

1973 S.C. Op. Atty. Gen. 365 (S.C.A.G.), 1973 S.C. Op. Atty. Gen. No. 3675, 1973 WL 21126

Office of the Attorney General

State of South Carolina

Opinion No. 3675

December 19, 1973

***1** The Honorable John C. West

Governor

Columbia, South Carolina

Dear Governor West:

You have inquired as to whether you may suspend a member of the Charleston County Council should he be indicted upon the charge for which he is presently under arrest and, if so, whether you may appoint an interim successor to his position without regard to residency requirements contained in the organic act creating the Charleston County Council.

It is my opinion that you have authority to suspend such an officer who may be indicted for a crime involving moral turpitude and that you may appoint a successor in his place, subject to the residency requirements imposed by the law. The basis for this conclusion is set forth below.

Section 8 of Article VI of the Constitution, ratified March 13, 1973, and relating to 'officers' provides, in part, as follows:

'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 for a crime involving moral turpitude—may be suspended by the Governor until he shall have been acquitted. In case of conviction, the office shall be declared vacant and the vacancy filled as may be provided by law.'

A preceding portion of Section 8 relates specifically to suspension of officers charged with the embezzlement or appropriation of public or trust funds to private use, and differs from the former corresponding section of the State Constitution in that it extends your power of suspension to cover officers of local political subdivisions and permits you to initiate action looking to indictment upon a showing before you of probable cause. The Report of the West Committee on the Study of the Constitution of 1895 reveals its recommendation that similar suspension action should be permitted for offenses involving grand jury indictment and that the special treatment of embezzlement cases was designed to permit the Governor a greater degree of discretion in such instances. The separation of powers doctrine referred to in the constitutional provision is not, in my opinion, applicable here, in that this principle is not applicable to lesser political subdivisions. [Gaud v. Walker](#), 214 S.C. 451, 53 S.E.2d 316.

The crime for which the councilman has been arrested arises under Title 18, Section 1951A, and is essentially a charge of extortion, which is a crime involving moral turpitude.

Section 50–10 authorizes you, in your discretion as Governor, to suspend any State or county officer who is indicted in any court for any crime and, in my opinion, this section is now applicable, except that the crime for which such suspension may be made must, perforce the new constitutional provision, involve moral turpitude. I do not feel that the power to suspend for any crime formerly vested in the Governor by virtue of Section 50–10 continues in the light of the new constitutional provision, which now requires that moral turpitude be involved in the crime for which the officer is indicted and the existing statute must be so construed.

***2** Section 50–10 also authorizes you, in the event of suspension, to appoint another in the stead of the indicted officer until he shall have been acquitted and, in my opinion, this authority continues to be vested in you as Governor. The constitutional

provision does not provide for appointment of a successor during the period of suspension, but there is no prohibition against the General Assembly providing for such appointment, and the existing power continues.

The organic act providing for the Charleston County Council requires that its members be elected from designated residential areas by the electors of the County at large. It is my opinion that the councilman to replace one who has been suspended by you must be a resident of the area represented by the suspended officer. This conclusion is necessitated by consideration of the requirements of the statute itself, as well as by the dictates of the one-man, one-vote principle.

I therefore advise that, in my opinion, you have the authority to suspend a Charleston County councilman upon indictment for an offense involving moral turpitude. This will exist should indictment follow upon the arrest which has been made and upon a charge of the same offense; that you have authority to name an interim replacement; and such replacement is subject to the residency requirements imposed by the Act relating to the Charleston County Council.

Very truly yours,

Daniel R. McLeod
Attorney General

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