

In my opinion, the conviction of a public officer of such a crime automatically creates a vacancy in the office.

The difference between suspension and removal of officers has been pointed out by the Supreme Court of this State, as well as courts of other jurisdictions. One is the mere temporary withdrawal of the power to exercise the duties of an office; the other is a complete and final deprivation of official tenure. The two things are essentially different and are attended by different consequences, both to the officer and to the public. [Dacus v. Johnston, Governor, 180 S.C. 329, 347, 185 S.E. 490; Daniel v. C & S National Bank, 185 S.E. 696 \(Ga.\)](#).

\*2 The constitutional provision in question provides:

“Any officer of the State or its political subdivisions,—who has been indicted by a grand jury for a crime involving moral turpitude—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.” [Article VI, Section 8, Constitution of South Carolina](#).

Under the express wording of this constitutional provision, the Governor has the sole discretion as to whether suspension shall be made, whereas the concluding sentence of the section states that in case of conviction, the office shall be declared vacant. This demonstrates that while the Governor may or not invoke his discretionary powers of suspension when an officer is charged with a crime involving moral turpitude, nevertheless the precise language of the Constitution requires that the office be declared vacant in the case of conviction. The fact of conviction is the same irrespective of whether the prosecution is commenced by Indictment or Information, although a different conclusion exists insofar as suspension is concerned.

In my opinion, while the Governor may not suspend a public officer who has been charged in an Information rather than by Indictment with a crime involving moral turpitude, upon conviction of such officer, the office shall be declared vacant.

Very truly yours,

Daniel R. McLeod  
Attorney General

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