

1978 S.C. Op. Atty. Gen. 91 (S.C.A.G.), 1978 S.C. Op. Atty. Gen. No. 78-64, 1978 WL 22545

Office of the Attorney General

State of South Carolina

Opinion No. 78-64

March 31, 1978

*1 Mr. J. M. McLendon

Attorney

City of Marion

Messrs. McLendon & Sloan

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Marion, South Carolina 29571

Dear Mr. McLendon:

Thank you for your letter of March 23, 1978.

A member of the city council has pleaded guilty to the third count of a federal indictment brought under the provisions of [Section 7206\(1\) of the Internal Revenue Code](#). You inquire as to the effect this would have upon the office of city councilman held by the individual. [Section 5-7-200, Code of Laws](#), 1976, provides:

‘A mayor or councilman shall forfeit his office if he—(3) is convicted of a crime involving moral turpitude.’

[Section 7206\(1\), Internal Revenue Code](#), relates to income tax law violation. Violation of this statute, in my opinion, is an offense involving moral turpitude. The authorities on which this conclusion is based are appended at the foot of this letter.

Section 5-7-210 provides, in part, that ‘the council shall be the judge of the grounds of forfeiture of—office (of its members).’

By the preceding section ([Section 5-7-200](#)), a mayor or councilman shall forfeit his office if he (1) during his term of office lacks any qualification for the office, (2) violates any provision of chapters 1 to 17, or (3) is convicted of a crime involving moral turpitude. This statute uses the phrase ‘shall forfeit his office’ and the review provisions provided for in Section 5-7-210 do not, in my opinion, vest in the council the authority to remove the disqualification for office imposed by [Section 5-7-200](#) but, instead, only grant to the council the power to make an adjudication of the facts upon which the mandatory forfeiture imposed by [Section 5-7-200](#) may be imposed. If the fact of conviction is in dispute, the council, under the provisions of Section 5-7-210, would have jurisdiction to inquire into the establishment of this factual matter; but if it is found as a fact that a conviction has occurred and the crime involves moral turpitude, council would be powerless to relieve the councilman of the penalty of forfeiture.

In my opinion, the plea of guilty is for a crime involving moral turpitude and unless a factual determination is made by the city council that the conviction has not been had, the effect of the plea of guilty, being tantamount to conviction, is to bring about a vacancy in the councilman's office. This should be filled in the manner provided by law.

Under the provisions of [Article VI, Section 8, of the Constitution of South Carolina](#), I think that the Governor could remove any officer of the State or its political subdivisions upon indictment upon a charge of violation of [Section](#)

[7206\(1\), Internal Revenue Code](#), but this is discretionary with the Governor in accordance with the express terms of the constitutional provision.

Cordially yours,

Daniel R. McLeod
Attorney General

Violation of [Section 7206\(1\), Internal Revenue Code](#), relating to income tax violations, involves moral turpitude and works a forfeiture of the office of any mayor or councilman convicted pursuant to [Section 5-7-200](#). On appeal to county council, its inquiry is limited to the establishment of factual matters. The council may not relieve a convicted member of forfeiture of office if the fact of conviction is found.

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