

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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