

1980 WL 120760 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

July 1, 1980

*1 Honorable L. Marion Gressette
Member
South Carolina Senate
101 Gressette Building
Columbia, South Carolina 29202

Dear Senator Gressette:

You have requested an opinion from my Office as to whether or not a vacancy will exist in the office of resident judge of the Sixteenth Judicial Circuit upon the resignation of the Honorable Robert W. Hayes effective January 20, 1981, which vacancy may be filled by the South Carolina General Assembly when it reconvenes on August 28, 1980, in accordance with House Bill No. 3961 to engage in, among other things:

. . . the holding of elections to fill any vacancies which may exist if all necessary requirements for elections of the candidates have been completed; . . . S.C.H.J. No. 90 at 3834 (June 16, 1980).

The general rule in South Carolina is that a resignation from office, including a resignation prospective in effect, is complete upon acceptance by the authority empowered to accept it and, once accepted, the resignation is complete and cannot be withdrawn. Cf., [State v. Stickley](#), 80 S.C. 64 (1908); 1964-65 Ops. Atty. Gen. 271; see generally, 63 AM.JUR.2d [Public Officers and Employees](#) §§ 161 et seq. (1972). Once a resignation is complete, a vacancy exists. *Id.* Therefore, assuming that Judge Hayes' resignation effective January 20, 1981, is accepted by August 28, 1980, a vacancy in that office will exist at that time, which vacancy can then be filled by the General Assembly.

Sincerely,

Daniel R. McLeod
Attorney General

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