

7045 Library



The State of South Carolina  
**OFFICE OF THE ATTORNEY GENERAL**

CHARLIE CONDON  
ATTORNEY GENERAL

November 30, 2000

The Honorable Alma White  
Member, Georgetown City Council  
413 N. Congdon Street  
Georgetown, South Carolina 29440

**RE: Informal Opinion**

Dear Ms. White:

By your letter of November 20, 2000, you have requested an opinion concerning your transition into the office of the Georgetown County Clerk of Court. Specifically you wish to know:

- 1) To whom should the letter of resignation be written or addressed?
- 2) I'd like to be sworn in as Clerk of Court on January 1, which is a holiday. Is that possible or is there a law or something that prohibits me from being sworn in January 1. If so, can I be sworn in on Saturday, December 30 or Sunday, December 31? If so, how does this affect the incumbent's term...?

In a municipality, all powers of the municipality are vested in its municipal council, except as otherwise provided by law, and the municipal council is required to provide for the exercise of those powers and the performance of all duties and obligations imposed on the municipality by law. See S.C. CODE ANN. §5-7-160. Should a vacancy exist in a position of mayor or town council member, S.C. Code Ann. §5-7-200 provides in subsection (b):

A vacancy in the office of mayor or council shall be filled for the remainder of the unexpired term at the next regular election or at a special election if the vacancy occurs one hundred eighty days or more prior to the next general election.

The applicable statutes do not contain provisions for a means of tendering notice of resignation or any other means of filling vacancies on a municipal council.

The requisites of an effective resignation are outlined in 63A AM.JUR.2D *Public Officers and*

*Request Letter*

Ms. White  
November 30, 2000  
Page 2

*Employees* §171. No particular form is required unless so specified by statute. There must be an intention to resign from the office in question, accompanied by some act of relinquishment. A written resignation is to be tendered to the entity or person authorized by law to receive it. If the resignation is in writing, it is to be signed by the officer tendering the resignation and should be dated. To be effective, the tendered resignation must be accepted by the appropriate entity or person. See Op. Att'y Gen. No. 86-78, dated July 10, 1986.

According to 63A AM.JUR.2D *Public Officers and Employees* §172, "[t]he official with whom a resignation must be filed may be designated by statute." That section also provides that "in the absence of a statutory direction, a public officer should tender his resignation to the tribunal having authority to appoint his successor or to call an election to fill the office." As previously observed, the statutes concerning municipal council members, their terms, and filling vacancies do not contain provisions relative to the appropriate entity or person to whom the resignation from the office of municipal council should be tendered. Although no one person or entity appears to be designated to receive the resignation of a council member, I would recommend erring on the side of caution and submitting your resignation to the municipal council collectively.

You also ask when you can be sworn in as the clerk of court. The South Carolina Constitution, Article VI, Section 4 provides:

. . . all other officers of the State and its political subdivisions, before entering upon the duties of their respective offices, shall take and subscribe the oath of office as prescribed in Section 5 of this article.

Article VI, Section 5 again states that the oath must be taken before an officer begins his duties and then sets out the oath of office. In addition, S.C. Code Ann. §14-17-50 and §14-17-60 require the clerk of court to enter into a bond, take the oaths of office, have the oaths endorsed on the commission, and produce the commission to the court before beginning the duties of the office. See also S.C. CODE ANN. §5-15-150. Because the clerk must complete these as prerequisites to entering office, the General Assembly appears to contemplate their performance before the commencement of the term of office.

Furthermore, nothing in the Code of Laws of South Carolina prohibits you from being sworn in on any of the days immediately before the commencement of the term, assuming a magistrate or notary public of your county is available on those days to administer the oath and endorse the commission. See S.C. CODE ANN. §14-17-50. Of course, your term would not actually commence until a few days later, but it is our opinion that you may proceed with taking the oath in order to fulfill the prerequisites for entering office. See also Op. Att'y Gen. Sept. 22, 1999 (officer may take oath of office prior to commencement of term but may not exercise powers of office until then). Finally, because your term has not yet commenced, the term of your predecessor would remain unaffected.

Ms. White  
November 30, 2000  
Page 3

This letter is an informal opinion only. It has been written by a designated Assistant Attorney General and represents the position of the undersigned attorney as to the specific question asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kind regards, I remain

Very truly yours,

A handwritten signature in cursive script, reading "Susannah R Cole".

Susannah Cole  
Assistant Attorney General