

1981 WL 158256 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 1, 1981

\*1 Honorable Frank H. McGill  
Member  
South Carolina Senate  
Box 759  
Kingstree, South Carolina 29566

Dear Senator:

On April 24, 1981, I wrote you concerning the procedures which should be followed consequent upon the expected resignation of The Honorable Hugh McCutchen, Supervisor for Williamsburg County.

I have reconsidered that opinion in light of previous precedents in this Office in similar situations and, consequently, hereby withdraw the position of the opinion relating to the occurrence of a vacancy in office following acceptance of a prospective resignation, which I wrote you on April 24, and request that you substitute this in lieu of it.

As I understand it, Mr. McCutchen has resigned his office, effective December 31, 1981. His term of office will expire December 31, 1982.

The effect of a prospective resignation of this sort has not been considered by the Supreme Court of this State and, consequently, we have no authoritative decisions on the problem. The general authorities hold clearly, however, that an election cannot be held until after the date on which the resignation is to take effect, which, in Mr. McCutchen's instance, would be December 31, 1981. There is no provision for gubernatorial appointment, which therefore presents a problem of inability to fill the office by appointment.

In view of the practical difficulties for which the law does not make provision, a special election could be ordered now to fill the unexpired portion of Mr. McCutchen's term, but with the winner of the special election to take office at the effective date of the resignation, to wit, December 31, 1981. This is not in strict accordance with the governing principles of the general authorities from other states or with the previous opinions of this Office, but, as stated, the courts of this State have not been faced with this problem, and it may be the most practical method of solving the dilemma.

I might add, as an alternative to the procedures set out above, that steps such as primary nominations, etc., could be carried out before the effective date of the resignation, on December 31, for an election to be held after that date for that office.

I regret the previous opinion which was forwarded to you, but I feel that the statements herein made are in accordance with the law as previous opinions of this Office have construed the law. The holding of the special election, while presenting some legal difficulty, may be a practical means of clarifying the situation.

With best wishes,  
Very truly yours,

Daniel R. McLeod  
Attorney General

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