

From: Schimsa, Rebecca <RebeccaSchimsa@gov.sc.gov>

To: Patel, Swati <SwatiPatel@gov.sc.gov>

Pisarik, Holly <HollyPisarik@gov.sc.gov>

Date: 2/12/2016 5:43:34 PM

Subject: RE: Kelvin Washington

Attachments: The Honorable Richard W Riley.rtf

L Hunter Limbaugh Esquire.rtf

***We need to request a copy of the plea to know exactly to what crime Mr. Washington pled guilty. Without knowing the specifics, it is impossible to determine the Governor's involvement. However, below is some general research based on what we think we know. Attached are the AG Opinions I reference.

Issue: Whether the Governor can declare vacant an office of County Council when the official has pled guilty to failing to file taxes.

First Question: Is "failure to file taxes" a crime of moral turpitude?

Answer: Although a 1998 AG Opinion recognized a division of authority in courts across the country for whether failing to file income tax returns involved moral turpitude, the Opinion held that a conviction of a violation of willfully failing to file appears to involve a crime of moral turpitude. Accordingly, the Governor would be authorized to declare the office vacant pursuant to Article VI, Section 8 of the State Constitution (ref. suspension upon indictment for crime of moral turpitude and if convicted then deemed vacated). However, in this case, Mr. Washington was not convicted – he pled guilty.

Second Question: Can the Governor declare vacant an office when the official was not convicted but, rather, pled guilty?

Answer: A 1980 AG Opinion found that when a public officer has pled guilty of an offense involving moral turpitude, then the last sentence of Article VI, Section is brought into play: *"In case of conviction, the office shall be declared vacant and the vacancy shall be filled as may be provided by law."* Therefore, it is appropriate for the Governor to issue an order declaring the position of the office of County Council vacant and the vacancy to be filled according to law.

Third Question: How will the vacancy in an office of County Council be filled?

Answer: Following the Governor's declaration of vacancy, a vacancy on County Council is filled by election pursuant to Section 4-9-90 of the SC Code of Laws: *"Vacancies on the governing body 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."*

Here, Mr. Washington was elected to the District 10 seat in November 2008 and again in 2012. My understanding is that his current term will expire following the November 2016 election. Therefore, since 180 days from the November 8, 2016 election is May 12, 2016, a special election will be held to fill the remainder of his term.

From: Patel, Swati

Sent: Wednesday, February 10, 2016 8:51 PM

To: Schimsa, Rebecca

Subject: Fwd: Kelvin Washington

Please look into this.

Sent from my iPhone

Begin forwarded message:

From: "Hayden, Herb" <Herb@ethics.sc.gov>
Date: February 10, 2016 at 6:03:57 PM EST
To: "Patel, Swati" <SwatiPatel@gov.sc.gov>
Subject: Re: Kelvin Washington

He pled guilty today.

Sent from my iPhone

On Feb 10, 2016, at 16:16, Patel, Swati <SwatiPatel@gov.sc.gov> wrote:

We have to receive an indictment before we can act to suspend. We haven't gotten that yet.

Sent from my iPhone

On Feb 10, 2016, at 3:03 PM, Hayden, Herb <Herb@ethics.sc.gov> wrote:

Swati, Just curious, but isn't failure to file tax returns, i.e. tax evasion, a crime of moral turpitude allowing the Governor to remove him? Herb