

1980 S.C. Op. Atty. Gen. 124 (S.C.A.G.), 1980 S.C. Op. Atty. Gen. No. 80-74, 1980 WL 81956

Office of the Attorney General

State of South Carolina

Opinion No. 80-74

June 30, 1980

***1 In Re: R.D. Cantley, Jr. Magistrate, Kingstree District, Williamsburg County**

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

Dear Governor Riley:

Judge R.D. Cantley, Jr., resigned his office effective March 30, 1980, and this resignation was accepted by you on April 28, 1980. His resignation was prompted by the structures of the Code of Judicial Conduct, and to remove himself from this, he therefore resigned his office as magistrate.

The Senate of South Carolina is, in my opinion, now in session within the meaning of [Section 1-3-210, Code](#) of Laws, 1976. Because the Senate is still in session, in my view, I think that a serious question exists as to your power to make an interim appointment before the Senate resumes on August 28, 1980. In the present circumstances, sine die adjournment is fixed for 5:00 p.m., August 28, 1980.

The oath of office required of all magistrates is that they execute their duties, when the term of office expires at fixed times, until the termination date “and until their successors are appointed and have qualified.”

This quoted phrase has been construed by the Supreme Court to preclude one from leaving his office prior to the qualification of his successor. I feel that Judge Cantley, even though he has submitted a resignation which has been accepted, must, under the doctrine laid down by the Supreme Court in [Rogers v. Coleman, 245 S.C. 32](#), must remain in office until his successor is appointed and has qualified, and that he is, while serving in such circumstances, acting in a de facto capacity, with full entitlement to all the emoluments and authority vested in a magistrate.

When the Senate convenes again at the call of the President of the Senate in the latter part of August, Judge Cantley may be submitted for confirmation to that body, or, of course, any other choice by you may be submitted. Upon confirmation, the unexpired part of Judge Cantley's term would be served.

Very truly yours,

Daniel R. McLeod
Attorney General

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