

1973 S.C. Op. Att'y. Gen. 70 (S.C.A.G.), 1973 S.C. Op. Att'y. Gen. No. 3483, 1973 WL 20947

Office of the Attorney General

State of South Carolina

Opinion No. 3483

March 2, 1973

\*1 Honorable Larry H. McCallan  
Chairman  
Greenville County Council  
County Courthouse, Room 107  
Greenville, South Carolina 29601

Dear Mr. McCalla:

Thank you for your letter of February 21, 1973, requesting the opinion of this Office as to whether an election may be held to fill a vacancy created by the removal of an officer by the Governor pursuant to the provisions of Section 50–10, Code of Laws, 1962, in circumstances where the defendant has appealed such conviction, which appeal is now pending before the courts.

I have talked with the County Attorney for Greenville County, Honorable E. P. Riley, who has discussed the matter also with your Council and who has assented to the rendition of an opinion by this Office.

The Councilman involved was convicted of an offense and was removed by the Governor following such conviction in accordance with the provisions of the statute which provides, in part:

‘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 the Governor was required under the terms of the statute to undertake the procedure of removal in this case, and that the removal is not stayed pending final disposition of the case upon appeal. The nearest case in point in this State appears to be [Jin Parker v. State Highway Department](#), 224 S.C. 263, 78 S.E.2d 382, which concerned the suspension of a convicted person's driver's license pending the process of an appeal. Cases in other jurisdictions, some more precisely in point, relate to the same problem and support the views herein expressed. A majority of the cases, where there were provisions declaring, in substance, that a public office shall become vacant upon an incumbent's conviction of a felony or certain other crimes, have held that, notwithstanding an appeal, there was a conviction within the meaning of the provisions, and that such conviction caused an immediate vacancy, despite the appeal.

I therefore advise that it is appropriate that the election to fill the vacancy created by the Governor's Order of Removal be held forthwith. Section 14–2071 of the Code of Laws, 1962, makes provision for filling vacancies which occur in county council, and provides:

‘—the vacancy shall be filled for the remainder of the unexpired term by special election. Provided, that where such unexpired term is for a period of less than one year, the vacancy shall not be filled until the next general election.’

Pursuant to this provision, an election should be held to fill the vacancy for the remainder of the term or/until the next general election, whichever is appropriate under the circumstances existing with respect to this specific term of office. I have no information as to the length of the removed officer's remaining term.

I express no opinion as to what effect an acquittal of the officer during the portion of his term remaining may have upon the situation as it may exist at that time, in that a decision should be reached upon that issue at that time should such eventuality

occur. From a cursory inspection of the authorities, it appears, however, that subsequent acquittal does not have the effect of restoration to office of one who has been removed therefrom, especially where there is no provision for restoration to office. None exists in the South Carolina statute under which this officer was removed.

\*2 You additionally inquire as to whether the election may be held simultaneously with a city election.

It appears to me that it is a feasible and proper approach to holding the county and city elections jointly. The qualifications of the electors are identical, in the light of [Dunn v. Blumstein](#), 405 U.S. 330, 31 L.E.2d 274, 26 S. Ct. —, recently decided by the United States Supreme Court, the effect of which was to, in the opinion of this Office, invalidate residential requirements except thirty-day residential requirements. The county may designate the same official to conduct its election within the city as those who have been designated to hold the city election therein, and I see no legal objection to this. Lists of qualified electors will be furnished to the election managers consisting of those persons who are registered to vote in the various precincts, and the city will have such lists for those precincts lying within the city which will be the same for conducting a city election, whether or not a county election is or is not held on the same date. Managers for those precincts outside the county will be named by the appropriate officials and appropriate lists of qualified electors will be furnished them.

I do not attach any legal significance to the position that the city voters are more likely to turn out in large numbers because a city election is involved, and that an unusually heavy city vote may ensue thereby. Each election is a general election and there appears to me to be no valid reason why the process may not be more simple and expeditious, with a resulting dollar saving, as well as less inconvenience to the city waters.

Very truly yours,

Daniel R. McLeod  
Attorney General

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