



State of South Carolina Office of the Governor

NIKKI R. HALEY
GOVERNOR

1205 PENDLETON STREET
COLUMBIA 29201

March 8, 2016

The Honorable Alan Wilson
P.O. Box 11549
Columbia, South Carolina 29211

Dear Attorney General Wilson,

This letter is written to ask for your opinion regarding the Governor's authority in two separate situations - 1) whether the Governor has the authority to declare a public office vacant or suspend a public official for three counts of failure to file a tax return and felony driving under the influence with bodily injury, and 2) whether the Governor has the authority to suspend a public official for a pattern of driving under the influence charges.

Situation One

On Tuesday, March 1, 2016, our office received a sentencing sheet (attached) indicating that Richland County Councilman Kelvin E. Washington waived indictment and pled guilty to three counts of failure to file a tax return in violation of Section 12-54-44(B)(3). It has also come to our attention that he has recently been charged with felony driving under the influence with bodily injury.

As you are aware, pursuant to Article VI, Section 8 of the South Carolina Constitution, the Governor may suspend an officer of a political subdivision who has been indicted by a grand jury for a crime involving moral turpitude or who has waived such indictment. Further, in the case of conviction, the office shall be declared vacant and the vacancy filled as may be provided by law.

Specifically, we are asking whether three counts of failure to file a tax return is a crime of moral turpitude. It is our understanding that if three counts of failure to file a tax return are found to be a crime of moral turpitude and because Mr. Washington has already pled guilty, the Governor would have the mandatory duty to declare Mr. Washington's county council seat vacant to allow for a special election to fill his seat.

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Further, we are asking whether felony driving under the influence with bodily injury is a crime of moral turpitude. We acknowledge that if it is determined that felony driving under the influence with bodily injury is a crime of moral turpitude, the Governor would not have the authority to suspend Mr. Washington for this charge until an indictment is issued or until Mr. Washington waives indictment.

Situation Two

It has come to our attention that Lexington County Solicitor Donnic Myers was recently arrested and charged with driving under the influence and was reportedly charged previously for the same offense in 2005.

As previously stated, pursuant to Article VI, Section 8 of the South Carolina Constitution, the Governor may suspend an officer of a political subdivision who has been indicted by a grand jury for a crime involving moral turpitude or who has waived such indictment.

Specifically, we are asking whether driving under the influence in either one or two instances is a crime involving moral turpitude. We acknowledge that if it is determined that driving under the influence is a crime of moral turpitude, the Governor would not have the authority to suspend Mr. Myers for this charge until an indictment is issued or until Mr. Myers waives indictment.

Thank you for your assistance with this request. Please let me know if you have questions.

Sincerely,



Holly G. Risarik
Chief Legal Counsel

Enclosure(s)