



6449 Limbaugh

The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

February 3, 1998

L. Hunter Limbaugh, Esquire
Chief Legal Counsel
Office of the Governor
Post Office Box 11369
Columbia, South Carolina 29211

Re: Informal Opinion

Dear Mr. Limbaugh:

You have requested this Office's opinion regarding the Governor's authority to declare a vacancy on Horry County Council should a member of that council be convicted of a violation of S.C. Code Ann. Section 12-54-40(b)(6)(c).

Section 12-54-40 provides penalties for violations of the tax or revenue laws. Subsection (b)(6)(c) provides the following:

(c) A person required under any provision of law administered by the Commission to pay any estimated tax or tax, or required by any provision of law or by any regulation to make a return, keep any records, or supply any information, who wilfully fails to pay the estimated tax or tax, make the return, keep the records, or supply the information, at the time or times required by law or regulation, in addition to other penalties provided by law, is guilty of a misdemeanor and, upon conviction, must be fined not more than ten thousand dollars, or imprisoned not more than one year, or both, together with the cost of prosecution. (emphasis added).

Article VI, Section 8 of the South Carolina Constitution (1895 as amended) provides in pertinent part:

[a]ny 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. (emphasis added)

In addition, S.C. Code Ann. § 8-1-100 (1994 Supp.) provides as follows:

Except as provided in Section 8-1-110, 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. (emphasis added).

In Op. Atty. Gen. 80-18 (February 6, 1980) Attorney General Daniel R. McLeod addressed the Governor's authority to declare a vacancy in the case of a county coroner who had been convicted in federal court under 26 U.S.C. 7203, which closely parallels S.C. Code Ann. Section 12-54-40(b)(6)(c). Therein, Attorney General McLeod concluded, "the conviction of a public officer of such a crime automatically creates a vacancy in the office." Moreover, while there appears to be a division of authority, many courts have similarly held that convictions for failing to file income tax returns involved moral turpitude. Under nearly identical statutes, see, e.g. In Re Lambert, 47 Ill.2d 223, 265 N.E.2d 101 (1970), In Re Bass, 49 Ill.2d 269, 274 N.E.2d 6 (1971), In Re Chester, 117 N.J. 360, 567 A.2d 1008 (1989), In Re Des Brisay, 288 Or. 625, 606 P.2d 1148 (1980). But see, In Re Fahey, 8 Cal.3d 842, 106 Cal. Rptr. 313, 505 P.2d 1369 (1973).

Therefore, consistent with both Attorney General McLeod's earlier opinion and the authorities cited above, a conviction for a violation of § 12-54-40(b)(6)(c) appears to involve a crime of moral turpitude. Accordingly, it is my opinion that the Governor is

L. Hunter Limbaugh, Esquire

Page 3

February 3, 1998

authorized to declare the office vacant pursuant to Article VI, Section 8 South Carolina Constitution (1895 as amended) and S.C. Code Ann. Section 8-1-100 (1995 Supp.).

This letter is an informal opinion only. It has been written by a designated Deputy Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion. I trust this information has satisfactorily responded to your inquiry and that you will advise if clarification or additional assistance should be needed.

Very truly yours,



Zeb C. Williams, III
Deputy Attorney General

ZCW,III/an