

1990 S.C. Op. Atty. Gen. 130 (S.C.A.G.), 1990 S.C. Op. Atty. Gen. No. 90-41, 1990 WL 482428

Office of the Attorney General

State of South Carolina

Opinion No. 90-41

June 5, 1990

*1 The Honorable James M. Waddell, Jr.

Senator

District No. 46

Post Office Box 1026

Beaufort, South Carolina 29901

Dear Senator Waddell:

Attorney General Medlock has referred your recent letter to me for reply. You have stated that a member of the Beaufort County Council is planning to resign and that less than one hundred and eighty days will elapse between the date of resignation and the date of the general election. You have inquired if, following the Governor appointing a person to fill the vacancy, a special election must still be held to fill the term from the November general election to the January date of taking office, i.e., does the Governor's appointment only hold office until the November general election or does he continue to hold office until January 2 when his successors takes the office.

South Carolina Code of Laws, 1976, as amended, Section 4-9-90 provides in part that

[v]acancies . . . shall be filled in the manner of original election for the unexpired terms in the next general election after the vacancy occurs or by special election if the vacancy occurs one hundred eighty days or more prior to the next general election.

This Office has stated in the past that if a special election will not be held, as there is less than one hundred and eighty days to the next election, the Governor can make an appointment. See June 9, 1988 Opinion to The Honorable Carroll A. Campbell, Jr. from Patricia D. Petway, copy enclosed. The person so appointed would serve out the term of the person he replaced which would be January 2 when the person elected to the position in the general election takes office.

The Governor receives his power to appoint in these situations from South Carolina Code of Laws, 1976, Section 1-3-220 and 4-11-20. These sections also state that the vacancy is filled by the Governor until the next general election but in practice this has resulted in persons appointed holding the office for the term of office of the person they replaced. The person who resigned would have held the office until January 2; therefore, the person filling the vacancy holds until January 2 when the newly elected office holder takes office. Cf May 2, 1979 Opinion to the Honorable Earle E. Morris, Jr. from James Holly, copy enclosed.

Sincerely yours,

Treva G. Ashworth

Senior Assistant Attorney General

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