

1980 S.C. Op. Atty. Gen. 91 (S.C.A.G.), 1980 S.C. Op. Atty. Gen. No. 80-45, 1980 WL 81928

Office of the Attorney General

State of South Carolina

Opinion No. 80-45

April 28, 1980

*1 The Honorable Richard W. Riley
Governor
The State House
Columbia, South Carolina 29211

Dear Governor Riley:

Your letter of March 20, 1980, presents the following questions, the answers so which are set forth below. The first of these questions asks:

1. When the Governor declares a county office vacant (i.e., council seat) after an officer has been convicted of a crime involving moral turpitude, and county council or the appropriate officials refuse to order a special election as provided under [Section 4-9-90 of the 1976 South Carolina Code of Laws](#), is the Governor then authorized under Section 7-13-1170 so order an election?

The Governor has the authority to order a special election when the authority charged with conducting the election has neglected, failed or refused to order such election at the time appointed therefor. [Section 7-13-1170, Code of Laws, 1976](#). The answer to this question is, therefore, in the affirmative.

2. When the Governor declares a county office vacant, can he then appoint an individual to the office until a special election is held? Or, can the interim appointment hold over after the office is declared vacant?

Should the Governor order a special election, the holding of that election would be at a fixed and determinable date which the Governor can enforce by mandamus proceedings should he consider it necessary. In such event, there is no authority vested in the Governor to fill a vacancy pending the holding of the special election. If, however, there has been a previous order of suspension because of the charge of a crime involving moral turpitude, any interim appointee at the time of the ordering of the special election will continue to hold office until a successor has been elected and has qualified. The foregoing conclusion is reached in consideration of the provisions of [Sections 4-9-90, 4-11-20 and 1-3-220](#) and appear to this Office to be consonant with the decisions of the Supreme Court of this State in [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](#). With respect to the office of member of county council, the first two statutes cited above make no provision for appointment by the Governor following the occurrence of a vacancy before a special election nor does [Article VI, Section 8, of the Constitution of this State](#). As stated, it is our opinion that any previous appointments to take the place of a suspended officer would continue to run until the successor of that person has been elected and has qualified.

Very truly yours,

Daniel R. McLeod
Attorney General

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