

1974 WL 27679 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 25, 1974

*1 The Honorable John I. Rogers, III
Member
House of Representatives
Marlboro County
Box 47
Bennettsville, South Carolina 29512

Dear Mr. Rogers:

You have inquired as to whether a vacancy existing in the office of member of the Marlboro County Council may be filled subsequent to the recent death of a member of the Council until an election can be held at the next general election.

The controlling statute appears to be Act No. 1021, Section 5, of 1972 (72 Acts 2166):

‘Vacancies shall be filled for the remainder of the unexpired portion of the term by appointment of the Governor, upon recommendation of a majority of the resident members of the Marlboro County Legislative Delegation, except that if the unexpired portion of the term is more than two years, the vacancy shall be filled in the next general election.’

It is my opinion that the Legislature, in enacting the organic act, did not intend that the County Council function for an appreciable length of time without the full membership of five members. In this connection, see [McMahan v. Jones, 94 S.C. 362](#), which states, in part:

‘—[T]he Legislature has expressed the intention that the State should have the benefit of the judgment and discretion, individually and collectively, of a commission of five members—.’

In this light, it is my view that a vacancy with an unexpired term of more than two years duration may be filled by the Governor until the next general election, at which time a successor to the deceased member would be elected to complete the unexpired term of his predecessor. This construction of the above section appears to be consonant with the appointive powers of the Governor under the general law. Sections 1-122, 14-302, Code of Laws, 1962. Moreover, it provides a means of insuring that the County Council functions with a full membership of five members as contemplated by the Act creating it.

With best wishes,
Very truly yours,

Daniel R. McLeod
Attorney General

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