

1979 S.C. Op. Atty. Gen. 96 (S.C.A.G.), 1979 S.C. Op. Atty. Gen. No. 79-74, 1979 WL 29079

Office of the Attorney General

State of South Carolina

Opinion No. 79-74

June 6, 1979

\*1 An officer appointed to serve in the stead of one who has been indicted for a crime involving moral turpitude, continues to serve until the position is filled by election or appointment, irrespective of the resignation from office of the suspended officer.

Honorable Joyce C. Hearn  
Member  
House of Representatives  
1316 Berkeley Road  
Columbia, South Carolina 29205

Dear Mrs. Hearn:

You have requested the opinion of this Office in your letter of June 6, 1979, as follows:

'Would you please render your opinion as to what would occur if a County Council Member has been indicted and removed from office and a gubernatorial appointee has been appointed to replace him. Should the County Council Member, who was indicted, resign from the position? Would that automatically eliminate the gubernatorial appointee's serving on that council before an election is held?

In my opinion, should the indicted council member resign, the individual appointed by the Governor would continue in office until a successor is elected in the manner provided by law and has qualified and taken office. The Governor is vested with authority under [Section 8-1-100, Code of Laws, 1976](#), to suspend any State or county officer who is indicted by any court for any crime and to appoint another in his stead until the indicted officer shall be acquitted. This statutory provision must be read in conjunction with [Article VI, Section 8, of the Constitution](#), which contains the same general language but restricts the power of the Governor to remove an indicted officer only for crimes involving moral turpitude. This Office has heretofore advised the Governor that, under these provisions, he had the authority to suspend the indicted officer and to appoint another in his stead until acquittal should be obtained.

The Supreme Court of this State has clearly expressed its view that a vacancy in public office will not be countenanced. [Bradford v. Byrnes](#), 221 S.C. 255, 70 S.E. 228, and [Rogers v. Coleman](#), 245 S.C. 32, 138 S.E.2d 415. Consideration of this principle compels the conclusion that the appointee of the Governor continues in office until a successor to the resigned officer has been elected and has qualified and taken office.

I, therefore, advise that, in the opinion of this Office, one who has been suspended by the Governor because of his indictment for a crime involving moral turpitude and resigns during the period of such suspension vacates his office, and the officer appointed by the Governor will continue to hold office until a successor is elected and has qualified to fill the vacancy created by the resignation.

Very truly yours,

Daniel R. McLeod  
Attorney General

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