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The State of South Carolina



Office of the Attorney General

T. TRAVIS MEDLOCK

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February 11, 1985

T. H. Rawl, Jr., Esquire Lexington County Attorney Post Office Box 846 Lexington, South Carolina 29072

Dear Mr. Rawl:

Pursuant to your telephone request for an opinion concerning specific questions raised by the denial of certiorari by the South Carolina Supreme Court, I am sending you this letter of advice which does not constitute an official opinion of this Cffice. Because of the exigent nature of your request, Attorney General Medlock has waived the usual opinion request procedure in this instance.

You have raised the following questions:

1. Who should call the election for the county council seat?

It is my opinion that the Governor should be asked to call this election. Section 7-13-1170 of the South Carolina Code of Laws, 1976, provides in part

...in the event...[an] election...shall for any reason be declared void by competent authority, and any of these facts shall be made to appear to the satisfaction of the Governor, he shall...order an election or a new election to be held at such time and place or places, and upon such notice being given as to him may seem adequate to insure the will of the electorate being fairly expressed.

As you are aware, on December 5, 1984, the State Election Commission denied the appeal of Mr. Kleckley affirming, in

effect, the decision of the County Board of Canvassers. (Copy of the opinion of the State Election Commission is enclosed.) On February 7, 1985, the South Carolina Supreme Court denied certiorari. Therefore, the decision of the State Board stands.

The decision of the State Board found that Mr. Kleckley was not a resident of the district on the day of the election and was, therefore, not entitled to be elected. The Order further states that a new election should be conducted at the "earliest appropriate date" but does not set a specific date for that election. The determination of the State Board of Canvassers made the election void and thereby brings the calling of a new election under the provisions of Section 7-13-1170 of the Code. See 29 C.J.S. Elections, §221.

2. Should Mr. Kleckley continue to hold over until this new election?

Yes. For the reasons set out earlier in Ms. Petway's letter to you, Mr. Kleckley would continue to hold over until his successor is elected and qualified. See in general, Bradford v. Byrnes, 221 S.C. 255 (1952); Heyward v. Long, 178 S.C. 351 (1935); 63 Am.Jur.2d Public Officers, §§156, 150; 67 C.J.S. Officers, §71.

Sincerely,

Treva G. Ashworth

Senior Assistant Attorney General

TGA/bm Enclosure

cc: Governor Richard Riley
Mr. James B. Ellisor