

1973 S.C. Op. Atty. Gen. 170 (S.C.A.G.), 1973 S.C. Op. Atty. Gen. No. 3538, 1973 WL 20997

Office of the Attorney General

State of South Carolina

Opinion No. 3538

June 6, 1973

\*1 The Honorable John C. West  
Governor  
Columbia, South Carolina

Dear Governor West:

You have requested the opinion of this Office as to whether the mayor of a municipality may be suspended from office by you following the indictment of such officer for the offense of embezzlement. I am not advised as to the nature of the funds which were the subject of the charge of embezzlement and I therefore do not know whether public or trust funds are involved.

Under the provisions of Article 6 of the Constitution, which was ratified on the 13th day of March, 1973, the duty is imposed upon you to suspend from office any officer 'of the State or its political subdivisions' upon indictment of such an officer 'who has the custody of public or trust funds.' The constitutional provision uses the phrase 'shall suspend such officer' and, in my opinion, this is a self-executing provision of the Constitution, and you may act thereunder at the present time.

The same constitutional provision reposes in you the discretionary authority to suspend any officer of the State or its political subdivisions, except members and officers of the Legislative and Judicial Branches, who has been indicted by a grand jury involving moral turpitude. The offense of embezzlement is undoubtedly an offense involving moral turpitude.

In my opinion, the mayor of a municipality is not a legislative or judicial officer. The provisions of the Constitution relating to the separation of powers has been held by the Supreme Court of this State as not being applicable to municipal corporations. [Gaud v. Walker](#), 214 S.C. 451, 53 S.E.2d 316.

The comments on the section of the Constitution which are herein referred to recite that its purpose was as follows: 'Recognizing the separation of powers, legislative and court officials are exempt, thus allowing each branch of government the right to discipline its own employees.' Report, West Committee, p. 117, Sec. H.

While the exact position of the mayor of a municipality cannot be stated as falling precisely within any separate branch of government, it is my opinion that the position of mayor most probably falls within the classification of a member of the Executive Branch.

It is my opinion that you have the mandatory duty of suspending the mayor of a municipality upon the finding of an indictment charging embezzlement or appropriation of public or trust funds to private use and that you have the discretionary authority to suspend such a mayor upon his indictment upon a charge of embezzlement, irrespective of what types of funds may be involved. You have this power at present under the self-executing provisions of Article 6, Section 7, of the constitutional amendment ratified March 13, 1973.

In case of acquittal, the order of suspension will terminate; in case of conviction, the office shall be declared vacant and the vacancy filled as may be provided by law.

Very truly yours,

\*2 Daniel R. McLeod  
Attorney General

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