

1974 WL 27649 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 26, 1974

\*1 Honorable A. J. Dooley  
State Senator  
The State House  
Columbia, South Carolina

Dear Senator Dooley:

You have inquired as to what procedure is to be followed in order to fill the vacancy created by the removal from office of former Councilman O. M. Shealy. Mr. Shealy was suspended from office by the Governor consequent upon his indictment for an offense. Upon trial of the offense, Mr. Shealy entered a plea of guilty to at least one count of the indictment. The controlling statute reads as follows:

‘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.’

In my opinion, the office should now be declared vacant by the Governor and the vacancy filled as provided by law. No discretion is vested in the Governor in this respect, except to make a determination that the facts exist which lead to an automatic declaration of vacancy. [Blalock v. Johnston](#), 180 S.C. 40, 185 S.E. 51.

Upon such declaration of a vacancy, the County Council should then order an election to fill the vacancy.

The method of filling vacancies and for ordering elections to fill vacancies in the County Council of Lexington County is provided for by Act Nos. 1067 (72 Acts 2223) and 1175 (72 Acts 2349), the latter of which provides:

‘Vacancies of less than two years occurring by reason of death, resignation, disability or removal shall be filled for the unexpired term by appointment by the Governor upon recommendation of a majority of the county legislative delegation. Unexpired terms of two years or more shall be filled by special elections, or in the general election when the vacancies occur at least forty-five days prior to a general election in an even numbered year.’

The last sentence quoted above is applicable here. The unexpired term of former Councilman Shealy exceeds two years and occurred forty-five days prior to a general election in an even numbered year.

If the County Council does not order such an election, the Governor is empowered, when such facts appear to the satisfaction of the Governor, to order an election to be held, at such time and place or places, and upon such notice being given as to him may seem adequate to insure the will of the electorate being fairly expressed. The Governor is further empowered to designate the existing election officials or such other persons as he may appoint to perform the necessary official duties pertaining to such an election and to declare the result thereof. Section 23-400.97, Code of Laws, 1962.

It is my suggestion that the Governor forthwith declare that a vacancy exist on the Lexington County Council, vice O. M. Shealy. The County Council should then order the election and, upon its failure to do so, the Governor is empowered to order such election under the terms of the statute last cited above.

Very truly yours,

**\*2** Daniel R. McLeod  
Attorney General

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