

1978 S.C. Op. Atty. Gen. 239 (S.C.A.G.), 1978 S.C. Op. Atty. Gen. No. 78-208, 1978 WL 22676

Office of the Attorney General

State of South Carolina

Opinion No. 78-208

December 15, 1978

***1** The Governor has the authority to suspend an officer for an offense involving moral turpitude and also the authority to appoint an officer to serve in the place of the suspended official pending his trial. [Article VI, Section 8, Constitution of South Carolina](#); [Section 8-1-100, Code of Laws, 1976](#).

The Honorable James B. Edwards
Governor
Columbia, South Carolina

Dear Governor Edwards:

You have inquired as to whether you may appoint an individual to serve in the stead of a county councilman who has been suspended by you pursuant to your constitutional authority.

[Article VI, Section 8, of the Constitution of South Carolina](#), vests in you the authority to suspend an officer of the State or of a political subdivision thereof who has been indicted for a crime involving moral turpitude but makes no mention of the authority to appoint a person to serve in the stead of the suspended official. Specific authority to make such appointment is made in the first paragraph of the constitutional section where embezzlement of public or trust funds is involved. But the second paragraph of the Section, which affords the authority under which you have acted, does not provide for filling the office during the period of suspension.

A general statute which existed prior to the amendment of the Constitution vests in the Governor the authority to suspend a State or county officer who is indicted for any crime and further vests the Governor with the authority to appoint another in the stead of the suspended officer until he shall be acquitted. In case of acquittal, the officer is restored to the office from which he was suspended; whereas, in case of conviction, the office shall be declared vacant by the Governor and the vacancy filled as provided by law. The statute reads:

‘Any State or county officer who is indicted in any court for any crime may, in the discretion of the Governor, be suspended by the Governor, who in event of suspension shall appoint another in his stead until he shall be acquitted. In case of conviction the office shall be declared vacant by the Governor and the vacancy filled as provided by law.’

It is my opinion that this statute is not affected by incorporation of the new constitutional provision but that it must be read in the light of that new provision so that only those crimes involving moral turpitude may be used as a basis of authority for suspending an officer of the State or one of its political subdivisions. This is nothing more nor less than construing a statute in a constitutional rather than in a unconstitutional manner.

There is no provision, other than Section 8–1–100, which relates to the filling of the vacuum created by the suspension of an officer. [Section 4–9–90 of the Code of Laws, 1976](#), provides for filling of vacancies by election but in the present case no vacancy has occurred and will not occur unless there is conviction of the suspended officer upon trial. At that time, the provisions of [Section 4–9–90](#) will become effective to fill the vacancy.

***2** It is my opinion that you have the authority as Governor of this State to fill the vacancy upon suspension made in accordance with the powers conferred on you by [Section 8–1–100, Code of Laws, 1976](#).

Very truly yours,

Daniel R. McLeod
Attorney General

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