

1978 WL 35247 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

November 28, 1978

*1 The Honorable Jean Hoefer Toal
Representative
District No. 75
State House
Columbia, South Carolina 29201

Dear Representative Toal:

You have inquired as to the possible consequences in the event a member of the House of Representatives refuses to be sworn in at the time of the constitutionally required reorganization meeting. [S.C. CONSTITUTION, Article III, Section 9. Article III, Section 10, of the S. C. CONSTITUTION](#) states that: '[t]he terms of office of the Senators and Representatives chosen at a general election shall begin on the Monday following such election.' [Article III, Section 25](#), states in part that:

... if any person chosen a member of either house shall refuse to qualify and take his seat ... a writ of election shall be issued by the ... Speaker of the House of Representatives ... for the purpose of filling the vacancy thereby occasioned for the remainder of the term for which the person so refusing to qualify ...

[Article III, Section 26](#), prescribes the oath each member must take before taking office.

The provisions of the Constitution are mandatory and prohibitory unless the context indicates otherwise. Article I, Section 23. While a different conclusion exists in this State with respect to an officer's failure to take an oath required by statute, it is the opinion of this Office that a constitutionally imposed oath must be considered as mandatory.

Pursuant to the above constitutional provisions, as the term of office has begun, a person refusing to take the oath and be sworn into office is disqualified under the provisions of [Article III, Section 25](#). Any determination of disqualification of a House Member who may refuse to be sworn into office rests solely with the House which must determine the qualifications of its own members. [S. C. CONSTITUTION, Article III, Section 11](#).

Very truly yours,

Daniel R. McLeod
Attorney General

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