

1979 WL 42871 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 16, 1979

\*1 Ms. Dorothy Manigault  
Governor's Office  
P. O. Box 11450  
Columbia, SC 29211

Dear Ms. Manigault:

I am in receipt of your recent request for an opinion concerning a vacancy in the office of Supervisor in McCormick County. You have informed me that the Supervisor in McCormick County was suspended by former Governor Edwards and that he has now been convicted in Federal Court. You have asked the following questions:

(1) Where a county officer (county supervisor) has been convicted of a crime involving moral turpitude, can the Governor declare the office vacant and reappoint while the case is on appeal? (Article VI, Section 8 [S. C. Constitution, Section 8-1-100](#), S. C. Code of Laws, 1976).

This question was indirectly addressed by the South Carolina Supreme Court in the case of [State ex rel v. Pridmore, County Supervisor](#), 163 S.C. 97, 161 S.E. 340 (1931). In this case, the supervisor of Greenwood County was convicted of murder and appealed from the verdict. The Governor proceeded to order the supervisor removed from office. One of the grounds of the appellant's appeal to the Supreme Court was that the Governor did not have the authority to remove him from office as the conviction had been appealed; and the Court itself in dicta states in its opinion that at the time the Governor removed the supervisor, the conviction was under appeal. The Court proceeded to affirm the order of the Governor removing the supervisor from office. See also [Parker v. State Highway Department](#), 224 S.C. 263, 78 S.E.2d 382 (1951); [State v. Levi](#), 109 W.Va. 277, 153 S.E. 587 (1930); [Bell v. Treasurer of Cambridge](#), 310 Mass. 484, 38 N.E.2d 660 (1941); 67 C.J.S., [Officers](#), Section 75; cf. [Smith v. Todd](#), 155 S.C. 323, 152 S.E. 506 (1930); 7 C.J.S., [Attorney and Client](#), Section 21(c).

Therefore, it is the opinion of this Office that pursuant to [Article VI, Section 8 of the South Carolina Constitution](#) and [Section 8-1-100](#) of the South Carolina Code of Laws, 1976, the Governor has the power to suspend a state or county officer who has been indicted; and that upon conviction, the Governor can declare that office vacant. An appeal of that conviction does not affect the Governor's power to declare the office vacant upon conviction.

(2) Can the county hold an advisory election to assist the Governor in the appointment?

There is no statutory procedure that would authorize such an advisory election. Under the provisions of the Home Rule Act, South Carolina Code of Laws, 1976, Section 4-9-30(16), the counties are empowered to conduct an advisory referendum. However, there is some question if an advisory referendum could be interpreted as providing for an advisory election on the selection of a person to hold office. A referendum by definition is called for people to vote on a legislative measure and not to vote for a person for office.

(3) When the Governor declares the office of county supervisor vacant and does not appoint a replacement, does the appointment run until the next General Election or is a special election required? ([Section 4-11-20](#) and [4-9-90](#), S. C. Code of Laws).

\*2 McCormick County is under the county-supervisor form of government. The supervisor is elected at large and serves as the chairman of the county council. Under [Section 8-1-100 of the South Carolina Code](#) of Laws, 1976, the Governor is given

the power to suspend a State or county officer who has been indicted and ‘[i]n the case of conviction the office shall be declared vacant by the Governor and the vacancy filled as provided by law.’ [Section 4-9-90 of the South Carolina Code of Laws, 1976](#), states that

[v]acancies on the governing body [of a county] shall be filled in the manner of original election for the unexpired terms in the next general election after the vacancy occurs or by special election if the vacancy occurs one hundred eighty days or more prior to the next general election.

It is the opinion of this Office that the county-supervisor is a member of the governing body within the meaning of the above-cited statute, and any vacancy should be filled pursuant to these provisions. South Carolina Code of Laws, 1976, [Section 4-11-20](#) allows the Governor to appoint persons to fill vacancies in any county office. However, [Section 4-9-90](#), which is part of the Home Rule Act, was enacted subsequent to [Section 4-11-20](#). [Section 4-9-90](#) expressly provides for the procedure for replacing a vacancy on the governing body of the county. Therefore, a vacancy in the office of supervisor in a county-supervisor form of government would be filled pursuant to the provisions of [Section 4-9-90](#) and not by appointment.

Very truly yours,

Treva G. Ashworth  
Senior Assistant Attorney General

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