

1983 WL 181898 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 27, 1983

*1 The Honorable Richard W. Riley
Governor
P. O. Box 11450
Columbia, SC 29211

Dear Governor Riley:

You have asked me to advise you as to whether return of a true bill for the enclosed indictment alleging certain offenses against the Mayor of Lynchburg requires you to suspend the Mayor pursuant to [Article VI, Section 8 of the South Carolina Constitution](#). I would advise that it does.

The indictment you have submitted to me for review alleges four counts, two of which involve embezzlement of public funds. Another count alleges compounding a misdemeanor and the fourth alleges threatening a public official.

[Article VI, Section 8 of the Constitution](#) provides as follows:

Whenever, it appears to the satisfaction of the Governor that probable cause exists to charge any officer of the State or its political subdivisions who has the custody of public or trust funds with embezzlement of the appropriation of public or trust funds to private use, then the Governor shall direct his immediate prosecution by the proper officer, and upon indictment by a grand jury or upon the waiver of such indictment if permitted by law, the Governor shall suspend such officer and appoint one in his stead until he shall have been acquitted. In case of conviction, the position shall be declared vacant and the vacancy filled as may be provided by law. Any officer of the State or its political subdivision, except members and officers of the Legislative and Judicial Branches, who have been indicted by a grand jury for a crime involving moral turpitude . . . may be suspended by the Governor until he shall have been acquitted. (Emphasis added).

In a previous opinion of this office, enclosed herein, it was stated, with respect to the suspension of a mayor:

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.

1973 *Op. Atty. Gen.*, No. 3538 at 170. In a subsequent opinion, this conclusion was reaffirmed.

. . . The offense charged [in the indictment] alleges the embezzlement of public funds to private use. Pursuant to [Article VI, Section 8, of the Constitution of this State](#), the Governor in such event, has the mandatory duty imposed on him of suspending . . . [the officer] from office and appointing one in his stead until he shall have been acquitted; in case of conviction, the position shall be declared vacant and the vacancy filled as may be provided by law.

Op. Atty. Gen. (letter to Dorothy A Manigault, dated July 23, 1981).

The latter Opinion also noted that [Art. VI, Section 8](#) gives the Governor 'the additional authority . . . to suspend, in his discretion any officer of the State, except members and officers of the legislative and judicial branches, who has been indicted for a crime

of moral turpitude.’ This Opinion, as well as the other referenced above, concluded that embezzlement indeed was a crime involving moral turpitude. 1973 Op., supra at 171. This conclusion is well supported. 58 C.J.S., Moral at p. 1206. However, the Governor's discretionary authority pursuant to the portion of [Article VI, Section 8](#) involving moral turpitude would not even come into play if, as is the case here, [Article VI, Section 8](#)'s mandatory provisions relating to suspension upon indictment for embezzlement are applicable. Op., July 23, 1981, supra.

*2 Thus, I would advise that, based upon these two previous opinions and, because certain of the offenses alleged in the enclosed indictment involve embezzlement, the Governor has the mandatory duty to suspend the Mayor. ‘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. 1973 Op., supra at 171.

With kindest regards, I am

Sincerely yours,

T. Travis Medlock

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