

The State of South Carolina



Office of the Attorney General

*Opinion to [unclear]  
#127*

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April 12, 1985

The Honorable Grady A. Brown  
Member, House of Representatives  
432A Blatt Building  
Columbia, South Carolina 29211

Dear Representative Brown:

You have asked whether an individual convicted in 1981 of obstruction of justice would be eligible to be appointed to the office of county service officer. Based upon the following, we advise that the individual would be eligible for appointment to a public office such as county service officer. 1/

BACKGROUND

The individual in question was convicted in a South Carolina Court of General Sessions in 1981 of one count of obstructing justice. From the terms of the indictment, it appears that the individual was charged with common law obstruction of justice rather than being charged with a specific statutory offense. His sentence was incarceration for one year, suspended upon payment of a fine of \$2,000.00 and probation for two years, such probation to be suspended upon payment of the fine. This Office is advised that the sentence has been completely fulfilled.

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1/ This Office has concluded on numerous occasions that a county service officer is a public officer. See, for example, Ops. Atty. Gen. No. 1609 dated January 16, 1964; No. 58 dated August 11, 1960; No. 1986 dated March 1, 1966; and No. 77-344 dated November 1, 1977. See also Section 25-11-40, Code of Laws of South Carolina (1976).

REQUEST LETTER

Continuation Sheet Number 2  
To: The Honorable Grady A. Brown  
April 12, 1985

### STATUS AS ELECTOR

To hold a public office, one must be a qualified registered elector. See Article VI, Section 1 of the State Constitution. The qualifications to be a registered elector are contained in Section 7-5-120 of the Code; the section provides that persons who meet the five listed requirements shall be registered to vote,

provided, however, that: ...

(b) Persons convicted of a felony or offenses against the election laws shall be disqualified from being registered or voting, unless such disqualification shall have been removed by service of the sentence, including probation and parole time unless sooner pardoned.

The determinative questions are whether the crime of obstruction of justice constitutes a felony and, if so, whether the sentence has been completely served. 2/

### OBSTRUCTION OF JUSTICE

As noted above, the indictment did not charge that a particular statute had been violated; it is presumed that the conviction was for the common law offense. Section 16-1-10 of the Code specifies the crimes classified as felonies and states that

all other criminal offenses punishable under the laws of this State which were felonies under the common law are hereby classified as and declared to be felonies.

A consultation of authorities on common law crimes reveals that obstruction of justice was most probably a misdemeanor, rather than a felony, at common law. Perkins, Criminal Law, 494 (1969); McAninch, Criminal Law of South Carolina, 277 (1982). Thus, one who was convicted of the crime of obstruction of justice would not have lost his status as an elector and would be qualified to hold public office, assuming he is a registered elector.

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2/ It is assumed that the individual otherwise meets the qualifications specified in Section 7-5-120 of the Code.

Continuation Sheet Number 3  
To: The Honorable Grady A. Brown  
April 12, 1985

Because McAninch, the leading authority on criminal law in this State, is not so specific as is Perkins on the status of obstruction of justice as a crime, we would note that even if obstruction of justice might be considered a felony in this State, the individual would be qualified to be an elector under Section 7-5-120 of the Code since the terms of his sentence have been fulfilled.

CONCLUSION

This Office concludes that the individual in question would be eligible to be appointed to a public office such as county service officer. Because the crime of obstruction of justice was most probably a misdemeanor at common law and, in any event, since the sentence has been completely served, the individual would not be disqualified as an elector under Section 7-5-120(b) of the Code. Assuming he otherwise meets the qualifications of an elector specified under Section 7-5-120 and is registered to vote, he would be eligible to hold a public office.

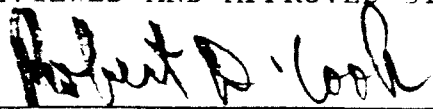
We trust that we have satisfactorily responded to your inquiry. Please advise if we may assist you further.

Sincerely,

*Patricia D. Petway*  
Patricia D. Petway  
Assistant Attorney General

PDP:djg

REVIEWED AND APPROVED BY:

  
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