



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

June 21, 2001

The Honorable John M. Knotts, Jr.
Member, House of Representative
500 West Dunbar Road
West Columbia, South Carolina 29169

Dear Representative Knotts:

By your letter of June 1, 2001, you have requested an opinion of this Office concerning the filling of a vacancy in the office of sheriff. Specifically you inquire about the sequence of events followed to fill the vacancy, such as how the appointment is made and how the election is held. You also ask about the appointment of the interim sheriff.

The office of Sheriff is a constitutional office. See Article V, § 24; see also Privette v. Grinnell, 191 S.C. 376, 4 S.E.2d 305 (1939). As stated by the Court in Privette, because "the Constitution makes no provision whatever for the filling of a vacancy nor does it prescribe any time for the election of sheriffs, ... it follows that these are matters within the legislative power and discretion." 4 S.E.2d at 306.

Fortunately, the General Assembly has expressly delineated the procedures to be followed upon a vacancy in the office of sheriff. South Carolina Code of Laws Section 23-11-40 states:

(A) If any vacancy occurs in the office of sheriff in any county of this State less than one year prior to the next general election for county sheriffs, the Governor may appoint some suitable person who must be an elector of the county and who, upon qualifying, according to law, is entitled to enter upon and hold the office until a sheriff is elected and qualifies in the election and is subject to all the duties and liabilities incident to the officer during the term of his service in the office.

(B) If any vacancy occurs in the office more than one year prior to the next general election for county sheriffs, the Governor shall appoint some suitable person as provided in subsection (A) until a special election is held to elect a sheriff to hold the office until a sheriff is elected and qualifies in the next general election for county sheriffs.

(C) If any vacancy occurs in the office at any time and is created by suspension by the Governor upon any sheriff's indictment, the Governor shall appoint some suitable person, as provided for in subsection (A), to hold the office until the suspended sheriff is acquitted, or the indictment is otherwise disposed of, or until a sheriff is elected and qualifies in the next general election for county sheriffs, whichever event occurs first.

(D) The chief deputy or second-in-command of the sheriff's office shall act as sheriff until the vacancy is filled, except in the case when a vacancy occurs as a result of an indictment, where the vacancy will be filled as provided in Section 23-11-50. While acting as sheriff, the chief deputy or second-in-command is subject to the duties and liabilities incident to the office of sheriff.

Under the terms of the statute, if a vacancy occurs due to the death or resignation of the sheriff, the Governor appoints a suitable person to fill the vacancy until either the next general election (subsection (A)) or until a special election is held to elect a person to serve the remainder of the original term (subsection (B)). Whether a special election is held depends on when the vacancy in office occurs. If the vacancy occurs *less than one year* before the next general election for the county sheriff, no special election is held and the Governor's appointee serves the remainder of the term. If the vacancy occurs *more than one year* before the next general election for the sheriff, then a special election must be held. Furthermore, Subsection (D) provides that the chief deputy or second in command of the sheriff's office shall act as sheriff until the vacancy in office is filled, assuming the vacancy occurs as a result of death or resignation and not indictment.

An example may best illustrate the sequence of events. Suppose the sheriff was just elected or re-elected in the November of 2000 general election. The next general election for the sheriff would be held in November of 2004 because the term of office for a sheriff is four years. See S.C. Const. Art. V, § 24. If a vacancy occurred today, the chief deputy or second in command would immediately assume the duties of the office. See § 23-11-40 (1). As soon as practical, the Governor would then appoint a suitable person to assume the sheriff's duties from the chief deputy until a special election is held. See § 23-11-40(B). After the special election, the winning candidate would assume the duties from the appointee and serve the remainder of the term, i.e., until the successor is elected at next general election in 2004.

In short, Section 23-11-40 provides for the filling of the vacancy in the office of sheriff-- first by the chief deputy, then by the Governor's appointee, and then, if applicable, by the winning candidate of a special election. At the next general election for the county sheriff, a successor is duly elected and will assume office at the expiration of the original sheriff's term, the first Tuesday in January after the election.

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

Representative Knotts

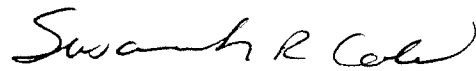
June 21, 2001

Page 3 of 3

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