

1980 WL 120610 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 16, 1980

**\*1 Re: Claude McKinney, Jr.**

Honorable Richard W. Riley  
Governor  
The State of South Carolina  
The State Capitol  
Columbia, South Carolina 29211

Dear Governor Riley:

Claude McKinney, Jr., who is presently the Coronor of Greenville County, on an information filed in the United States District Court of South Carolina, Columbia Division, is charged with a violation of 26 [26 USC § 7203](#), it being alleged in said information that Claude McKinney, Jr., did not make an income tax return to the District Director of Internal Revenue for the years 1974, 1975 and 1976. This offense is punishable under a federal law by a maximum fine of \$10,000.00 and/or imprisonment for one year.

Mr. McKinney has not been indicted nor has he waived indictment. Pursuant to federal law, the prosecution of offenses punishable by imprisonment for a term exceeding one year may be prosecuted by information if the defendant waives prosecution by indictment; for those offenses punishable by one year or less, the District Attorney may proceed by information or indictment and no waiver of indictment is required or authorized.

The District Attorney chose to prosecute by information rather than by indictment and, therefore, no question of waiver of indictment by the defendant is involved.

The Governor is authorized to suspend an officer of the State or its political subdivisions who has been indicted by a Grand Jury for a crime involving moral turpitude or has waived such indictment if permitted by law. Mr. McKinney has not been indicted nor has he waived such indictment as such waiver is not authorized or permitted under federal law.

The provisions of the CONSTITUTION must be construed in a mandatory and prohibitory manner unless otherwise indicated and, so construed, it is my opinion that as Governor of the State you do not have the authority in these circumstances to suspend Mr. McKinney from office.

Very truly yours,

Daniel R. McLeod  
Attorney General

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