

1979 WL 43057 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 7, 1979

**\*1 RE: Opinion—County Council Members**

Costa M. Pleicones, Esquire  
Richland County Attorney  
P. O. Box 4069  
Columbia, South Carolina 29240

Dear Mr. Pleicones:

Mr. McLeod has referred your recent letter to me for reply. You have asked the following questions:

1. If a present County Council Member resigns, either Mr. Cothran or Dr. Harrison, what are the time limits on calling for an election, and would the present Governor's appointees remain in office pending an election?

South Carolina Code of Laws, 1976, Section 7-13-35, establishes the notice requirements of a general and special election. The statute expressly states that the sixty day notice provisions of the statute will not apply to a special election held to fill a vacancy created by death, resignation or removal from office. Registration books close thirty days before an election; therefore, reasonable notice of an election must be given prior to the registration books closing in order to afford persons the opportunity to register and vote. An election could be held following reasonable notice of the thirty day closing of the registrations books.

The Governor is vested with authority under South Carolina Code of Laws, 1976, Section 8-1-100, and [Article VI, Section 8 of the South Carolina Constitution](#), to suspend a State or county officer who is indicted and to appoint another in his stead until the indicted officer is acquitted. The Supreme Court has clearly expressed its view that a vacancy in a public office is not favored. [Bradford v. Byrnes](#), 221 S.C. 255, 70 S.E. 228; [Rogers v. Coleman](#), 245 S.C. 32, 138 S.E.2d 415. This principle necessitates 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. See also 63 Am.Jur.2d, Public Officers, § 138; [19 A.L.R. 39, Annotation, Right of Public Officer to Resign](#).

2. If Council members presently taking 'leaves of absence' are convicted, when does their seat become vacant? What are the time limits on calling for an election in such cases?

Pursuant to [Article VI, Section 8, of the South Carolina Constitution](#), and [Section 8-1-100, of the South Carolina Code of Laws, 1976](#), the Governor can declare the office vacant upon conviction. The election can be held as soon thereafter as practical .

Yours very truly,

Treva G. Ashworth  
Senior Assistant Attorney General

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