

1976 WL 30470 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 24, 1976

*1 The Honorable Irene K. Rudnick
Member
House of Representatives
Aiken County
Box 544
Aiken, South Carolina 29801

Dear Mrs. Rudnick:

Your letter of May 13 concerns the authority of the Governor to fill the position that may be created by the suspension of Mrs. Cleo Scott, Register of Mesne Conveyances for Aiken County, consequent upon her indictment for embezzlement at a recent term of general sessions court for Aiken County.

You specifically inquire:

‘In an Act that was passed in 1975, it clearly states that if a vacancy occurs, it shall be filled by the majority of the legislative delegation.

‘Since Mrs. Scott was suspended by the Governor, I would like to know whether or not the Governor has the power of appointment without the consent of the majority of the delegation.’

It is my opinion that the Governor has the authority to appoint a person to act in the stead of a suspended officer without regard to the provisions of Act No. 143 of 1975 (75 Acts 147), which establish the office of Register of Mesne Conveyances for Aiken County and provide that vacancies in the office should be filled in the manner of original appointment. The manner of original appointment was by the Delegation of Aiken County.

The Constitution provides that the Governor may suspend a public official upon indictment and grants to the Governor the authority to appoint another to serve in the stead of the suspended officer until his acquittal. The Constitution then provides: ‘In case of conviction, the office shall be declared vacant and shall be filled as provided by law.’ Article VI, Section 8.

The circumstance existing when a suspension by the Governor is made is different from that created by the occurrence of a vacancy. Suspension is a status resulting from the action of the Governor following indictment of the officer and continuing until the guilt or innocence of the public official is determined. A vacancy does not occur until the officer is removed following trial or is occasioned by some other event. This is recognized by the constitutional provision itself which, initially, authorizes the suspension of the officer and subsequently prescribes that ‘in case of conviction, the office shall be declared vacant.’

If am of opinion that the Governor has the sole authority to determine the individual to serve in the stead of an officer who has been suspended following indictment.

With best wishes,
Very truly yours,

Daniel R. McLeod
Attorney General

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