

1983 WL 181927 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

July 1, 1983

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

Dear Governor Riley:

The recent letter addressed to Mr. Medlock from Helen Zeigler has been referred to me for reply. You have stated that as a result of the Mayor of Lynchburg, Mr. Jefferson, being indicted on charges of embezzlement of public funds, compounding a misdemeanor and threatening a public official, you suspended Mr. Jefferson from serving as Mayor. Mr. Jefferson was recently re-elected as Mayor. You have inquired if Mr. Jefferson can be sworn into office while subject to your suspension order.

SOUTH CAROLINA CODE OF LAWS, 1976, Section 5-15-150, provides that ‘. . . before entering upon the duties . . .’ of the Mayor’s office the Mayor shall take the oath of office prescribed in this statute and the oath prescribed by the Constitution. (Emphasis added.) Pursuant to the provisions of this statute the Mayor is to take this oath before the enters upon the duties of that Office. Mr. Jefferson obviously cannot assume the duties of Office until the indictment is resolved. Further, the oath of office prescribed by the Constitution provides that the person swears that he is ‘. . . duly qualified, according to the Constitution of this State, to exercise the duties of the office to which . . . (he has) been elected. . . .’ [South Carolina Constitution, Article III, Section 26](#). Mr. Jefferson currently is not qualified under the Constitution of this State in that he has been suspended from Office pursuant to [Article VI, Section 8 of the South Carolina Constitution](#). It would, therefore, appear that Mr. Jefferson could not take the oaths of office in that he does not currently meet the requirements mandated by the oaths.

This position is sustained also in the general law. In 67 CJS, [Officers](#) Section 18 it is stated that . . . it has been held that the term ‘eligible’ as used in a constitution or statute means capacity to be chosen, and that therefore the qualification must exist at the time of election or appointment, and also at the time when seeking to qualify by taking the oath of office . . . (Emphasis added.)

In [Slater v. Varney](#), 136 W.Va. 406, 68 S.E. 2d 757, 770 (1951) the court in a similar situation, held that a candidate elected to an office ‘. . . must be eligible to the office when he takes the oath which the law requires of him.’ In [McDowell v. Burnett](#), 92 S.C. 469, 75 S.E. 873 (1912) the court defined suspension of a public officer as the ‘temporary withdrawal of the power to exercise the duties of office.’ Clearly then, a Mayor under [Article VI, Section 8](#) suspension is not eligible to hold office. See also [State v. Seigler](#), 230 S.C. 115, 94 S.E. 2d 231 (1956); [Commonwealth v. Kelley](#), 100 A. 272, 255 Pa. 475 (1917).

Therefore, for all the foregoing reasons it would not appear that Mr. Jefferson could be sworn into office until the indictment which resulted in removing him from office is resolved.

*2 Additionally, you have asked if a newly elected mayor pro tem would have the right to serve acting mayor or would Maceo Montgomery, the person appointed by you, continue to serve. [Article VI, Section 8](#), provides that upon indictment of an officer for embezzlement the Governor ‘. . . shall suspend such officer and appoint one in his stead, until he shall have been acquitted.’ Therefore, the Constitution provides that the person have Governor appoints shall continue to hold the office until the person has been acquitted or the office declared vacant upon a conviction.

Sincerely,

Treva G. Ashworth
Senior Assistant Attorney General

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