

1980 S.C. Op. Atty. Gen. 77 (S.C.A.G.), 1980 S.C. Op. Atty. Gen. No. 80-38, 1980 WL 81922

Office of the Attorney General

State of South Carolina

Opinion No. 80-38

April 10, 1980

***1 SUBJECT: Legislature, vacancy, writ of election issued by presiding officer required; Elections, writ of election, legislative vacancy requires a writ of election by presiding officer; Public officers, legislative vacancy, writ of election issued by presiding officer required;**

Upon occurrence of a vacancy in either body of the General Assembly, the presiding officer is required to issue a writ of election to fill the vacancy for the unexpired term. The action is mandatory, irrespective of the length of the remaining term.

Honorable James P. Fields, Jr.
Clerk of the Senate
The State House
Columbia, South Carolina 29202

Dear Mr. Fields:

Senator John Henry Waller, Jr., of Marion, is presently serving as senator representing District No. 11 and has been elected as a judge of the Twelfth Judicial Circuit. He is expected to resign his office as senator in order to assume his duties as a judge on or about May 20, 1980. His term as senator will expire in November, 1980.

You inquired whether an election must be held for the selection of a successor to complete his unexpired term, which will be for approximately six months.

[Article III, Section 25, of the Constitution](#) provides that should any member:

“—resign—a writ of election shall be issued by the President of the Senate—for the purpose of filling the vacancy thereby occasioned for the remainder of the term—.”

The provisions of the Constitution must be construed to be mandatory and prohibitory unless otherwise stated (Article I, Section 23) and there is nothing that appears in connection with the above quoted section that indicates in any manner that it can be taken in any way except mandatorily. I must, therefore, advise that strict compliance with the constitutional provisions requires that an election be ordered to fill the vacancy occasioned by the resignation of a member irrespective of the length of the remaining portion of his term.

The circumstances point up an oversight for which the framer of the Constitution did not provide, but which the drafters of the new Constitution did foresee. Their recommendations have not, however, been submitted to the people for inclusion in the proposed basic law. Consequently, we must be guided by the Constitution of 1895 and its relevant legislative provisions. See, Constitutional Study Report, page 35.

The vacancy about which you ask is hardly worth filling, in that the legislative session will have ended by the time an election can be held, the processes for the election of a successor for the full term will occur at about the same time as the election of a person for the remainder of the term, and the remaining part of the term will be of short duration. Nevertheless, the Constitution of this State provides specifically for the means of filling the vacancy to be created and I can only advise that its terms are mandatory.

Very truly yours,

*2 Daniel R. McLeod
Attorney General

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