1979 WL 43260 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
October 16, 1979

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

Dear Governor Riley:
You have requested an opinion of this Office as to whether or not the offices of the County Council members in Chester County are vacant; and, if so, if you, as Governor, have the right and duty to declare the offices vacant and appoint new members to the County Council.

Several provisions of law authorize the Governor to suspend indicted officers and to fill vacancies. South Carolina Constitution, Article VI, § 8; South Carolina Code of Laws, 1976, Sections 8-1-100, 1-3-220, and 4-11-20. These provisions are inapplicable to the situation in Chester County as none of the members have been indicted, nor is there a vacancy in Chester County which falls within the statutory authorization of the Governor to appoint. South Carolina Code of Laws, 1976, § 4-11-20 allows the Governor to appoint persons to fill vacancies in any county office. However, § 4-9-90, which is part of the Home Rule Act, was enacted subsequent to § 4-11-20. Section 4-9-90 expressly provides for an election to be held to replace a vacancy on the governing body of the county. Therefore, if there was a vacancy in Chester County, it would have to be filled pursuant to the provisions of § 4-9-90 and not by appointment.

South Carolina Code of Laws, 1976, § 7-13-1170 authorizes the Governor to call an election
whenever any election official or officials of any political subdivision of this State charged with ordering, providing for or holding an election has or have neglected, failed or refused to order, provide for or hold such election at the time appointed therefor ... or in the event such election shall ... for any reason be declared void by competent authority, and any of these facts shall be made to appear to the satisfaction of the Governor, he shall, should the law not otherwise provide for such a contingency, order an election ... to be held ...

Immediately prior to the primary election in 1978, Chester County was sued in the Federal courts by both the United States of America and individual plaintiffs to enjoin the primary elections. United States of America v. The County Council of Chester County, South Carolina, C.A. No. 78-881 and King v. Roddey, C.A. No. 78-839. These suits were brought because the Justice Department objected to the at large method of election utilized in Chester County. A three-judge court on June 6, 1978, granted an injunction against Chester County, preventing the County from holding any election for the offices of County Council and the County Board of Education until the Acts received approval from the Justice Department. (A copy of the Order and Dissenting Opinion of Judge Blatt is attached.)

In 1979 the General Assembly enacted legislation for Chester County that apportioned the County into single member districts. (Act bearing ratification number R248.) This Act was approved by the Justice Department. A second Act was enacted to extend the time for holding the election to November of 1980. (Act bearing ratification number R293.) This Act was disapproved. It is my understanding that Chester County now intends to hold an election as soon as feasible.

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***2** Due to court order, the County has been unable to hold an election until they received approval from the Justice Department. This approval was dated August 21, 1979. As the legislation authorizing the date of the election in November of 1980 has been disapproved, the County is apparently now proceeding to implement the procedures to call for an election. Therefore, there has been no refusal or failure to hold an election that would authorize the Governor to call an election pursuant to § 7-13-1170. Those persons presently holding office are validly holding over in their offices and should continue to hold over until their successors are elected at the special election.

Very truly yours,

Treva G. Ashworth
Senior Assistant Attorney General

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