OS-4237
LIBRARY

The State of South Carolina

Office of the Attorney General

T. TRAVIS MEDLOCK
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211
TELEPHONE: 803-734-3970
FACSIMILE: 803-253-6283

August 31, 1990

The Honorable Carroll A. Campbell, Jr.
Governor of the State of South Carolina
Post Office Box 11369
Columbia, South Carolina 29211

Dear Governor Campbell:

You have requested the opinion of this Office as to whether the violation of Section 12-54-40 (b)(6)(d)of the South Carolina Code of Laws, by a county auditor's alleged furnishing constituents with personal property tax receipts for taxes which had not been paid, would constitute a crime of moral turpitude within the definition stated in State v. Horton, 271 S.C. 413, 248 S.E.2d 263 (1978).

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

> In lieu of any other penalty provided by law, any person required by law or regulation to furnish a statement who wilfully furnishes a false or fraudulent statement in the manner, at the time, and showing the information required by law or regulation, is guilty of a misdemeanor and upon conviction must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

A county auditor has been indicted under this statute, such indictment alleging several counts of furnishing statements that taxes had been paid on certain motor vehicles, knowing at the time of furnishing the statements that the taxes had not been paid.

Moral turpitude is traditionally defined as

> an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellow man, or to society in general, contrary to the accepted and customary rule of right and duty between man and man .... Moral

> turpitude implies something immoral in itself, regardless of whether it is punishable by law as a crime ....
>
> An act in which fraud is an ingredient involves moral turpitude.

State v. Horton, supra, 271 S.C. at 414.

Making a false statement has been declared to be a crime involving moral turpitude. Hackman v. Commonwealth, 220 Va. 710, 261 S.E.2d 555 (1980). Making a false statement, knowing it to be false, to support a claim for unemployment benefits, was found to involve moral turpitude in Chesapeake and Ohio Railway Company v. Hanes, 196 Va. 806, 86 S.E.2d 122 (1955). Likewise, making a false affidavit to secure monetary benefits to which one was not entitled involved moral turpitude in American Motorists Insurance Company v. Evans, 577 S.W.2d 514 (Tex. Civ. App. 1979). Similarly, opinions rendered by this Office have deemed criminal offenses concerning the making of false statements to involve moral turpitude. Ops. Atty. Gen. dated March 11, 1988 (making a false statement or concealing material facts on an application for certificate of title or registration for a motor vehicle); April 30, 1982 (making a false statement on a United States Department of Agriculture form); December 18, 1975 (submitting false statements to the United States Department of Agriculture); June 13, 1989 (making false statements to a federally insured financial institution with respect to a loan application); March 6, 1990 (making false statements to obtain unemployment benefits); October 25, 1978 (filing false statements in violation of the Internal Revenue Code); and April 3, 1979 (filing false statements, relative to Certificate of Eligibility -- Public Service Employment). Thus, the offense created under Section 12-54-40 (b)(6)(d), involving the wilfull furnishing of a false or fraudulent statement as described in the statute, would necessarily involve moral turpitude.

Assuming a crime of moral turpitude is involved, you have asked whether the public official's voluntary submission into a pretrial intervention program prohibits the Governor from removing the public official from office. In a telephone conversation with your office, it was indicated that you were referring to the submission into and completion of a pretrial intervention program in your question regarding the removal of the public official. It was also noted that the statute you were referencing should have been Section 8-1-100 of the Code which states:

> 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. 1/

Pursuant to Article VI, Section 8 of the State Constitution any indictment must be for a crime involving moral turpitude.

Sections 17-22-20 et seq. of the Code provide for the admission of a qualified offender into a pretrial intervention program. Section 17-22-120 authorizes an agreement between a solicitor and an offender which include the terms of the intervention program, the length of the program, and a provision "... stating the period of time after which the prosecutor will either dismiss the charge or seek a conviction based upon that charge."

Pursuant to Section 17-22-150(a)

> In the event an offender successfully completes a pretrial intervention program, the solicitor shall effect a noncriminal disposition of the charge or charges pending against the offender.

Section 17-22-20(2) defines the term "noncriminal disposition" as "... the dismissal of a criminal charge without prejudice to the State to reinstate criminal proceedings on motion of the solicitor." Section 17-22-150 further provides that upon disposition, an order may be issued for the destruction of all records pertaining to the charge. It is further provided that

> The effect of such order shall be to restore such person, in the contemplation of the law, to the status he occupied before such arrest.

A prior opinion of this Office dated October 13, 1988 stated that where an offender successfully completes a pretrial intervention program, there is no conviction. Also, another opinion of this Office dated November 8, 1965 determined that

> ... one is "convicted" of a disqualifying offense within the meaning of the constitutional and statutory provisions when there is a verdict of guilty and sentence thereon....

1/ As to the suspension authority of Section 8-1-100 which provides that upon indictment the Governor may suspend the officer, the entry into a pretrial intervention program would not conflict with the suspension authority.

See also: 71 A.L.R.2d 595 ("the term 'conviction' usually imports an adjudication reached in a trial in a court of law and does not include a civil or administrative proceeding.")

As indicated above, Section 8-1-100 provides that in the event of the conviction of the public official the office is declared vacant and the vacancy may be filled as provided. However, as to an offender who successfully completes a pretrial intervention program there is no conviction. Instead there is a "noncriminal disposition," or dismissal, of the criminal charge. Furthermore, it is specifically provided that the effect of such a disposition is to restore the individual involved to the status held before arrest. Therefore, there would not be a conviction for purposes of Section 8-1-100 or a resulting vacancy in any office.

Clearly however, the Governor possesses, within his discretion, the authority to remove pursuant to another section of the Code. Reference should be made to Section 1-3-240 which authorizes the Governor to remove a county or state officer "who is guilty of misconduct or persistent neglect of duty in office ...." As noted in a prior opinion of this Office dated May 23, 1990, whether the situation involved is appropriate for purposes of Section 1-3-240 is "a matter to be exclusively decided by the Governor." Therefore, the question of whether proceedings should be initiated pursuant to Section 1-3-240 is beyond the scope of an opinion of this Office.

With best wishes, I am

Sincerely,

Charles H. Richardson
Assistant Attorney General

CHR/an

REVIEWED AND APPROVED BY:

Robert D. Cook
Executive Assistant for Opinions