CHAPTER 3

Governor and Lieutenant Governor

ARTICLE 1

General Provisions Affecting Governor

**SECTION 1‑3‑10.** Departments, agencies and the like shall furnish information requested by Governor.

The departments, bureaus, divisions, officers, boards, commissions, institutions and other agencies or undertakings of the State, upon request, shall immediately furnish to the Governor, in such form as he may require, any information desired by him in relation to their respective affairs or activities.

HISTORY: 1962 Code Section 1‑101; 1952 Code Section 1‑101; 1942 Code Section 3216; 1932 Code Section 3216; Civ. C. ‘22 Section 912; 1919 (31) 187.

CROSS REFERENCES

Constitutional provisions in regard to Governor and Lieutenant Governor, see SC Const, Art 4, Sections 1 et seq.

Creation of Office of Criminal Justice Programs within Office of the Governor, see Section 23‑4‑510.

LIBRARY REFERENCES

Westlaw Key Number Search: 360k72.

States 72.

C.J.S. States Section 123.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Constitutional Law Section 24, Powers of the Governor.

S.C. Jur. Public Officers and Public Employees Section 42, Authority to Terminate.

NOTES OF DECISIONS

In general 1

1. In general

Supreme Court could not exonerate state officer, removed for failing to immediately provide requested documents to Governor, by examining the merits of his claim regarding improprieties by other government officials. Rose v. Beasley (S.C. 1997) 327 S.C. 197, 489 S.E.2d 625, rehearing denied. Public Employment 259(1); States 52

State officer was obligated under statute immediately to furnish requested documents to attorney representing Governor, regardless of scope of attorney’s representation, and even if officer merely delayed furnishing the documents, rather than refusing to furnish them, this was ground for removal. Rose v. Beasley (S.C. 1997) 327 S.C. 197, 489 S.E.2d 625, rehearing denied. Public Employment 259(1); States 52

**SECTION 1‑3‑20.** Salary of Governor.

The Governor shall receive such annual salary as may be provided by the General Assembly.

HISTORY: 1962 Code Section 1‑102; 1952 Code Section 1‑102; 1942 Code Section 3090; 1932 Code Section 3090; Civ. C. ‘22 Section 775; Civ. C. ‘12 Section 691; Civ. C. ‘02 Section 621; G. S. 473; R. S. 537; 1865 (13) 350; 1893 (21) 416; 1919 (31) 4; 1924 (33) 1182; 1948 (45) 1716; 1954 (48) 1566; 1960 (51) 1779; 1963 (53) 358 [478]; 1966 (54) 2424; 1969 (56) 444; 1973 (58) 623.

CROSS REFERENCES

Compensation of Governor, see SC Const, Art 4, Section 16.

Specific amounts of compensation, see Section 1‑1‑1210.

LIBRARY REFERENCES

Westlaw Key Number Searches: 360k41; 360k60(1).

States 41, 60(1).

C.J.S. States Sections 88 to 90, 130 to 131.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Governor Section 4, Compensation.

Attorney General’s Opinions

A base pay for the Governor and other constitutional officers may be fixed so as to be adjusted annually consistent with the percentage base increase given to regular State employees for the same year; or such adjustment may be fixed annually consistent with the percentage base increase given to regular State employees for the prior year; or such base pay may be adjusted annually pursuant to a fixed percentage rate, provided such provisions are adopted as permanent law prior to the commencement of the terms of the officers identified. 1982 Op Atty Gen, No 82‑9, p 11.

NOTES OF DECISIONS

In general 1

1. In general

The General Appropriation Act, 1970 Act No. 984 [1970 (56) 2085], suspended the permanent statute fixing the salaries of the constitutional officers until July 1, 1971, but did not repeal the permanent statute either expressly or by implication. State ex rel. McLeod v. Mills (S.C. 1971) 256 S.C. 21, 180 S.E.2d 638.

A permanent continuing statute fixing the compensation of a public officer is a valid appropriation for the salaries provided in such statute. State ex rel. McLeod v. Mills (S.C. 1971) 256 S.C. 21, 180 S.E.2d 638.

**SECTION 1‑3‑30.** Executive chamber, official papers and records.

The Governor shall be furnished with a suitable office, to be called the executive chamber, in which all petitions, memorials, letters and other official papers and documents addressed to or received by him shall be methodically arranged and kept, with proper indexes therefor. He shall keep a record in proper books of:

(1) All his messages to the General Assembly;

(2) All bills presented to him in obedience to the provisions of the Constitution and all objections he may make to any of them;

(3) All official communications, proclamations and orders issuing from his office; and

(4) All other matters which he may think it important to preserve.

HISTORY: 1962 Code Section 1‑103; 1952 Code Section 1‑103; 1942 Code Section 3090; 1932 Code Section 3090; Civ. C. ‘22 Section 775; Civ. C. ‘12 Section 691; Civ. C. ‘02 Section 621; G. S. 473; R. S. 537; 1865 (13) 350; 1893 (21) 416; 1919 (31) 4; 1924 (33) 1182.

CROSS REFERENCES

Constitutional provision for the residence of the governor, see SC Const Art. IV, Section 20.

Department of Administration established, transfer of offices, divisions, other agencies, see Section 1‑11‑10.

LIBRARY REFERENCES

Westlaw Key Number Search: 360k41.

States 41.

C.J.S. States Sections 88 to 90, 130 to 131.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Governor Section 3, Nature of the Office.

**SECTION 1‑3‑40.** Private secretary of Governor.

The Governor shall be allowed a private secretary, to be appointed by him, who shall under the direction of the Governor keep an accurate record under proper dates of all transactions, opinions and other official matters and acts occurring during his period of office. Said record shall, under certain restrictions, be open to the inspection of the members of the General Assembly. He shall also perform such clerical and other duties as may be required of him by the Governor, in connection with the duties of the office of Governor.

HISTORY: 1962 Code Section 1‑104; 1952 Code Section 1‑104; 1942 Code Section 3091; 1932 Code Section 3901; Civ. C. ‘22 Section 776; Civ. C. ‘12 Section 692; Civ. C. ‘02 Section 622; G. S. 474; R. S. 538; 1865 (13) 350; 1868 (14) 11; 1869 (14) 246; 1893 (21) 416.

LIBRARY REFERENCES

Westlaw Key Number Searches: 360k41; 360k73.

States 41, 73.

C.J.S. States Sections 88 to 90, 130 to 136, 140.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Governor Section 3, Nature of the Office.

**SECTION 1‑3‑50.** Personal staff of Governor for ceremonial occasions; military secretary.

Whenever the Governor shall desire the attendance of a personal staff upon any ceremonial occasion he shall detail therefor such officers as he may choose from the active list of the National Guard of South Carolina, resident in or nearest to the place where such ceremonies are to be held, and the officers detailed shall attend in uniform at the time and place designated and shall constitute the personal staff of the Governor for that occasion, reverting upon completion of such duty to their regular assignments. The Governor may appoint as his military secretary any officer of the United States Army detailed for duty with the militia of this State, and such officer shall have the rank of colonel and the title “Military Secretary to the Governor”.

HISTORY: 1962 Code Section 1‑105; 1952 Code Section 1‑105; 1950 (46) 1881.

LIBRARY REFERENCES

Westlaw Key Number Searches: 259k5; 259k7; 360k41.

Militia 5, 7.

States 41.

C.J.S. Armed Services Section 291.

C.J.S. States Sections 88 to 90, 130 to 131.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Governor Section 3, Nature of the Office.

ARTICLE 3

Installation of Governor; Vacancy in Office

**SECTION 1‑3‑110.** Date of installation of Governor.

The Governor shall be installed on the first Wednesday following the second Tuesday in January following his election; but in case the Governor is unable to be installed on the day herein provided, he shall be installed as soon thereafter as is practicable.

HISTORY: 1962 Code Section 1‑111; 1952 Code Section 1‑111; 1942 Code Section 3085; 1932 Code Section 3085; Civ. C. ‘22 Section 770; Civ. C. ‘12 Section 686; 1911 (27) 142; 1979 Act No. 29, Section 1.

CROSS REFERENCES

For term of Governor and date on which it begins, see S C Const. Art IV, Section 4.

LIBRARY REFERENCES

Westlaw Key Number Search: 360k41.

States 41.

C.J.S. States Sections 88 to 90, 130 to 131.

NOTES OF DECISIONS

In general 1

1. In general

South Carolina Const, Art 4, Section 2, specifically authorizes the General Assembly to fix the time for the commencement of the term of office of the Governor and other executive officers elected in the general election, including that of State Treasurer. By this section [Code 1962 Section 1‑111] the General Assembly has fixed the time for the qualification of such elective officers, and the commencement of their respective terms, as the third Tuesday in January, following such general election. This is a reasonable exercise of the power granted to the General Assembly. State ex rel. Thornton v. Wannamaker (S.C. 1966) 248 S.C. 421, 150 S.E.2d 607.

**SECTION 1‑3‑120.** Vacancy in office of both Governor and Lieutenant Governor.

In case of the removal, death, resignation or disability of both the Governor, and the Lieutenant Governor, the President of the Senate pro tempore shall perform the duties and exercise the powers of Governor until such disability shall have been removed or until the next general election, at which a Governor shall be elected by the electors duly qualified, as is prescribed by Section 3 of Article IV of the Constitution.

HISTORY: 1962 Code Section 1‑112; 1952 Code Section 1‑112; 1942 Code Section 3086; 1932 Code Section 3086; Civ. C. ‘22 Section 771; Civ. C. ‘12 Section 687; Civ. C. ‘02 Section 617; G. S. 469; R. S. 533; 1868 (14) 101.

CROSS REFERENCES

Emergency interim successors to office of Governor, see Section 1‑9‑30.

Impeachment of the Governor, see SC Const, Art 15, Section 2.

Succession when governor‑elect dies, declines to serve or fails to take oath, see SC Const, Art 4, Section 6.

Succession when neither governor‑elect nor lieutenant governor‑elect qualifies or is able to serve, see SC Const, Art 4, Section 7.

LIBRARY REFERENCES

Westlaw Key Number Searches: 360k41; 360k42; 360k51.

States 41, 42, 51.

C.J.S. States Sections 61, 87 to 90, 92, 130 to 131.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Governor Section 48, Succession.

**SECTION 1‑3‑125.** Filling vacancy in office of Lieutenant Governor.

Beginning with the Lieutenant Governor elected in the 2018 General Election, in the case of the Lieutenant Governor’s impeachment, death, resignation, disqualification, disability, or removal from the State, the Governor, with the advice and consent of the Senate, shall appoint a successor to fulfill the unexpired term.

HISTORY: 2018 Act No. 142 (H.4977), Section 1, eff March 15, 2018.

CROSS REFERENCES

Joint election of Governor and Lieutenant Governor, qualifications, procedures, see Section 7‑11‑12.

**SECTION 1‑3‑130.** Disability of Governor, Lieutenant Governor and President of Senate pro tempore.

In case of the disability, from whatever cause, of the Governor, the Lieutenant Governor, and the President of the Senate pro tempore, the Speaker of the House of Representatives shall perform the duties and exercise the powers of Governor, in like manner and upon like conditions as are prescribed by Section 1‑3‑120.

HISTORY: 1962 Code Section 1‑113; 1952 Code Section 1‑113; 1942 Code Section 3087; 1932 Code Section 3087; Civ. C. ‘22 Section 772; Civ. C. ‘12 Section 688; Civ. C. ‘02 Section 618; G. S. 470; R. S. 534; 1868 (14) 102.

CROSS REFERENCES

Emergency interim successors to office of Governor, see Section 1‑9‑30.

LIBRARY REFERENCES

Westlaw Key Number Searches: 360k41; 360k42.

States 41, 42.

C.J.S. States Sections 88 to 90, 130 to 131.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Governor Section 48, Succession.

**SECTION 1‑3‑140.** Disability of all of officers enumerated in Sections 1‑3‑120 and 1‑3‑130.

In case of the disability, from whatever cause, of all of the officers enumerated in Sections 1‑3‑120 and 1‑3‑130, the General Assembly, if it shall be in session, by a joint vote shall elect a person duly qualified to fill the office of Governor in like manner, and upon the like conditions, as are prescribed by Section 1‑3‑120.

HISTORY: 1962 Code Section 1‑114; 1952 Code Section 1‑114; 1942 Code Section 3088; 1932 Code Section 3088; Civ. C. ‘22 Section 773; Civ. C. ‘12 Section 689; Civ. C. ‘02 Section 619; G. S. 471; R. S. 535; 1868 (14) 102.

CROSS REFERENCES

Emergency interim successors to office of Governor, see Section 1‑9‑30.

LIBRARY REFERENCES

Westlaw Key Number Search: 360k41.

States 41.

C.J.S. States Sections 88 to 90, 130 to 131.

**SECTION 1‑3‑150.** Term of Governor elected pursuant to Section 1‑3‑140.

Whenever a Governor shall be elected as provided in Section 1‑3‑140, he shall immediately enter upon the discharge of the duties of his office and shall continue to discharge them during the residue of the term.

HISTORY: 1962 Code Section 1‑115; 1952 Code Section 1‑115; 1942 Code Section 3089; 1932 Code Section 3089; Civ. C. ‘22 Section 774; Civ. C. ‘12 Section 690; Civ. C. ‘02 Section 620; G. S. 472; R. S. 536; 1868 (14) 102.

CROSS REFERENCES

Term of Governor, generally, see SC Const, Art 4, Section 4.

LIBRARY REFERENCES

Westlaw Key Number Searches: 360k41; 360k51.

States 41, 51.

C.J.S. States Sections 61, 87 to 90, 92, 130 to 131.

ARTICLE 5

Appointment and Removal of Officers

**SECTION 1‑3‑210.** Filling vacancies when Senate not in session.

During the recess of the Senate, vacancy which occurs in an office filled by an appointment of the Governor with the advice and consent of the Senate may be filled by an interim appointment of the Governor. The Governor must report the interim appointment to the Senate and must forward a formal appointment at its next ensuing regular session.

If the Senate does not advise and consent thereto prior to sine die adjournment of the next ensuing regular session, the office shall be vacant and the interim appointment shall not serve in hold over status notwithstanding any other provision of law to the contrary. A subsequent interim appointment of a different person to a vacancy created by a failure of the Senate to grant confirmation to the original interim appointment shall expire on the second Tuesday in January following the date of such subsequent interim appointment and the office shall be vacant.

HISTORY: 1962 Code Section 1‑121; 1952 Code Section 1‑121; 1942 Code Section 3093; 1932 Code Section 3093; Civ. C. ‘22 Section 778; Civ. C. ‘12 Section 694; Civ. C. ‘02 Section 624; G. S. 476, 477; R. S. 540; 1868 (14) 66; 1870 (14) 376; 1871 (15) 690; 1876 (16); 1877 (16) 249; 1878 (16) 571, 609, 766; 1882 (18) 1111; 1890 (20) 697; 1896 (22) 154; 1901 (23) 701; 1920 (31) 704, 908; 1922 (32) 938; 1945 (44) 156; 1954 (48) 1745; Const. 1895, Art. 12, Section 2; 1963 (53) 512; 1993 Act No. 181, Section 3.

CROSS REFERENCES

Appointment of solicitors to vacancies by and with the consent of the Senate, see Section 1‑7‑390.

Filling of department director vacancy by Governor where vacancy occurs when General Assembly not in session, see Section 1‑30‑10.

Filling of vacancies in county offices, see Section 4‑11‑20.

Filling of vacancies in membership of county governing body, see Section 4‑9‑90.

Filling of vacancies in office of municipal mayor or council, see Section 5‑7‑200.

Further provisions relating to recess appointment of solicitors, see Section 1‑3‑220.

State Board of Medical Examiners, appointment, terms and vacancies, powers and duties, see Section 40‑47‑10.

LIBRARY REFERENCES

Westlaw Key Number Searches: 360k41; 360k51.

States 41, 51.

C.J.S. States Sections 61, 87 to 90, 92, 130 to 131.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Constitutional Law Section 26, Vacancies, Appointments, Removals, and Suspensions.

S.C. Jur. Governor Section 8, When Senate is in Recess.

S.C. Jur. Magistrates and Municipal Judges Section 8, Magistrates.

Attorney General’s Opinions

Discussion as to whether the Governor has the power to appoint someone to replace a magistrate who resigned in April when the Legislature was in session, but the Governor’s Office did not receive notice of the resignation until the legislative session had ended. S.C. Op.Atty.Gen. (Oct. 10, 2013) 2013 WL 5763372.

Sections 4‑11‑20 and 1‑3‑220 should prevail over Sections 12‑45‑20 and 1‑3‑210 with respect to filling vacancy in office of county treasurer elected pursuant to Section 4‑9‑60. Gubernatorial appointee (appointed to fill vacancy occasioned by death two weeks prior to commencement of term of office) would serve until successor is elected in general election in November 1994 and successor so elected would serve the remainder of term for which treasurer was elected in November 1992. 1993 Op Atty Gen No. 93‑20.

Applying Circuit Court decision of Honorable James E. Moore and reasoning therein to situation in Darlington County mandates conclusion that Sections 4‑11‑20 and 1‑3‑220 should prevail over Sections 12‑39‑10 and 1‑3‑210 with respect to filling vacancy in office of county auditor elected pursuant to Section 4‑9‑60. Thus, interim gubernatorial appointee to office of county auditor would hold office until next general election, at which time successor would be elected to serve remainder of unexpired term. To extent this opinion is deemed inconsistent with other opinions of Attorney General’s office concerning selection of successor to elected auditor, this opinion will be controlling, as being in conformity with Judge Moore’s ruling. 1990 Op Atty Gen No. 90‑43.

Inasmuch as magistrates are required to hold over in office until their successors are appointed and qualified, Section 1‑3‑210 would be inapplicable to an expired magisterial term since a vacancy would not exist. 1987 Op Atty Gen, No. 87‑45, p 123.

Governor may appoint successor to complete unexpired term of office of county treasurer. 1984 Op Atty Gen, No. 84‑7, p. 26.

New appointments are required to be made by the Governor and new bonds furnished at the expiration of each successive term. 1982 Op Atty Gen, No 82‑69, p 69.

The Governor should appoint an interim magistrate when a magistrate has been suspended and must also submit an appointment to the Senate should the magistrate be convicted. 1976‑77, Op Atty Gen, No 77‑320, p 253.

NOTES OF DECISIONS

In general 1

1. In general

Stated in State v. Whitten (S.C. 1912) 92 S.C. 409, 75 S.E. 880.

The appointment of a magistrate for a full term without the advice and consent of the Senate is without effect. State v. Bowden (S.C. 1912) 92 S.C. 393, 75 S.E. 866. Public Employment 70

The Governor’s power of appointment without the advice and consent of the Senate is limited to vacancies occurring during a recess of the Senate, and the appointment ceases to be of force on the failure of the Senate, at the next session, to confirm it. State v. Bowden (S.C. 1912) 92 S.C. 393, 75 S.E. 866. Public Employment 70

**SECTION 1‑3‑215.** Appointments by the Governor requiring advice and consent of Senate.

(A) Appointments by the Governor requiring the advice and consent of the Senate must be transmitted to the Senate and must contain at a minimum the following information:

(1) the title of the office to which the individual is being appointed;

(2) the designation of any special seat, discipline, interest group or other designated entity that the individual is representing or is chosen from;

(3) the full legal name of the individual being appointed;

(4) the current street or mailing address and telephone number;

(5) the county, counties, district or other geographic area or political subdivision being represented;

(6) the name of the individual being replaced if the appointment is not an initial appointment; and

(7) the commencement and ending date of the term of office.

(B) When an appointment has been confirmed by the Senate, evidence of such confirmation shall be transmitted to the Secretary of State by the Clerk of the Senate and the Secretary of State must thereafter obtain the necessary oath and evidence of bond if required. The taking of the oath of office and filing of any requisite bond shall fully vest the person appointed with the full rights, privileges and powers of the office. The notice of confirmation transmitted by the Senate shall be conclusive as to the validity of an appointment and the issuance of a commission by the Secretary of State after obtaining the requisite documentation is a ministerial act.

HISTORY: 1993 Act No. 183, Section 4; 1993 Act No. 181, Section 4.

LIBRARY REFERENCES

Westlaw Key Number Search: 360k46.

States 46.

C.J.S. States Sections 61, 80, 84, 102.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. General Assembly Section 11, Clerk.

**SECTION 1‑3‑220.** Appointment of certain officers by Governor.

The following appointments shall be made by the Governor and are in addition to those appointments by the Governor authorized in other provisions in the Code:

(1) An appointment to fill any vacancy in an office of the executive department as defined in Section 1‑1‑110 occurring during a recess of the General Assembly. The term of such appointment shall be until the vacancy be filled by a general election or by the General Assembly in the manner provided by law.

(2) An appointment to fill any vacancy in a county office. The person so appointed shall hold office, in all cases in which the office is elective, until the next general election and until his successor shall qualify; and in the case of offices originally filled by appointment and not by election, until the adjournment of the session of the General Assembly next after such vacancy has occurred. The Governor may remove for cause any person so appointed by him under the provisions of this paragraph to fill any such vacancy.

(3) Proxies to represent the share of the State in the Cheraw and Coalfields Railroad Company and in the Cheraw and Salisbury Railroad Company.

(4) The chief constable of the State, whensoever in his judgment any public emergency shall require it or when necessary to the due execution of legal process.

HISTORY: 1962 Code Section 1‑122; 1952 Code Section 1‑122; 1942 Code Section 3094; 1932 Code Section 3094; Civ. C. ‘22 Section 779; Civ. C. ‘02 Section 625; G. S. 477; R. S. 541; 1818 (16) 723; 1840 (11) 147; 1875 (15) 935; 1877 (16) 263; 1878 (16) 656, 716; 1884 (18) 691; 1903 (24) 19; 1960 (51) 1917; 1993 Act No. 181, Section 5.

CROSS REFERENCES

Appointment of solicitors to vacancies by and with consent of Senate, see Section 1‑7‑390.

Emergency Interim Executive and Judicial Succession, see Sections 1‑9‑10 et seq.

Filing of vacancies in county offices, see Section 4‑11‑20.

Filling of vacancies in membership of county governing body, see Section 4‑9‑90.

Filling of vacancies in office of municipal mayor or council, see Section 5‑7‑200.

Length of term of appointments to fill vacancies in elective offices, see Section 1‑1‑120.

Qualifications of elected or appointed officers, see SC Const, Art 17, Sections 1, 4.

Recess appointments, see Section 1‑3‑210.

Retirement systems, see Title 9.

LIBRARY REFERENCES

Westlaw Key Number Search: 360k46.

States 46.

C.J.S. States Sections 61, 80, 84, 102.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Constitutional Law Section 26, Vacancies, Appointments, Removals, and Suspensions.

S.C. Jur. Governor Section 7, Filling Vacancies.

S.C. Jur. Governor Section 8, When Senate is in Recess.

S.C. Jur. Governor Section 9, Specific Appointments.

S.C. Jur. Governor Section 10, Filling Vacancies.

S.C. Jur. Governor Section 12, Specific Appointments.

Attorney General’s Opinions

If the Governor does not make an appointment to fill a vacancy in the office of county auditor, section 12‑39‑40 provides a mechanism by which a deputy auditor may fulfill the duties of the auditor until a successor is chosen. S.C. Op.Atty.Gen. (July 13, 2012) 2012 WL 3057449.

Section 7‑13‑190, though potentially useful as a model, does not provide a statutory minimum in terms of the time required to prepare for an election to fill a vacancy in the office of county auditor. Rather, if the Governor makes an appointment to fill such vacancy, a successor to the appointee must be selected at the next general election absent some circumstance making such an election a practical impossibility. S.C. Op.Atty.Gen. (July 13, 2012) 2012 WL 3057449.

Governor does not have authority to fill vacancy pending holding of special election. 1993 Op Atty Gen No. 93‑68.

Sections 4‑11‑20 and 1‑3‑220 should prevail over Sections 12‑45‑20 and 1‑3‑210 with respect to filling vacancy in office of county treasurer elected pursuant to Section 4‑9‑60. Gubernatorial appointee (appointed to fill vacancy occasioned by death two weeks prior to commencement of term of office) would serve until successor is elected in general election in November 1994 and successor so elected would serve the remainder of term for which treasurer was elected in November 1992. 1993 Op Atty Gen No. 93‑20.

Applying Circuit Court decision of Honorable James E. Moore and reasoning therein to situation in Darlington County mandates conclusion that Sections 4‑11‑20 and 1‑3‑220 should prevail over Sections 12‑39‑10 and 1‑3‑210 with respect to filling vacancy in office of county auditor elected pursuant to Section 4‑9‑60. Thus, interim gubernatorial appointee to office of county auditor would hold office until next general election, at which time successor would be elected to serve remainder of unexpired term. To extent this opinion is deemed inconsistent with other opinions of Attorney General’s office concerning selection of successor to elected auditor, this opinion will be controlling, as being in conformity with Judge Moore’s ruling. 1990 Op Atty Gen No. 90‑43.

Vacancy on Beaufort County Council occurring less than 180 days prior to next election would be filled in next general election. Governor is authorized to appoint person to fill unexpired term and office holder would serve until January 2 when newly elected office holder takes office. 1990 Op Atty Gen No. 90‑41.

Governor is required to appoint successor to fill vacancy in office of coroner to serve until next general election and until coroner’s elected successor shall qualify. 1984 Op Atty Gen, No. 84‑78, p. 194.

Members of the Pendleton Historical and Recreational commission must be appointed by the Governor. 1982 Op Atty Gen, No 82‑62, p 63.

New appointments are required to be made by the Governor and new bonds furnished at the expiration of each successive term. 1982 Op Atty Gen, No 82‑69, p 69.

A vacancy will be created should a councilman resign and should that resignation be accepted by the appropriate authority, which in the case of county councilman, is the county council; if the term of the councilman would expire within 180 days after the resignation has been accepted, the governor has the authority to appoint a person to fill the vacancy until the holding of the general election; if the term of the resigning councilman will end more than 180 days after the resignation is accepted, the governor does not have the authority to fill the vacancy pending the holding of the special election; Colleton county is now under a court order which precludes the holding of any election therein and the consent of the federal court must be obtained prior to the holding of any election which may be sought to be conducted. 1981 Op Atty Gen, No 81‑42, p 63.

The Governor should appoint an interim magistrate when a magistrate has been suspended and must also submit an appointment to the Senate should the magistrate be convicted. 1976‑77, Op Atty Gen, No 77‑320, p 253.

The Director of the Department of Veteran Affairs does not have the authority to select a county Veteran Affairs officer, and such authority cannot be delegated to him by the County Delegation; the Governor can make an interim appointment to that office; the Director of the Veteran Affairs may give advice to the County Delegation, but the selection of the County Veteran Affairs officer must be that of the Delegation. 1976‑77 Op Atty Gen, No 77‑344, p 274.

The Governor may make an appointment to fill the vacancy in the Office of the Probate Judge during a legislative recess. Such appointment, however, is subject to approval by the Senate at its next session. 1975‑76 Op Atty Gen, No 4542, p 410.

Members of a county board of education are county officers. If no other means are provided to fill a vacancy on the board, the vacancy may be filled by the Governor. 1969‑70 Op Atty Gen, No 3036, p 325.

When a member of the county board of directors of Lancaster County dies after his election but before he takes office on January 1, a vacancy is created in such office which must be filled by the Governor until the next general election pursuant to this section [Code 1962 Section 1‑122] and Code 1962 Section 14‑302. 1965‑66 Op Atty Gen, No 2209, p 353.

NOTES OF DECISIONS

In general 1

Construction 2

Removal 3

Term of appointment 4

1. In general

Applied in State ex rel. Thornton v. Wannamaker (S.C. 1966) 248 S.C. 421, 150 S.E.2d 607.

The long‑continued failure of a majority, including the Senator, of the York County legislative delegation to recommend persons for appointment as members of the county board of directors pursuant to the terms of the York County Government Act created vacancies in the offices of county director and gave rise to the power of the Governor to appoint under former Code 1962 Section 14‑302 and this section [former Code 1962 Section 1‑122]. Bradford v. Byrnes (S.C. 1952) 221 S.C. 255, 70 S.E.2d 228.

Stated in Heyward v. Long (S.C. 1935) 178 S.C. 351, 183 S.E. 145, 114 A.L.R. 1130.

Office of sheriff is a county office, falling under the provisions of item (2) of this section [former Code 1962 Section 1‑122]. State v. Sanders (S.C. 1920) 118 S.C. 498, 110 S.E. 808.

The solicitor is an officer of the executive department, under former Code 1962 Section 1‑1 of this Title, and the provisions of item (1) of this section [former Code 1962 Section 1‑122] are applicable to him. State v. Singleton (S.C. 1915) 100 S.C. 465, 84 S.E. 989.

2. Construction

Item (2) of this section [former Code 1962 Section 1‑122] and former Code 1962 Section 53‑56, providing that a vacancy in the office of sheriff shall be filled by appointment, are not in conflict and being construed together, the Governor has power to remove for cause one appointed by him to fill a vacancy in the office of sheriff. State v. Sanders (S.C. 1920) 118 S.C. 498, 110 S.E. 808.

3. Removal

Adultery is sufficient ground for the removal of a sheriff appointed under this section [former Code 1962 Section 1‑122] by the Governor. State v. Sanders (S.C. 1920) 118 S.C. 498, 110 S.E. 808.

The Governor may suspend a magistrate for incapacity, misconduct or neglect of duty, but he has no power to remove a magistrate serving a full term, except after trial and conviction. McDowell v. Burnett (S.C. 1912) 92 S.C. 469, 75 S.E. 873. Justices Of The Peace 10

4. Term of appointment

Statute permitting a governor to fill a vacancy in an elective county office by appointment and stating that such appointee would hold office until his successor has “qualified,” provides for holdover situations in which no person authorized by law to do so has qualified for office on the day the term is to commence. Florence County v. Moore (S.C. 2001) 344 S.C. 596, 545 S.E.2d 507. Counties 65; Public Employment 146

Construing together item (2) of this section [former Code 1962 Section 1‑122] and former Code 1962 Section 53‑56, an appointee filling a vacancy in the office of sheriff holds the office until the next general election for county sheriff. Privette v. Grinnell (S.C. 1939) 191 S.C. 376, 4 S.E.2d 305.

It is manifest that the legislature did not intend to confer upon the Governor power to appoint a solicitor for such a length of time as would extend beyond the first general election held after the vacancy occurred. State v. Singleton (S.C. 1915) 100 S.C. 465, 84 S.E. 989. District And Prosecuting Attorneys 2(2)

**SECTION 1‑3‑230.** Appointment of poet laureate.

The Governor may name and appoint some outstanding and distinguished man of letters as poet laureate for the State of South Carolina.

HISTORY: 1962 Code Section 1‑123; 1952 Code Section 1‑123; 1942 Code Section 3094; 1932 Code Section 3094; Civ. C. ‘22 Section 779; Civ. C. ‘12 Section 695; Civ. C. ‘02 Section 625; G. S. 477; R. S. 541; 1875 (15) 935; 1909 (26) 127; 1911 (27) 5; 1924 (33) 1016; 1933 (38) 296; 1934 (38) 1299.

LIBRARY REFERENCES

Westlaw Key Number Search: 360k46.

States 46.

C.J.S. States Sections 61, 80, 84, 102.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Constitutional Law Section 26, Vacancies, Appointments, Removals, and Suspensions.

S.C. Jur. Governor Section 9, Specific Appointments.

**SECTION 1‑3‑240.** Removal of officers by Governor.

(A) Any officer of the county or State, except:

(1) an officer whose removal is provided for in Section 3 of Article XV of the State Constitution;

(2) an officer guilty of the offense named in Section 8 of Article VI of the State Constitution; or

(3) pursuant to subsection (B) of this section, an officer of the State appointed by the Governor, either with or without the advice and consent of the Senate; who is guilty of malfeasance, misfeasance, incompetency, absenteeism, conflicts of interest, misconduct, persistent neglect of duty in office, or incapacity must be subject to removal by the Governor upon any of the foregoing causes being made to appear to the satisfaction of the Governor. Before removing any such officer, the Governor shall inform him in writing of the specific charges brought against him and give him an opportunity on reasonable notice to be heard.

(B) A person appointed to a state office by the Governor, either with or without the advice and consent of the Senate, other than those officers enumerated in subsection (C), may be removed from office by the Governor at his discretion by an Executive Order removing the officer.

(C)(1) Persons appointed to the following offices of the State may be removed by the Governor for malfeasance, misfeasance, incompetency, absenteeism, conflicts of interest, misconduct, persistent neglect of duty in office, or incapacity:

(a) Workers’ Compensation Commission;

(b) [Repealed]

(c) Ethics Commission;

(d) Election Commission;

(e) Professional and Occupational Licensing Boards;

(f) Juvenile Parole Board;

(g) Probation, Parole and Pardon Board;

(h) Director of the Department of Public Safety;

(i) Board of the Department of Health and Environmental Control, excepting the chairman;

(j) Chief of State Law Enforcement Division;

(k) South Carolina Lottery Commission;

(l) Executive Director of the Office of Regulatory Staff;

(m) Directors of the South Carolina Public Service Authority appointed pursuant to Section 58‑31‑20. A director of the South Carolina Public Service Authority also may be removed for his breach of any duty arising under Section 58‑31‑55 or 58‑31‑56. The Governor must not request a director of the South Carolina Public Service Authority to resign unless cause for removal, as established by this subsection, exists. Removal of a director of the South Carolina Public Service Authority, except as is provided by this section or by Section 58‑31‑20(A), must be considered to be an irreparable injury for which no adequate remedy at law exists;

(n) State Ports Authority;

(o) State Inspector General;

(p) State Adjutant General;

(q) South Carolina Retirement Investment Commission members appointed by the Governor or members of the General Assembly; and

(r) South Carolina Public Benefit Authority members.

(2) Upon the expiration of an officeholder’s term, the individual may continue to serve until a successor is appointed and qualifies.

HISTORY: 1962 Code Section 1‑124; 1952 Code Section 1‑124; 1942 Code Section 3098; 1932 Code Section 3098; 1924 (33) 997; 1993 Act No. 181, Section 6; 2001 Act No. 59, Section 3; 2004 Act No. 175, Section 1, eff March 4, 2004; 2005 Act No. 137, Section 1, eff May 25, 2005; 2007 Act No. 114, Section 3, eff June 27, 2007; 2009 Act No. 73, Section 16, eff June 16, 2009; 2012 Act No. 105, Section 1, eff January 1, 2012; 2014 Act No. 224 (H.3540), Section 1, eff March 5, 2015; 2016 Act No. 275 (S.1258), Section 86, eff July 1, 2016; 2017 Act No. 13 (H.3726), Pt. V, Section 16, eff July 1, 2017.

Editor’s Note

2014 Act No. 224, Section 4, provides as follows:

“SECTION 4. This act takes effect upon the ratification of amendments to Section 7, Article VI, and Section 4, Article XIII of the Constitution of this State deleting the requirement that the Adjutant General be elected by the qualified electors of this State and providing that he be appointed by the Governor.”

2015 Act No. 1 (S.8) Sections 1.A, 1.B, eff March 5, 2015, ratified amendments to Section 7, Article VI, and Section 4, Article XIII of the Constitution.

Effect of Amendment

The 2004 amendment added subsection (C)(12).

The 2005 amendment, in subsection (C), designated paragraph (1) and under it redesignated items (1) to (12) as subparagraphs (a) to (l), in subparagraph (b), substituted “Reserved” for “Commission of the Department of Revenue”, and added subparagraph (m) relating to the officers who may be removed by the governor; and designated paragraph (2) making nonsubstantive changes.

The 2007 amendment, in subsection (C)(1)(b), substituted “Department of Transportation Commission” for “Reserved”.

The 2009 amendment added subsection (C)(1)(n) relating to State Ports Authority.

The 2012 amendment inserted subsection (C)(1)(o) and made other nonsubstantive changes.

2014 Act No. 224, Section 1, effective March 5, 2015, added subsection (C)(1)(p), relating to the Adjutant General.

2016 Act No. 275, Section 86, repealed (C)(1)(b), relating to the Department of Transportation Commission.

2017 Act No. 13, Pt. V, Section 16, added (C)(1)(q) and (C)(1)(r), and made other nonsubstantive changes.

CROSS REFERENCES

Adjutant General, appointment and term, salary, minimum qualifications, chief of staff, see Section 25‑1‑320.

Board members for Department of Natural Resources may be removed pursuant to this section, see Section 48‑4‑30.

Chief of South Carolina Law Enforcement Division (SLED) may be removed only pursuant to this section, see Section 23‑3‑10.

Constitutional provision for removal of officers, see SC Const, Art VI, Section 9.

Constitutional provision for removal of officers by Governor on address of General Assembly, see SC Const, Art XV, Section 3.

Creation of South Carolina Mental Health Commission, appointment and terms of members, removal, duties, expenses, see Section 44‑9‑30.

Department of Administration established, transfer of offices, divisions, other agencies, see Section 1‑11‑10.

Department of Employment and Workforce, creation, executive director, appointment, removal, compensation, see Section 41‑29‑20.

Director of Department of Parks, Recreation and Tourism subject to removal as provided in this section, see Section 51‑1‑10.

Director of Department of Public Safety may be removed only pursuant to this section, see Section 23‑6‑40.

Director of Division on Aging subject to removal pursuant to provisions of this section, see Section 43‑21‑70.

Director of State Department of Health and Human Services subject to removal pursuant to provisions of this section, see Section 44‑6‑10.

Director of State Department of Social Services subject to removal by Governor pursuant to this section, see Section 43‑1‑10.

Governing authorities of departments of state government, see Section 1‑30‑10.

Impeachment of officers, see SC Const, Art XV, Sections 1 to 3.

Public Charter School District board of trustees, membership, powers and duties, see Section 59‑40‑230.

Public Employee Benefit Authority, see Section 9‑4‑10.

Removal of certain officers appointed by Governor, see Section 1‑3‑220.

Removal of community mental health board members by Governor, see Section 44‑15‑60.

Removal of director of Department of Alcohol and Other Drug Abuse Services by Governor, see Section 44‑49‑20.

Removal of director or member of Board of Probation, Parole and Pardon Services shall be pursuant to this section, see Section 24‑21‑11.

Removal of officers elected by the General Assembly, see Section 8‑11‑60.

Secretary of Commerce, see Section 13‑1‑30.

State Board of Medical Examiners, appointment, terms and vacancies, powers and duties, see Section 40‑47‑10.

State Ethics Commission reconstituted, appointment of members, terms of office, officers, quorum requirements, meetings, per diem, mileage, and subsistence for members, removal, see Section 8‑13‑310.

State Inspector General may be removed by this section, see Section 1‑6‑20.

Termination of members of the Advisory Council on Aging, see Section 43‑21‑20.

Workers’ Compensation Commission, removal of persons appointed to the commission, see Section 42‑3‑20.

LIBRARY REFERENCES

Westlaw Key Number Search: 360k52.

States 52.

C.J.S. States Sections 93 to 94, 96, 98 to 102.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Clerks of Court Section 9, Discipline and Removal.

S.C. Jur. Constitutional Law Section 106, Laws Impairing Obligations of Contract.

S.C. Jur. Governor Section 15, Neglect of Office.

S.C. Jur. Governor Section 18, Inclement Weather.

S.C. Jur. Governor Section 32, South Carolina Law Enforcement Division (SLED).

S.C. Jur. Mental Health Section 7, Selection of Members of Mental Health Commission.

S.C. Jur. Mental Health Section 12, Selection of Members of Boards.

S.C. Jur. Public Officers and Public Employees Section 42, Authority to Terminate.

S.C. Jur. Veterinarians Section 5, Removal.

Attorney General’s Opinions

The Governor can not remove a school board member pursuant to this section because a school board trustee is not a county or state officer. 2015 S.C. Op.Atty.Gen. (January 14, 2015) 2015 WL 3533905.

Nothing was found in review of both the Constitution and the statutes allowing for removal of a city council member due to absenteeism. S.C. Op.Atty.Gen. (April 13, 2011) 2011 WL 1740741.

Appointments to community mental health boards are to be made by Governor proportional to population of member‑counties. 1993 Op Atty Gen No. 93‑53.

Appointments to community mental health boards are to be made by Governor proportional to population of member‑counties. 1993 Op Atty Gen No. 93‑53.

If public official were to successfully complete pretrial intervention program, there would be no conviction for purposes of Section 8‑1‑100 or resulting vacancy, but there would be “noncriminal disposition” or dismissal of criminal charge; Governor possesses discretionary authority to remove official under Section 1‑3‑240; whether instant situation is appropriate for purposes of that section or whether proceedings should be initiated pursuant to such section is beyond scope of opinion of Attorney General’s Office. 1990 Op Atty Gen No. 90‑51.

Offense of furnishing false personal property tax receipts is crime of moral turpitude. 1990 Op Atty Gen No. 90‑51.

Inasmuch Section 42‑19‑40 contains no criminal penalty provision, a criminal prosecution cannot be undertaken pursuant to this provision for the unauthorized release of a confidential settlement agreement in a worker’s compensation case. Because only those officers possessing removal power by virtue of a statute or constitutional provision may exercise such power, it would be a matter for the Governor to determine whether the unauthorized release of a settlement agreement in violation of Section 42‑19‑40 would constitute sufficient grounds for removal. Because the Freedom of Information Act was designed to encourage the disclosure of public records and contains no specific provision dealing with the enforcement of confidentiality, either by criminal or civil remedies, the release of a settlement agreement which is confidential pursuant to Section 42‑19‑40 is not enforceable under the FOIA. 1986 Op Atty Gen, No. 86‑55, p 162.

Offenses set forth in Title 21, USC Section 841 (a)(1) (knowingly distribute drugs) and 843(b) (use of mails in aid of felony) each involves moral turpitude. 1979 Op Atty Gen, No 79‑93, p 130.

The authority of the Governor in certain specific instances to suspend or remove judicial officers of less than statewide jurisdiction includes the power to appoint by executive order an advisory commission to hear complaints and grievances against magistrates, municipal and county judges. 1975‑76 Op Atty Gen, No 4244, p 34.

As assault and battery is not an offense ordinarily construed as involving moral turpitude; conviction of a municipal officer on such a charge would not, in itself, be adequate grounds for removal of the officer by the Governor. 1974‑75 Op Atty Gen, No 4202, p 249.

This section [Code 1962 Section 1‑124] not applicable to notaries public, and notary public may be removed by Governor without notice of hearing. Op. Atty. Gen July 9, 1963.

NOTES OF DECISIONS

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1. In general

Meaning of word “misconduct.” ‑ “Misconduct” as used in this section [former Code 1962 Section 1‑124] means mismanagement, wrong or improper conduct, bad behavior, unlawful behavior or conduct, malfeasance, a case or instance of bad behavior, a misdeed. State ex rel. Richards v Ballentine (1929) 152 SC 365, 150 SE 46, 66 ALR 574. State ex rel. Blackwood v Pridmore (1931) 163 SC 97, 161 SE 340.

Governor has authority, under statutory provision generally making any person appointed to state office by a governor subject to removal at governor’s discretion by executive order, to remove a member of the Board of Directors of South Carolina Public Service Authority (Santee Cooper) upon the issuance of an executive order. Hodges v. Rainey (S.C. 2000) 341 S.C. 79, 533 S.E.2d 578. Public Employment 254; States 52

Omission of Board of Directors of South Carolina Public Service Authority (Santee Cooper) from statutory list of state offices for which governor’s removal power is limited implies that General Assembly intended that governor’s general power to remove, at governor’s discretion, state officers appointed by governor should apply to Santee Cooper board members. Hodges v. Rainey (S.C. 2000) 341 S.C. 79, 533 S.E.2d 578. Public Employment 254; States 52

There was no constitutional or statutory provision allowing the Governor to suspend the Director of the Department of Public safety (DPS), and Governor did not have such power as an incident of his statutory power of removal. Rose v. Beasley (S.C. 1997) 327 S.C. 197, 489 S.E.2d 625, rehearing denied. Public Employment 254; States 52

Where the Governor declared a state of insurrection existed and called out the militia to take over State Highway Department and to remove highway commissioners from office, he was exceeding his authority and should have proceeded under this section [former Code 1962 Section 1‑124]. Hearon v. Calus (S.C. 1935) 178 S.C. 381, 183 S.E. 13. Evidence 5(2)

The legislature intended to create the Governor a judicial tribunal and to vest in him a purely judicial power for the purposes of this section [former Code 1962 Section 1‑124] and former Code 1962 Sections 1‑125 to 1‑127. State v. Ballentine (S.C. 1929) 152 S.C. 365, 150 S.E. 46, 66 A.L.R. 574.

2. Validity

This section [former Code 1962 Section 1‑124] is constitutional. State ex rel. Blackwood v Pridmore (1931) 163 SC 97, 161 SE 340, citing State ex rel. Richards v Ballentine (1929) 152 SC 365, 150 SE 46, 66 ALR 574.

Postremoval procedure afforded state officer satisfied due process and sufficiently compensated for the lack of an oral preremoval hearing called for by statute. Rose v. Beasley (S.C. 1997) 327 S.C. 197, 489 S.E.2d 625, rehearing denied. Constitutional Law 4172(6); Public Employment 469; States 52

3. Construction

Enabling legislation for South Carolina Public Service Authority (Santee Cooper), allowing advisory board to remove for cause a member of the board of directors, is not in conflict with subsequently enacted Restructuring Act that generally makes any person appointed to state office by the governor subject to removal at governor’s discretion. Hodges v. Rainey (S.C. 2000) 341 S.C. 79, 533 S.E.2d 578. Public Employment 254; States 52

4. Grounds for removal

Public officer’s failure to comply with a statutory duty constitutes misfeasance in office, which is a ground for removal. Rose v. Beasley (S.C. 1997) 327 S.C. 197, 489 S.E.2d 625, rehearing denied. Public Employment 259(1)

Governor properly removed county supervisor on grounds that conviction of manslaughter and three years’ sentence incapacitated him from discharging duties of office. State v. Pridmore (S.C. 1931) 163 S.C. 97, 161 S.E. 340. Counties 45; Public Employment 279

An officer charged with being guilty of misconduct and persistent neglect of duty in office in several particulars was properly removed from office by the Governor under the provisions of this section [former Code 1962 Section 1‑124]. State v. Ballentine (S.C. 1929) 152 S.C. 365, 150 S.E. 46, 66 A.L.R. 574.

**SECTION 1‑3‑245.** Removal from office of member of state board for three consecutive unexcused absences; vacancy created; requirement of chairman to notify appointing authority; exclusion for ex officio member or designee.

(A) A member of a state board, council, commission, or committee who has three consecutive unexcused absences from regularly scheduled meetings held by the particular board, council, commission, or committee is considered removed from the board, council, commission, or committee and a vacancy is created. The chairman of the board, council, commission, or committee immediately shall notify the Governor or appropriate appointing authority of the member’s three consecutive unexcused absences and of the resulting vacancy. An unexcused absence must be defined by each respective board, council, commission, or committee in rules governing its operation.

(B) This section does not apply to an ex officio member of a state board, council, commission, or committee or to a designee of an ex officio member.

HISTORY: 1995 Act No. 79, Section 1.

LIBRARY REFERENCES

Westlaw Key Number Search: 360k52.

States 52.

C.J.S. States Sections 93 to 94, 96, 98 to 102.

**SECTION 1‑3‑250.** Appeal by officer removed by Governor.

An officer, other than a state officer appointed by the Governor pursuant to subsection (B) of Section 1‑3‑240, shall have the right of appeal from any order of removal by the Governor under Section 1‑3‑240 to the resident or presiding judge of the circuit in which the officer resides. The judge shall hear and determine the appeal both as to law and fact upon the record as made before the Governor and upon additional evidence as he shall see fit to allow. The notice of appeal shall be served upon the Governor, or his secretary, within five days after the service upon the officer of the order of the Governor removing him and shall state the grounds for the appeal and name the circuit judge to whom the appeal is taken. The Governor shall transmit to the judge the record in the case, including a copy of the order of removal, grounds of removal, evidence in support of removal and return of service, and any other matter which in his judgment may be considered by the court. The circuit judge within twenty days after the taking of the appeal, or in such shorter time as may be practical, shall hear and determine the appeal, after giving to the parties reasonable notice of the time and place of hearing. The hearing may be had and judgment may be rendered in open court, or at chambers within or without the circuit. Any appeal from the order of the circuit court must be taken in the manner provided by the South Carolina Appellate Court Rules.

HISTORY: 1962 Code Section 125; 1952 Code Section 1‑125; 1942 Code Section 3098; 1932 Code Section 3098; 1924 (33) 997; 1960 (51) 1736; 1993 Act No. 181, Section 7; 1999 Act No. 55, Section 1.

CROSS REFERENCES

Removal of member of Probation, Parole and Pardon Services Board, see Section 24‑21‑11.

LIBRARY REFERENCES

Westlaw Key Number Search: 360k52.

States 52.

C.J.S. States Sections 93 to 94, 96, 98 to 102.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Constitutional Law Section 26, Vacancies, Appointments, Removals, and Suspensions.

S.C. Jur. Public Officers and Public Employees Section 42, Authority to Terminate.

NOTES OF DECISIONS

In general 1

1. In general

State officer appealing removal to the circuit court was not entitled to a de novo hearing on the merits, and circuit court properly limited its review to a determination that the facts supported the Governor’s decision. Rose v. Beasley (S.C. 1997) 327 S.C. 197, 489 S.E.2d 625, rehearing denied. Public Employment 763; States 52

In an action at law, Supreme Court’s jurisdiction is limited to the correction of errors of law, and factual findings will not be disturbed unless unsupported by any evidence, and this standard applies to appeal of circuit court’s judgment in an action contesting an officer’s removal. Rose v. Beasley (S.C. 1997) 327 S.C. 197, 489 S.E.2d 625, rehearing denied. Appeal And Error 842(1); Appeal And Error 1010.2; Public Employment 768(14)

**SECTION 1‑3‑260.** Removal procedure as additional to other removal procedures.

The power and procedure of removal conferred and provided for in Sections 1‑3‑240 and 1‑3‑250 are additional to any other removal powers or procedure authorized by statute.

HISTORY: 1962 Code Section 1‑126; 1952 Code Section 1‑126; 1942 Code Section 3098; 1932 Code Section 3098; 1924 (33) 997.

LIBRARY REFERENCES

Westlaw Key Number Search: 360k52.

States 52.

C.J.S. States Sections 93 to 94, 96, 98 to 102.

**SECTION 1‑3‑270.** Filling of vacancies created by removal pursuant to Section 1‑3‑240.

Any vacancy created under the authority vested by Section 1‑3‑240 shall be filled as provided by the Constitution and statute laws of the State relating to the filling of a vacancy in the office in which such vacancy is so created.

HISTORY: 1962 Code Section 1‑127; 1952 Code Section 1‑127; 1942 Code Section 3098; 1932 Code Section 3098; 1924 (33) 997.

LIBRARY REFERENCES

Westlaw Key Number Search: 360k51.

States 51.

C.J.S. States Sections 61, 87, 92.

ARTICLE 7

Maintenance of Peace and Order

**SECTION 1‑3‑410.** Governor may act to prevent violence.

The Governor may take such measures and do all and every act and thing which he may deem necessary in order to prevent violence or threats of violence to the person or property of citizens of the State and to maintain peace, tranquility and good order in the State, and in any political subdivision thereof, and in any particular area of the State designated by him.

HISTORY: 1962 Code Section 1‑128; 1957 (50) 521.

CROSS REFERENCES

Governor as commander‑in‑chief, see SC Const, Art 4, Section 13.

Suspension of habeas corpus, see Sections 17‑17‑190, 17‑17‑200.

LIBRARY REFERENCES

Westlaw Key Number Searches: 360k41; 402k37.

States 41.

War and National Emergency 37.

C.J.S. States Sections 88 to 90, 130 to 131.

C.J.S. War and National Defense Sections 6, 54.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Constitutional Law Section 24, Powers of the Governor.

S.C. Jur. Governor Section 42, Other Disasters.

**SECTION 1‑3‑420.** Proclamation of emergency by Governor.

The Governor, when in his opinion the facts warrant, shall, by proclamation, declare that, because of unlawful assemblage, violence or threats of violence, or a public health emergency, as defined in Section 44‑4‑130, a danger exists to the person or property of any citizen and that the peace and tranquility of the State, or any political subdivision thereof, or any particular area of the State designated by him, is threatened, and because thereof an emergency, with reference to such threats and danger, exists.

The Governor, upon the issuance of a proclamation as provided for in this section, must immediately file the proclamation in the Office of the Secretary of State, which proclamation is effective upon issuance and remain in full force and effect until revoked by the Governor.

HISTORY: 1962 Code Section 1‑129; 1957 (50) 521; 2002 Act No. 339, Section 3.

LIBRARY REFERENCES

Westlaw Key Number Searches: 360k41; 402k37.

States 41.

War and National Emergency 37.

C.J.S. States Sections 88 to 90, 130 to 131.

C.J.S. War and National Defense Sections 6, 54.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Governor Section 40, Inclement Weather.

**SECTION 1‑3‑430.** Orders to prevent danger.

In all such cases when the Governor shall issue his proclamation as provided in Section 1‑3‑420 he may further, cope with such threats and danger, order and direct any person or group of persons to do any act which would in his opinion prevent or minimize danger to life, limb or property, or prevent a breach of the peace; and he may order any person or group of persons to refrain from doing any act or thing which would, in his opinion, endanger life, limb or property, or cause, or tend to cause, a breach of the peace, or endanger the peace and good order of the State or any section or community thereof, and he shall have full power by use of all appropriate available means to enforce such order or proclamation.

HISTORY: 1962 Code Section 1‑130; 1957 (50) 521.

LIBRARY REFERENCES

Westlaw Key Number Searches: 360k41; 402k37.

States 41.

War and National Emergency 37.

C.J.S. States Sections 88 to 90, 130 to 131.

C.J.S. War and National Defense Sections 6, 54.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Governor Section 42, Other Disasters.

S.C. Jur. Governor Section 43, Governor’s Power to Order Evacuation.

**SECTION 1‑3‑440.** Further powers of Governor.

For the purposes already stated the Governor may take and exercise any or all of the following actions:

(1) Call out the military forces of the State (State militia) or any unit or units thereof and order and direct them to take such action as in his judgment may be necessary to avert any threatened danger and to maintain peace and good order;

(2) Order any and all law enforcement officers of the State or any of its subdivisions to do whatever may be deemed necessary to maintain peace and good order;

(3) Order the discontinuance of any transportation or other public facilities, or, in the alternative, direct that such facilities be operated by a State agency; or

(4) Authorize, order or direct any State, county or city official to enforce the provisions of such proclamation in the courts of the State by injunction, mandamus, or other appropriate legal action.

HISTORY: 1962 Code Section 1‑130.1; 1957 (50) 521.

CROSS REFERENCES

Governor taking possession of utilities, see Section 25‑1‑1870.

Ordering out the National Guard, see Sections 25‑1‑1810 et seq.

When Governor may order out the South Carolina State Guard, see Section 25‑3‑130.

LIBRARY REFERENCES

Westlaw Key Number Searches: 360k41; 402k37.

States 41.

War and National Emergency 37.

C.J.S. States Sections 88 to 90, 130 to 131.

C.J.S. War and National Defense Sections 6, 54.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Constitutional Law Section 24, Powers of the Governor.

S.C. Jur. Governor Section 43, Governor’s Power to Order Evacuation.

S.C. Jur. Governor Section 44, Governor’s Power Over the National Guard.

Attorney General’s Opinions

State‑wide curtailments of natural gas supplies could create a situation warranting the Governor to exercise his emergency powers to prevent a public calamity by reallocating the State’s remaining natural gas supplies. 1974‑75 Op Atty Gen, No 4114, p 190.

The Governor has no authority to convene a statewide grand jury for any purpose. 1974‑75 Op Atty Gen, No 4205, p 251.

**SECTION 1‑3‑450.** Intervention by Governor in situations of violence or public disorder.

The Governor may intervene in any situation where there exists violence or threats of violence to persons or property and take complete control thereof to prevent violence, riotous conduct, public disorder or breaches of the peace.

HISTORY: 1962 Code Section 1‑30.2; 1957 (50) 521.

LIBRARY REFERENCES

Westlaw Key Number Searches: 360k41; 402k37.

States 41.

War and National Emergency 37.

C.J.S. States Sections 88 to 90, 130 to 131.

C.J.S. War and National Defense Sections 6, 54.

**SECTION 1‑3‑460.** Governor’s powers under article shall be supplemental to powers granted by other laws of State.

The powers granted in this article are supplemental to and in aid of powers now vested in the Governor under the Constitution, statutory laws and police powers of the State.

HISTORY: 1962 Code Section 1‑30.3; 1957 (50) 521.

CROSS REFERENCES

Additional powers of the governor when an emergency is declared, see Section 25‑1‑440.

LIBRARY REFERENCES

Westlaw Key Number Search: 360k41.

States 41.

C.J.S. States Sections 88 to 90, 130 to 131.

**SECTION 1‑3‑470.** Lowering flags upon death in line of duty of firefighter or law enforcement officer.

The Governor on the day of burial or other service for any firefighter or law enforcement officer in this State who died in the line of duty shall order all flags on state buildings to be flown at half‑mast in tribute to the deceased firefighter or law enforcement officer. The Governor shall also request that flags over the buildings of the political subdivisions of this State similarly be flown at half‑mast for this purpose.

HISTORY: 1987 Act No. 104, Section 1.

LIBRARY REFERENCES

Westlaw Key Number Search: 360k23.

States 23.

C.J.S. States Section 39.

**SECTION 1‑3‑480.** Authority of Governor to authorize national guard to support federal, state and local law enforcement agencies in drug enforcement matters; delegation of authority.

(A) The Governor, as Commander‑in‑Chief of the organized militia of this State and in accordance with Title 32, United States Code, Section 112, may authorize or direct the South Carolina National Guard to assist and support federal, state, and local law enforcement agencies in drug interdiction, counterdrug activities, and demand reduction activities. The Governor may delegate his authority under this section to the Adjutant General who is specifically authorized to enter into mutual assistance and support agreements with law enforcement agencies operating within this State for activities within this State.

(B) The Governor, with the consent of Congress, is authorized to enter into compacts and agreements for the deployment of the National Guard with governors of other states concerning drug interdiction, counterdrug activities, and demand reduction activities. To facilitate these agreements, the General Assembly ratifies the National Guard Mutual Assistance Counterdrug Activities Compact, codified at Section 1‑3‑490. Article I, Section 10 of the Constitution of the United States permits a state to enter into a compact or agreement with another state, subject to the consent of Congress. Congress, through enactment of 4 U.S.C. Section 112, has given its consent for states to enter such compacts for cooperative effort and mutual assistance in the prevention of crime.

HISTORY: 1992 Act No. 379, Section 1; 1995 Act No. 113, Section 1.

LIBRARY REFERENCES

Westlaw Key Number Searches: 259k1; 360k41.

Militia 1.

States 41.

C.J.S. Armed Services Sections 288 to 289.

C.J.S. States Sections 88 to 90, 130 to 131.

**SECTION 1‑3‑490.** National Guard Mutual Assistance Counterdrug Activities Compact.

The National Guard Mutual Assistance Counterdrug Activities Compact is hereby enacted into law and entered into by the State of South Carolina with all other states legally joining, in the form substantially as follows:

THE NATIONAL GUARD MUTUAL ASSISTANCE COUNTERDRUG ACTIVITIES COMPACT

ARTICLE I

Purpose

The purposes of this compact are to:

(A) provide for mutual assistance and support among the party states in the utilization of the National Guard in drug interdiction, counterdrug activities, and demand reduction activities;

(B) permit the National Guard of this State to enter into mutual assistance and support agreements, on the basis of need, with one or more law enforcement agencies operating within this State, for activities within this State, or with a National Guard of one or more other states, whether the activities are within or outside this State in order to facilitate and coordinate efficient, cooperative enforcement efforts directed toward drug interdiction, counterdrug activities, and demand reduction activities;

(C) permit the National Guard of this State to act as a receiving and a responding state as defined within this compact and to ensure the prompt and effective delivery of National Guard personnel, assets, and services to agencies or areas that are in need of increased support and presence;

(D) permit and encourage a high degree of flexibility in the deployment of National Guard forces in the interest of efficiency;

(E) maximize the effectiveness of the National Guard in situations which permit its utilization under this compact;

(F) provide protection for the rights of National Guard personnel when performing duty in other states in counterdrug activities; and

(G) ensure uniformity of state laws in the area of National Guard involvement in interstate counterdrug activities by incorporating the uniform laws within the compact.

ARTICLE II

Entry into Force and Withdrawal

(A) This compact becomes effective when enacted by any two states. Thereafter, this compact becomes effective as to another state upon its enactment.

(B) A party state may withdraw from this compact by enacting a statute repealing the compact, but no withdrawal shall take effect until one year after the governor of the withdrawing state has given notice in writing of the withdrawal to the governors of all other party states.

ARTICLE III

Mutual Assistance and Support

(A) As used in this article:

(1) “Drug interdiction and counterdrug activities” means the use of National Guard personnel, while not in federal service, in law enforcement support activities that are intended to reduce the supply or use of illegal drugs in the United States. These activities include, but are not limited to:

(a) providing information obtained during either the normal course of military training or operations or during counterdrug activities to federal, state, or local law enforcement officials that may be relevant to a violation of a federal or state law within the jurisdiction of these officials;

(b) making available equipment, including associated supplies or spare parts, base facilities, or research facilities of the National Guard to a federal, state, or local civilian law enforcement official for law enforcement purposes, in accordance with other applicable law;

(c) providing available National Guard personnel to train federal, state, or local civilian law enforcement in the operation and maintenance of equipment, including equipment made available pursuant to this provision, in accordance with other applicable law;

(d) providing available National Guard personnel to operate and maintain equipment provided to federal, state, or local law enforcement officials pursuant to activities defined and referred to in this compact;

(e) operation and maintenance of equipment and facilities of the National Guard or law enforcement agencies used for the purposes of drug interdiction and counterdrug activities;

(f) providing available National Guard personnel to operate equipment for the detection, monitoring, and communication of the movement of air, land, and sea traffic, to facilitate communications in connection with law enforcement programs, to provide transportation for civilian law enforcement personnel;

(g) providing available National Guard personnel, equipment, and support for administrative, interpretive, analytic, or other purposes;

(h) providing available National Guard personnel and other equipment to aid federal, state, and local officials and agencies otherwise involved in the prosecution or incarceration of individuals processed within the criminal justice system who have been arrested for criminal acts involving the use, distribution, or transportation of controlled substances as defined in 21 U.S.C. 801 et seq. or in accordance with other applicable law.

(2) “Demand reduction” means providing available National Guard personnel, equipment, support, and coordination to federal, state, local, and civic organizations and agencies for the purposes of the prevention of drug abuse and the reduction in the demand for illegal drugs.

(3) “Requesting state” means the state whose governor requested assistance in the area of counterdrug activities.

(4) “Responding state” means the state furnishing assistance, or requested to furnish assistance, in the area of counterdrug activities.

(5) “Law enforcement agency” means a lawfully established federal, state, or local public agency that is responsible for the prevention and detection of crime and the enforcement of penal, traffic, regulatory, game, immigration, postal, customs, or controlled substances laws.

(6) “Official” means the appointed, elected, or designated representative of an agency, institution, or organization authorized to conduct those activities for which support is requested.

(7) “Mutual assistance and support agreement” means an agreement between the National Guard of this State and one or more law enforcement agencies or between the National Guard of this State and the National Guard of one or more other states, consistent with the purposes of this compact.

(8) “Party state” means a state that has lawfully enacted this compact.

(9) “State” means each of the several states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or possession of the United States.

(B) Upon the request of the governor of a party state for assistance in drug interdiction, counterdrug activities, and demand reduction activities, the governor of a responding state shall have authority under this compact to send to a requesting state and place under the temporary operational control of the appropriate National Guard or military authorities of that state, for the purposes of providing the requested assistance, all or a part of the National Guard forces of his state. The exercise of his discretion in this regard must be conclusive.

(C) The governor of a party state may withhold the National Guard forces of his state from deployment in a requesting state and recall the forces deployed in a requesting state.

(D) The National Guard of this State is authorized to engage in counterdrug activities and demand reduction activities.

(E) The Adjutant General of this State, in order to further the purposes of this compact, may enter into a mutual assistance and support agreement with one or more law enforcement agencies of this State, and with the National Guard of other party states to provide personnel, assets, and services in the area of counterdrug activities and demand reduction activities provided that all parties to the agreement are not specifically prohibited by law to perform these activities.

(F) The agreement must set forth the powers, rights, and obligations of the parties to the agreement, where applicable, as follows:

(1) the duration of the agreement;

(2) the organization, composition, and nature of a separate legal entity created by the agreement;

(3) the purpose of the agreement;

(4) the manner of financing the agreement and establishing and maintaining the budget of the agreement;

(5) the method to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon a partial or complete termination;

(6) provision for administering the agreement, which may include creation of a joint board responsible for its administration;

(7) the manner of acquiring, holding, and disposing of real and personal property used in the agreement;

(8) the minimum standards for National Guard personnel implementing the provisions of this agreement;

(9) the minimum insurance required of each party to the agreement;

(10) the chain of command or delegation of authority to be followed by National Guard personnel acting under the provisions of the agreement;

(11) the duties and authority that the National Guard personnel of each party state may exercise; and

(12) other necessary and proper matters.

(G) As a condition precedent to an agreement becoming effective, the agreement must be submitted to and receive the approval of the Office of the Attorney General of South Carolina. The Attorney General may delegate his approval authority to the appropriate attorney for the South Carolina National Guard subject to those conditions which he decides are appropriate. The delegation must be in writing and:

(1) the Attorney General, or his agent in the South Carolina National Guard, shall approve an agreement submitted to him under this provision unless he finds that it is not in proper form, does not meet the requirements set forth in this provision, or does not conform to the laws of South Carolina. If the Attorney General disapproves an agreement, he shall provide a written explanation to the Adjutant General of the National Guard;

(2) if the Attorney General, or his authorized agent, approves an agreement within thirty days after its submission to him, it is considered approved by him;

(3) whenever National Guard forces of a party state are engaged in drug interdiction, counterdrug activities, and demand reduction activities, they personally must not be held liable for an act or omission which occurs during the performance of their duty.

ARTICLE IV

Responsibilities

(A) Nothing in this compact may be construed as a waiver of benefits, privileges, immunities, or rights provided for National Guard personnel performing duty pursuant to Title 32 of the United States Code, nor shall anything in this compact be construed as a waiver of coverage provided for under the Federal Tort Claims Act. If National Guard personnel performing counterdrug activities do not receive rights, benefits, privileges, and immunities provided for National Guard personnel provided in this section, then the following provisions apply:

(1) Whenever National Guard forces of a responding state are engaged in another state in carrying out the purposes of this compact, the members engaged shall have the same powers, duties, rights, privileges, and immunities as members of the National Guard forces of the requesting state. The requesting state shall save and hold members of the National Guard forces of the responding state harmless from civil liability for acts or omissions which occur in the performance of their duty while engaged in carrying out the purposes of this compact, whether responding forces are serving the requesting state within the borders of the responding state or are attached to the requesting state for purposes of operational control.

(2) Subject to the provisions of items (3), (4), and (5) of this subsection, liability that may arise under the laws of the requesting state or the responding states, on account of or in connection with a request for assistance or support, must be assumed and borne by the requesting state.

(3) A requesting state rendering aid or assistance pursuant to this compact must be reimbursed by the requesting state for loss or damage to, or expense incurred in the operation of, equipment answering a request for aid, and for the cost of the materials, transportation, and maintenance of National Guard personnel and equipment incurred in connection with the request, provided that nothing contained in this provision prevents a responding state from assuming the loss, damage, expense, or other cost.

(4) Unless there is a written agreement to the contrary, each party shall provide, in the same amounts and manner as if they were on duty within their state, for pay and allowances of the personnel of its National Guard units while engaged in another state pursuant to this compact and while going to and returning from duty pursuant to this compact.

(5) Each party state providing the payment of compensation and death benefits to injured members and the representatives of deceased members of its National Guard forces in case the members sustain injuries or are killed within their own state shall provide for the payment of compensation and death benefits in the same manner and on the same terms in the event the members sustain injury or are killed while rendering assistance or support pursuant to this compact. These benefits and compensation are expense items reimbursable pursuant to item (3) of this subsection.

(B) Officers and enlisted personnel of the National Guard performing duties pursuant to this compact must be subject to and governed by the provisions of their home state’s Code of Military Justice whether they are performing duties within or outside their home state. If a National Guard member commits, or is suspected of committing, a criminal offense while performing duties pursuant to this compact outside his home state, he may be returned immediately to his home state and that state must be responsible for disciplinary action. However, nothing in this section abrogates the general criminal jurisdiction of the state in which the offense occurred.

ARTICLE V

Delegation

Nothing in this compact must be construed to prevent the governor of a party state from delegating his responsibilities or authority respecting the National Guard, provided that this delegation is in accordance with law. For purposes of this compact, however, the Governor shall not delegate the power to request assistance from another state.

ARTICLE VI

Limitations

Nothing in this compact shall:

(1) authorize or permit National Guard units or personnel to be placed under the operational control of a person not having the National Guard rank or status required by law for the command in question; or

(2) deprive a properly convened court of jurisdiction over an offense or a defendant because the National Guard, while performing duties pursuant to this compact, was utilized in achieving an arrest or indictment.

ARTICLE VII

Construction and Severability

This compact must be liberally construed to effectuate its purpose. The provisions of this compact are severable and if a phrase, clause, sentence, or provision of this compact is declared to be contrary to the Constitution of the United States or of a state or its applicability to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and its applicability to any government, agency, person, or circumstance must not be affected. If this compact is held contrary to the Constitution of a participating state, the compact shall remain in full force and effect upon the remaining party state and in full force and effect upon the state affected as to all severable matters.

HISTORY: 1995 Act No. 113, Section 2.

LIBRARY REFERENCES

Westlaw Key Number Searches: 259k15; 360k6.

Militia 15.

States 6.

C.J.S. Armed Services Section 295.

C.J.S. States Sections 31 to 32, 143.

ARTICLE 9

Lieutenant Governor

**SECTION 1‑3‑610.** Compensation.

The Lieutenant Governor shall receive such annual salary as may be provided by the General Assembly.

HISTORY: 1962 Code Section 1‑131; 1952 Code Section 1‑131; 1942 Code Section 3100; 1932 Code Section 3100; Civ. C. ‘22 Section 782; Civ. C. ‘12 Section 698; Civ. C. ‘02 Section 627; G. S. 481; R. S. 544; 1865 (13) 350; 1868 (14) 135; 1871 (15) 531; 1878 (16) 246; 1893 (21) 416; 1919 (31) 4; 1924 (33) 1182; 1966 (54) 2424; Const. 1895, Art. 3 Sections 2, 5‑9, 13, 20; 1969 (56) 444; 1973 (58) 623.

CROSS REFERENCES

Compensation of Lieutenant Governor, see SC Const, Art 4, Section 16.

Constitutional provisions in regard to Governor and Lieutenant Governor, see SC Const, Art 4, Sections 1 et seq.

Specific amounts of compensation, see Section 1‑1‑1210.

LIBRARY REFERENCES

Westlaw Key Number Searches: 360k42; 360k60(1).

States 42, 60(1).

C.J.S. States Section 131.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Lieutenant Governor Section 4, Qualifications, Election, Tenure, Compensation, and Vacancy.

NOTES OF DECISIONS

In general 1

1. In general

The General Appropriation Act, 1970 Act No. 984 [1970 (56) 2085], suspended the permanent statute fixing the salaries of the constitutional officers until July 1, 1971, but did not repeal the permanent statute either expressly or by implication. State ex rel. McLeod v. Mills (S.C. 1971) 256 S.C. 21, 180 S.E.2d 638.

A permanent continuing statute fixing the compensation of a public officer is a valid appropriation for the salaries provided in such statute. State ex rel. McLeod v. Mills (S.C. 1971) 256 S.C. 21, 180 S.E.2d 638.

**SECTION 1‑3‑620.** Office of Lieutenant Governor to be part‑time.

Beginning with the term of the Lieutenant Governor elected in 1982, the duties of such office shall be part‑time.

HISTORY: 1981 Act No. 178, Part II, Section 22.

LIBRARY REFERENCES

Westlaw Key Number Search: 360k42.

States 42.

C.J.S. States Section 131.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Constitutional Law Section 27, Other Executive Department Offices‑Constitutional Origin.

S.C. Jur. Lieutenant Governor Section 4, Qualifications, Election, Tenure, Compensation, and Vacancy.