

1983 WL 182065 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

November 23, 1983

*1 Helen T. Zeigler
Special Assistant for Legal Affairs
Office of the Governor
Post Office Box 11450
Columbia, South Carolina 29211

Dear Ms. Zeigler:

You have asked this office to advise you with respect to the following situation:

Louis T. Jefferson, who is a member of St. Stephens City Council, was suspended from office on August 3, 1983, as a result of an indictment brought against him in the United States District Court for bribing an IRS Tax Auditor. By Order dated October 20, 1983, the indictment was dismissed without prejudice by the Honorable Sol Blatt, Jr., United States District Judge. This dismissal resulted from a Motion made by the United States Attorney requesting that the indictment be dismissed due to the defendant having been placed in a pretrial diversion program. A Pretrial Diversion Agreement was entered into between the United States Attorney and Mr. Jefferson whereby Mr. Jefferson agreed to participate in a pretrial diversion program for a period of twelve months.

You wish to know what effect the dismissal of the indictment has upon the suspension and whether the Governor is required under [Article VI, § 8 of the South Carolina Constitution](#) to reinstate Mr. Jefferson. We would advise that the dismissal of the indictment terminates the suspension and for purposes of [Article VI, § 8 of the Constitution](#) the Governor would be required to reinstate.

[Article VI, § 8 of the South Carolina Constitution](#) (1895 as amended) provides in pertinent part:

Any 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 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.

Any provision involving suspension is penal in nature and must be strictly construed. Op. Atty. Gen., May 5, 1983. In this instance, there has been no 'conviction' required by [Article VI, § 8](#) before the office in question shall be declared vacant. See, 63 Am.Jur.2d, Public Officers and Employees, § 196. To the contrary, the indictment which formed the basis for the suspension in the first place has now been dismissed pursuant to an order appearing valid on its face.¹ Moreover, it is evident upon examination of the terms of [Article VI, § 8](#), quoted above, that it is indeed the indictment which provides the basis for any authority on the part of the Governor to suspend pursuant to that particular provision.

Once the indictment has been dismissed without prejudice by an order of the Court appearing valid on its face, the prosecution of the officer in question was completely 'terminate[d]'. Federal Rules of Criminal Procedure, § 48(a). There was no longer any prosecution for a crime of moral turpitude 'pending'. Cf., Pray v. State, (Ariz.), 106 P.2d 500 (1940); cf., State v. Freeman, (Ariz.), 279 P.2d 443 (1955); State v. Spina, (La.), 259 So.2d 891 (1972). Dismissal of the indictment preserves the presumption of innocence.² May v. Edwards, (Ark.) 529 S.W.2d 647, 651 (1975). Therefore, even though the officer in question has not

been technically 'acquitted' see, 1A Words and Phrases, 'Acquittal', because there is presently no indictment for a crime of moral turpitude outstanding against him, the authority of the Governor under [Article VI, § 8](#) to continue his suspension is no longer available. Accordingly, for purposes of [Article VI, § 8](#), the Governor would have to reinstate the officer in question.

*2 Of course, our conclusion addresses only [Article VI, § 8](#) as it applies to the present circumstances you have outlined. The indictment under consideration was dismissed without prejudice and it is our understanding that reindictment is at least authorized. Wright, Federal Practice and Procedure, § 811. If that should occur, the Governor's authority to suspend pursuant to [Article VI, § 8](#) would be renewed. Moreover, it is well established that dismissal of an indictment does not preclude removal or suspension under some other relevant provision of law. [City of Miami v. Kellum](#), (Fla.), 147 So.2d 147 (1962); [Sabia v. City of Elizabeth](#), (N.J.), 331 A.2d 620 (1975).

If we can be of further assistance, do not hesitate to let us know. With kindest personal regards, I am

Very truly yours,

Robert D. Cook

Executive Assistant for Opinions

Footnotes

- 1 The fact that the basis for the Order of Dismissal was a Pretrial Diversion Agreement would not alter the existence of the Order appearing valid on its face. So long as that Order remains in effect, it would not appear within the Governor's province to question its validity or the reasons therefor. See, 67 C.J.S., Officers, § 201, p. 662.
- 2 The Pretrial Diversion Agreement also expressly states that 'any statements made by [the officer in question] in this Agreement will not be admissible on the issue of guilt in any subsequent proceedings.' It further states:
Neither this agreement nor any other document filed with the United States Attorney as a result of your participation in the Pretrial Diversion Agreement Program will be used against you except for impeachment purposes, in connection with any prosecution for the above described offense.

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