

7832 Library



The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER  
ATTORNEY GENERAL

August 24, 2004

The Honorable Richard Eckstrom  
Comptroller General  
State of South Carolina  
1200 Senate Street  
305 Wade Hampton Office Building  
Columbia, South Carolina 29201

Dear Mr. Eckstrom:

In a letter to this office you raised several questions arising from the federal indictment of Agriculture Commissioner Charles R. Sharpe. As you referenced, Commissioner Sharpe has been suspended from his office by Governor Sanford until such time as he should be acquitted or convicted. We understand that Commissioner Sharpe was suspended pursuant to Article VI, Section 8 of the South Carolina Constitution, which authorizes the Governor to suspend an officer upon indictment for a crime of moral turpitude. Inasmuch as Commissioner Sharpe is a constitutional officer, questions have been raised as to his right to receive compensation and related benefits during the suspension period and to the right of any interim successor to receive the Commissioner of Agriculture's salary and benefits during the period he or she serves in an interim capacity.

According to your letter, Commissioner Sharpe is voluntarily declining to receive any compensation during following his suspension from office. You asked, however, is he entitled to receive salary and benefits during the period of his suspension. Prior opinions of this office have consistently concluded that a public officer suspended for the alleged commission of a crime does not generally receive compensation while suspended. See Ops. Atty. Gen. dated May 27, 2003, September 18, 1985, and December 16, 1981. The 1985 opinion recognized the long standing rule that "a public officer or employee lawfully suspended is generally not entitled to compensation during the period of his suspension." As determined by the State Supreme Court in its decision in In the Matter of Ferguson, 304 S.C. 216, 219, 403 S.E.2d 628, 630-631 (1991),

The salary pertaining to an office is an incident to the office itself and not to the person discharging the duties of the office...Consistent with this proposition is the common law rule that the officer's right to compensation arises out of his performance of his duties...Therefore, a public officer who is suspended from office is not entitled to compensation.

The Honorable Richard Eckstrom  
Page 2  
August 24, 2004

Consistent with such, Commissioner Sharpe would not be entitled to receive his salary or benefits during the period of his suspension from office. Such would include the employer's contribution to health insurance. In our opinion, such contribution would constitute "compensation" for purposes of Article VI, Section 8.

You next asked if Commissioner Sharpe is subsequently acquitted or the charges against him are dropped or withdrawn, is he entitled to receive back pay for the period of his suspension. The September 18, 1985 opinion previously referenced also concluded that "if a public employee is lawfully suspended after being charged with a crime and the suspension is thereafter terminated because of acquittal of the employee, the employee is not entitled to compensation for the period of time he was suspended." See also Ops. Atty. Gen. dated December 16, 1981, May 17, 1976 and March 13, 1972. Therefore, Commissioner Sharpe would not be entitled to back pay for the period of his suspension is he is subsequently acquitted or if the charges are dropped or withdrawn.

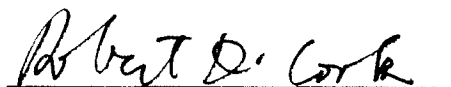
In your last question you asked if in circumstances where the Governor appoints an interim Commissioner during the period of Commissioner Sharpe's suspension, is the interim appointee entitled to receive the Commissioner of Agriculture's salary and related benefits during the period he or she serves in that capacity. An opinion of this office dated December 12, 1967 referencing the decision of the State Supreme Court in Ridgill v. Clarendon County, 188 S.C. 460, 199 S.E.683 (1937) concluded that an appointee to an office would be entitled to the salary and other benefits that a suspended incumbent would have been entitled to receive. Therefore, if the Governor makes an interim appointment, that appointee would be entitled to receive the Commissioner of Agriculture's salary and benefits during the period he or she serves as interim Commissioner.

Sincerely,



Charles H. Richardson  
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Assistant Deputy Attorney General