

1975 S.C. Op. Atty. Gen. 260 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 4218, 1975 WL 22515

Office of the Attorney General

State of South Carolina

Opinion No. 4218

December 18, 1975

\*1 The Honorable James B. Edwards

Office of the Governor

Columbia, SC 29211

Dear Governor Edwards:

By letter dated December 4, 1975, Mr. Lionel S. Lofton requested this Office to advise you as to what action, if any, you could take in regard to the continued service on the Greenville Memorial Auditorium District Board by a member of the Board who has been indicted by a federal grand jury on certain criminal charges.

Article VI, § 8 of the Constitution of South Carolina 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 or who has waived such indictment if permitted by law 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.’

The Greenville Auditorium and Community Center Board was first created by Act No. 1210 in 1940. The duties and responsibilities of the Board members as officers of a special purpose district were set forth in that Act. By Act No. 333 in 1945 the name of the Board was changed to the Greenville Memorial Auditorium District Board.

From the information Mr. Lofton provided this Office, it appears that the Board member was indicted by the federal grand jury on eight counts of submitting false statements to the United States Department of Agriculture in order to receive reimbursement for a breakfast and lunch program operated at a day care center in an amount exceeding that to which the center was entitled. Thus, the Board member, an officer of a special purpose district which is a political subdivision of the State, may be suspended from office pending acquittal or conviction on the alleged offenses for which he has been indicted provided these offenses can be classified as crimes of moral turpitude.

The difficulty, of course, in applying Article VI, § 8 to any situation lies in the determination of what constitutes a crime involving moral turpitude. In [Smith v. Smith](#), 194 S.C. 247, 9 S.E.2d 584 (1940), the Court quoted from a North Carolina case the following definition of moral turpitude:

‘[A]n Act of baseness, vileness, or depravity in the private and social duties that a man owes to his fellow man or to society in general, contrary to the accepted and customary rule of right and duty between man and man.’

The utility of such a generalized definition is more apparent than real.

However, in determination of whether crimes which involve fraud are crimes of moral turpitude *per se*, the Courts have consistently and without exception held them to be crimes of moral turpitude. See [Jordan v. DeGeorge](#), 341 U.S. 223, 95 L.Ed. 886 (1951); [U.S. ex rel Volpe v. Smith](#), 289 U.S. 422, 77 L.Ed. 1298 (1933); Annot. 95 L.Ed. 899. Inasmuch as the indictment alleges the Board member fraudulently reported expenditures to the Department of Agriculture, the alleged

crime is indeed one involving moral turpitude. Therefore, under authority of Article VI, § 8 the Governor may, in his discretion, suspend the Board member pending the outcome of his trial.

\*2 Since Article VI, § 8 provides adequate authority for appropriate action by the Governor, no consideration need be made of § 50-10 of the CODE OF LAWS OF SOUTH CAROLINA which allows the Governor to suspend any State or county officer who is indicted in any court for any crime as action under this Section would require resolution of the question of whether an officer of a special purpose district is a State or county officer.

Sincerely,

W. Joseph Isaacs  
Staff Attorney

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