

1976 S.C. Op. Att'y. Gen. 189 (S.C.A.G.), 1976 S.C. Op. Att'y. Gen. No. 4358, 1976 WL 22977

Office of the Attorney General

State of South Carolina

Opinion No. 4358

May 28, 1976

\*1 The Honorable James B. Edwards

Governor

Columbia, South Carolina

Dear Governor Edwards:

Inquiry has been made as to whether or not you have the authority to suspend a member of the General Assembly who has been indicted.

Senator Ralph Gasque of Marion County has been indicted in the federal courts upon charges which can be substantially characterized as conspiracy to defraud the United States. The offense charged, in my opinion, involves moral turpitude. The pertinent provision of the Constitution is Article VI, Section 8, which provides:

‘Whenever it appears to the satisfaction of the Governor that probable cause exists to charge any officer of the State or its political subdivisions who has the custody of public or trust funds with embezzlement or the appropriation of public or trust funds to private use, then the Governor shall direct his immediate prosecution by the proper officer, and upon indictment by a grand jury or, upon the waiver of such indictment if permitted by law, the Governor shall suspend such officer and appoint one in his stead, until he shall have been acquitted. In case of conviction, the position shall be declared vacant and the vacancy filled as may be provided by law.

‘Any officer of the State or its political subdivisions, except members and officers of the Legislative and Judicial Branches, who has been indicted by a grand jury for a crime involving moral turpitude or who has waived such indictment if permitted by law, 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.’

The first paragraph of the foregoing constitutional provision mandates the Governor to direct the prosecution of any officer, having custody of public or trust funds, as to whom there exists, to the satisfaction of the Governor, probable cause to charge with the embezzlement thereof. It further mandates the Governor to suspend such officer upon indictment by a grand jury.

The second paragraph authorizes the Governor to suspend any officer who has been indicted by a grand jury for a crime involving moral turpitude.

With regard to embezzlement, no discretion is vested in the Governor except the determination of whether or not probable cause exists to direct his prosecution of embezzlement of public or trust funds.

With regard to officers indicted for crimes involving moral turpitude, other than embezzlement, the Governor is vested with discretion to suspend or not to suspend.

With respect to officers of the Judicial and Legislative Branches, the second paragraph of the provision excepts such persons from the application of the law. This is made clear by the Report of the Committee which drafted the constitutional provisions submitted to the General Assembly:

‘Recognizing the separation of powers, legislative and court officials are exempt, thus each branch of government has the right to discipline its own employees.’

\*2 It is my opinion that the exemption of legislative and judicial officers from the suspension power of the Governor has reference to the entire constitutional section and that officers of the Legislative and Judicial Branches may not be suspended by the Governor, whether they are charged with embezzlement or with other crimes which involve moral turpitude. Embezzlement itself involves moral turpitude and it is unlikely that the Legislature, in adopting the constitutional provision, intended that officers of those Branches be excepted in one instance and not in another.

In my opinion, therefore, you do not have the authority to suspend an officer of the Judicial or Legislative Branch consequent upon his indictment when such officer has been indicted for the crime of embezzlement or for other crimes involving moral turpitude.

A statutory provision exists, which provides:

‘Any State or county officer who is indicted in any court for any crime may, in the discretion of the Governor, be suspended by the Governor, who, in event of suspension, shall appoint another in his stead until he shall be acquitted. In case of conviction, the office shall be declared vacant by the Governor and the vacancy filled as provided by law.’

Section 50–10, Code of Laws, 1962.

This statute has been upheld as valid under prior constitutional provisions, it being held referable to what is now Article VI, Section 9 (Removal of officers for incapacity, misconduct or neglect of duty). The statute under the new constitutional provision, however, must, in my opinion, be construed with the new provisions of Article VI, Section 8, which authorize discretionary suspension only in the case of indictments for crimes involving moral turpitude. The statute cannot be construed to give to the Governor greater powers than those found in the Constitution. These latter comments are not involved in the case under consideration, as the charges involve moral turpitude, but are set forth merely by way of future guidance.

My conclusion is that the Governor does not have authority to suspend except where officers are indicted for embezzlement of public or trust funds or for crimes involving moral turpitude and that, in such cases, the power of suspension does not extend to officers of the Legislative and Judicial Branches.

Very truly yours,

Daniel R. McLeod  
Attorney General

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