



HENRY McMASTER
ATTORNEY GENERAL

May 3, 2010

The Honorable Grady A. Brown
Member, House of Representatives
304B Blatt Building
Columbia, South Carolina 29201

Dear Representative Brown:

In a telephone call you indicated that the Lee County sheriff has resigned following his indictment to federal drug charges. You have questioned the procedure to replace the sheriff following such resignation. You further indicated that the sheriff has approximately two years and eight months left in his term so the next election for sheriff would not be until November, 2012.

S.C. Code Ann. § 23-11-40 states as follows:

(A) If any vacancy occurs in the office of sheriff in any county of this State less than one year prior to the next general election for county sheriffs, the Governor may appoint some suitable person who must be an elector of the county and who, upon qualifying, according to law, is entitled to enter upon and hold the office until a sheriff is elected and qualifies in the election and is subject to all the duties and liabilities incident to the officer during the term of his service in the office.

(B) If any vacancy occurs in the office more than one year prior to the next general election for county sheriffs, the Governor shall appoint some suitable person as provided in subsection (A) until a special election is held to elect a sheriff to hold the office until a sheriff is elected and qualifies in the next general election for county sheriffs.

(C) If any vacancy occurs in the office at any time and is created by suspension by the Governor upon any sheriff's indictment, the Governor shall appoint some suitable person, as provided for in subsection (A), to hold the office until the suspended sheriff is acquitted, or the indictment is otherwise disposed of, or until a sheriff is elected and qualifies in the next general election for county sheriffs, whichever event occurs first.

(D) The chief deputy or second-in-command of the sheriff's office shall act as sheriff until the vacancy is filled, except in the case when a vacancy occurs as a result of an indictment, where the vacancy will be filled as provided in Section 23-11-50. While acting as sheriff, the chief deputy or second-in-command is subject to the duties and liabilities incident to the office of sheriff.

(emphasis added).

Inasmuch as you indicated that the sheriff has resigned following his indictment and there is more than one year prior to the next sheriff's election, subsections (B) and (D) of Section 23-11-40 control. Pursuant to subsection (D), the chief deputy or second-in-command acts until the vacancy is filled. Pursuant to subsection (B), since the vacancy occurs "more than one year prior to the next general election for county sheriffs", the Governor would appoint a "suitable person" until a special election is held. You should contact the State Elections Commission as to the setting of the special election.

We emphasize here that our conclusion is premised upon a resignation by the sheriff. Such resignation thus distinguishes Section 23-11-50 which authorizes the coroner to serve pending trial following indictment of the sheriff. In this instance, the sheriff has resigned, thereby creating a vacancy to be filled by the mechanism of Section 23-11-40, rather than the procedure set forth in Section 23-11-50.

If there is anything further, please advise.

Very truly yours,

Henry McMaster
Attorney General



By: Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General