

1981 S.C. Op. Atty. Gen. 63 (S.C.A.G.), 1981 S.C. Op. Atty. Gen. No. 81-42, 1981 WL 96568

Office of the Attorney General

State of South Carolina

Opinion No. 81-42

April 24, 1981

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

Dear Governor Riley:

You have inquired concerning an Information which may be filed against a county councilman. The Information will charge conspiracy under [21 USC 846](#) relating to violation of [21 USC 812](#) and [841\(a\)\(1\)](#). You submit the following questions, which are answered seriatim below.

Is the conspiracy charge a crime involving moral turpitude?

In my opinion, the charge of conspiracy in these circumstances would constitute a crime involving moral turpitude, subjecting the offender to your powers of suspension. Under federal law, the completion of an overt act is necessary to complete the crime of conspiracy, whereas under State law, the substantive act need not be accomplished to complete the offense. The Supreme Court of this State has held that while overt acts need not be shown, such acts may nevertheless be shown, since from them an inference may be drawn as to existence and object of the conspiracy. [State v. Fleming](#), 243 S.C. 265, 133 S.E.2d 800, and [State v. Lagerquist](#), 256 S.C. 69, 180 S.E.2d 882.

I am of the opinion that the nature and characteristics of the substantive offenses which will apparently be charged are of such a nature that they must be characterized as involving moral turpitude, and this must be considered in connection with the determination of whether a conspiracy to commit such offenses must be judged in the same light.

[21 USC 812](#) establishes merely a schedule of controlled substances.

[21 USC 841\(a\)\(1\)](#) makes it unlawful for any person to knowingly or intentionally manufacture, distribute or dispense a controlled substance. The debilitating and degrading effects of drug trafficking are well-known. The defendant may be indicted for an offense charging a conspiracy to manufacture, distribute or possess such drugs, which are characterized by the federal statute as inclusive of those drugs which have high potential for abuse and, in my opinion, clearly meet the definition of 'moral turpitude' as defined in [State v. Horton](#), 271 S.C. 413, 248 S.E.2d 263:

'—an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellowman, or to society in general, contrary to the accepted and customary rule of right and duty between man and man—. 58 C.J.S. [Moral](#), p. 1201

'Moral turpitude implies something immoral in itself, regardless of whether it is punishable by law as a crime.' Id. at 1203.

I advise, therefore, that the offense of conspiracy to violate the provisions of [21 USC 812](#) and [841\(a\)\(1\)](#) involves moral turpitude.

You additionally inquire:

Does a temporary appointee continue to serve until a successor is elected and qualified when the councilman suspended is found guilty or pleads guilty to the offense charged?

It is my opinion that your appointee would continue to serve until his successor is elected and has been qualified. Should the suspended officer be convicted, the office is then declared to be vacant, but the interim appointee will continue to hold following such conviction until the office is filled by election. See Sections 4–9–90, 4–11–20 and 1–3–220; [Bradford v. Byrnes](#), 221 S.C. 255, 70 S.E.2d 228; [Rogers v. Coleman](#), 245 S.C. 32, 138 S.E.2d 415; 63 Am.Jur.2d Public Officers ¶138; and 19 A.L.R. 39.

**\*2** Your final question is:

Does the Governor have temporary appointive powers to fill a vacancy if the councilman resigns before he is suspended?

If the councilman's term expires within one hundred eighty days after the vacancy by resignation occurs, it 'shall be filled in the manner of original election for the unexpired term in the next general election—.' If the term will expire more than one hundred eighty days after the vacancy, it shall be filled by special election for the unexpired term. [Section 4–9–90, Code of Laws, 1976](#). I do not have any information regarding the date of expiration of the official about whom you inquire but the foregoing criteria will, in my opinion, control.

Where there are fewer than one hundred eighty days remaining on the term, it is my opinion that the Governor has the authority, pursuant to Sections 4–11–20 and 1–3–220, to fill the vacancy for the reason that it is then being filled by the Governor until the next general election, in precise accordance with the wording of the statutes to which reference is made.

Should more than one hundred eighty days remain on the term, a special election must be ordered to fill the vacancy for the unexpired term and I do not think that the Governor has the authority under the cited statutes to fill the vacancy pending the holding of the special election. The opinion of this Office dated April 28, 1980, and cited below, states the previous position of this Office in this respect.

In my opinion, a vacancy would occur upon receipt of a resignation and its acceptance by the appropriate authority. The cases of [Bradford v. Byrnes](#) and cases cited from the Southern Reports, S.E. and S.E.2d, cited below, are in substantiation of this conclusion.

Of concern also is the fact that Colleton County is now under an order of the federal court precluding the holding of any elections and the consent of that court must be obtained prior to the conduct of any election contemplated by the statutes.

In summary, I advise:

1. The offense of conspiracy as defined in [21 USC 812](#) relating to violation of [21 USC 841\(a\)\(1\)](#) is an offense involving moral turpitude.
2. A vacancy will be created should a councilman resign and should that resignation be accepted by the appropriate authority, which, in the case of county councilmen, is the county council.
3. If the term of the councilman would expire within one hundred eighty days after the resignation has been accepted, you have the authority to appoint a person to fill the vacancy until the holding of the general election.
4. If the term of the resigning councilman will end more than one hundred eighty days after the resignation is accepted, the Governor does not have the authority to fill the vacancy pending the holding of the special election.
5. Colleton County is now under a court order which precludes the holding of any election therein and the consent of the federal court must be obtained prior to the holding of any election which may be sought to be conducted.

Very truly yours,

\*3 Daniel R. McLeod  
Attorney General

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