

1981 S.C. Op. Atty. Gen. 17 (S.C.A.G.), 1981 S.C. Op. Atty. Gen. No. 81-13, 1981 WL 96540

Office of the Attorney General

State of South Carolina

Opinion No. 81-13

February 20, 1981

*1 The Honorable Richard W. Riley
Governor
Post Office Box 11450
Columbia, South Carolina 29211

Dear Governor Riley:

Your office has presented to me the following question:

‘We would appreciate an opinion as to whether there is any law specifically prohibiting the Governor from appointing a person to a State Board or Commission who has been convicted of a state or federal crime, either felony or misdemeanor.’

In my opinion, the Governor may not appoint a person to a state board or commission who has been convicted of a felony or offense against the election laws whether the latter offense is a felony or misdemeanor.

The reason for this is that an Act approved January 21, 1981, disqualifies from being registered or voting any person who has been ‘convicted of a felony or offenses against the election laws.’ Those individuals who may have been pardoned or may have served their sentences, including probation and parole time, would have their franchise restored. [Article XVII, Section 1, of the Constitution](#), provides:

‘No person shall be elected or appointed to any office in this State unless he possesses the qualifications of an elector.’

See also, [Article VI, Section 1, of the Constitution](#), which imposes the same qualifications upon persons popularly elected to public office.

The 1981 Act is, by its terms, retrospective in application so that the date of conviction is immaterial except as it may relate to the possibility of completion of the terms of the sentence having already been accomplished or pardon granted.

Because of the recency of the Disqualifications Act of 1981, it is probable that numbers of persons have been registered to vote and possess registration certificates. Under the terms of the new statute, they are not really qualified to vote due to previous convictions. In such circumstances, I would advise that action be taken if disqualifying crimes appear, irrespective of whether the individual may or may not have received a voting certificate. Alternatively, the information could be quickly transmitted to the Election Commission, which can then take action to remove the validity of the certificate.

Insofar as misdemeanors are concerned, it is my opinion that [Article VI, Section 8, of the Constitution](#) renders a person convicted of a crime involving moral turpitude ineligible to be appointed, irrespective of the characterization of the basis for a conviction as a misdemeanor or a felony.

The concluding portion of [Section 8](#) grants the Governor discretion to suspend an officer of the Executive Department who has been indicated for a crime involving moral turpitude, and the concluding sentence of the section states: ‘In case of conviction, the office shall be declared vacant and the vacancy filled as may be provided by law.’

It is my opinion that the quoted conclusion of the section does not depend upon prior suspension, but only upon conviction, in which instance the convicted person is ineligible to hold that office. The conclusion is inescapable, in my opinion, that he would similarly be ineligible to hold another office.

*2 I advise, therefore, that the Governor may not appoint one to a state board or commission who has been convicted of a state or federal felonious crime or of crimes against the election laws nor may he appoint one to an office in this state in the Executive Branch who has been convicted of a crime involving moral turpitude, irrespective of whether such an offense is or is not a felony or misdemeanor.

Very truly yours,

Daniel R. McLeod
Attorney General

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