



HENRY McMASTER
ATTORNEY GENERAL

December 2, 2009

Jonathan W. Bryan, Esquire
County Attorney, Sumter County
13 East Canal Street
Sumter, South Carolina 29150-4925

Dear Mr. Bryan:

From your letter, we understand you wish to request an opinion of this Office on behalf of Sumter County concerning what person or entity has the authority “to impose sanctions for misbehavior and poor performance in office by the veterans’ affairs officer.” Specifically, you state that “the Sumter County Administrator would like to know whether he has the authority to suspend the Sumter county Veterans’ Affairs Officer pending the disposition of criminal charges, and if not, whether that authority can be delegated by the Sumter County Legislative Delegation to the Sumter County Administrator.”

Law/Analysis

Section 25-11-40 of the South Carolina Code (2007) governs the appointment and removal of county veterans’ affairs officers. Subsection (B) of this provision states: “Subject to the recommendation of a majority of the Senators representing the county and a majority of the House members representing the county, the Director of the Division of Veterans Affairs shall appoint a county veterans’ affairs officer for each county in the State, whose term of office shall begin July first of each odd-numbered year and shall continue for a term of two years and until a successor shall be appointed.” Furthermore, this provision provides: “Qualifications shall be determined by the county legislative delegation upon a majority vote of the Senators representing the county and a majority of the House members representing the county. A county veterans’ affairs officer is subject to removal for cause at any time by a majority of the Senators representing the county and a majority of the House members representing the county.” S.C. Code Ann. § 25-11-40(B).

In our review of section 25-11-40, we did not discover any provision addressing who could impose sanctions or suspend a county veterans’ affairs officer. However, the statute is clear that the authority to remove a veterans’ affairs officer rest with the legislative delegation. In prior opinions, this Office recognized that the power to suspend may be implied from the power to remove. Ops. S.C. Atty. Gen., May 31, 2006; March 15, 2001; December 10, 1999. In a 2001 opinion, we noted that “the authority to suspend depends on the limitations placed on the power to remove.” Op. S.C.

Mr. Bryan
Page 2
December 2, 2009

Atty. Gen., March 15, 2001. We further explained that “an arbitrary power to remove is generally not held to include the power to suspend. However, when the power to remove is limited to removal for cause, then the power to suspend is viewed as a part of the disciplinary process leading to removal, and is considered an incidental power thereto.” Id. (citing Op. S.C. Atty. Gen., September 27, 1989; State ex rel. Thompson v. Seigler, 230 S.C. 115, 94 S.E.2d 231(1956) (upholding the validity of the Governor’s order suspending a sheriff, who had been indicted on criminal charges)). However, we also noted the Supreme Court’s decision in Rose v. Beasley, 327 S.C. 197, 489 S.E.2d 625 (1997), in which the Court found the Governor did not have the authority to suspend an appointee incident to his power to remove the appointee from office. Id. Nonetheless, we added:

[T]he courts have not expressly overruled case law supporting our conclusion that generally the power to suspend is incidental to a limited power of removal. However, the Court’s ruling in Beasley certainly leaves some room for doubt that this conclusion will be sustained by future case law.

Id.

We reached similar conclusions in other opinions of this Office considering the authority to suspend appointed offices. In 1999, we addressed the City of Aiken’s sanction of a municipal election commissioner for violating section 7-13-75 of the South Carolina Code, prohibiting municipal election commissioners from participating in political campaigns. Op. S.C. Atty. Gen., December 10, 1999. Section 7-13-75 stated that violation of this provision subjects the commissioner to removal by the appropriate appointive authority, which in this case was the City of Aiken. Id. We stated:

This Office has previously concluded the power to remove implies the power to suspend. Ops. Atty. Gen. dated September 27, 1989 and March 30, 1983. This conclusion is based on general law found in 67 C.J.S. Officers 108(a) which provides:

“[w]here the power of removal is limited to cause, the power to suspend, made use of as a disciplinary power pending charges, has been regarded as included within the power of removal, and it has been stated that the power to suspend is an incident to the power to remove for cause, and, according to some authorities, the power to remove necessarily includes the power to suspend.

In general, if an officer is appointed for a set term, as is the case with municipal election commissioners, there must exist good cause to remove the officer. State ex rel. Williamson v.

Wannamaker, 213 S.C. 1, 48 S.E.2d 601 (1948); Op. Atty. Gen. dated December 10, 1997. The General Assembly has determined the prohibited conduct found in Section 7-13-75 is cause for removal. Thus, it may be argued that the municipal governing body has the power to suspend the municipal election commissioner pending resolution of the charges. However, in light of Rose v. Beasley, 327 S.C. 197, 489 S.E.2d 625 (1997), I would caution that this conclusion is not free from doubt.”

Id. (footnotes omitted).

In 2006, we considered a county’s ability to remove or discipline members of a local recreation commission. Op. S.C. Atty. Gen., May 31, 2006. With no mention of removal or discipline in the recreation district’s enabling legislation, we initially determined that the power to remove commission members was incidental to the county’s authority to appoint such members. Id. Next, we considered the County’s authority to discipline commission members and stated:

[W]ith regard to Mr. Marcharia’s question as to the County Council’s authority to discipline members of the Recreational Commission, we find no authority allowing for such in the District’s enabling legislation. However, we note this Office has on occasion recognized the power to suspend is implied in the power of removal. See Op. S.C. Atty. Gen., March 15, 2001.

It has been the opinion of this Office in the past that the authority to suspend depends on the limitations placed on the power to remove. In particular, an arbitrary power to remove is generally not held to include the power to suspend. However, when the power to remove is limited to removal for cause, then the power to suspend is viewed as a part of the disciplinary process leading to removal, and is considered an incidental power thereto.

Id. However, we also qualified our opinion on this matter, recognizing the Supreme Court may find otherwise based on its opinion in Rose v. Beasley, 327 S.C. 197, 489 S.E.2d 625 (1997) (determining the Governor did not hold an inherent or removal or suspension). Id. (citing Rose, 327 S.C. at 197, 489 S.E.2d at 625).

Id.

Section 25-11-40 provides that legislative delegations may remove a veteran's affairs officer for cause. Thus, following the reasoning of our prior opinions, we believe that the Sumter County Legislative Delegation (the "Delegation") would also have the authority to suspend a county veterans' affairs officer. Nonetheless, we caution that a court, based on the Supreme Court's decision in Beasley, may find otherwise.

Although, we believe that a court would likely find that the appropriate legislative delegation has authority to suspend a county veterans' affairs officer, we find no authority to support the contention that a county administrator has such authority. First, the Legislature does not give any authority to county administrators in section 25-11-40. Second, we find that the authority to suspend a county veterans' affairs officer, if such exist, is incidental to the power to remove such officers. County administrators are given no such removal authority. Accordingly, we are of the opinion that the Sumter County Administrator (the "County Administrator") does not have authority to suspend the Sumter County Veterans' Affairs Officer (the "Veterans' Affairs Officer").

In addition, you ask whether the Delegation may delegate any authority it has to suspend the Veterans' Affairs Officer to the County Administrator. Initially, we note that based on Beasley, we cannot be confident that the Delegation holds such authority. Nonetheless, for purposes of answering your question, we will assume that it does hold such authority. In a prior opinion, we described the authority of legislative delegations as follows:

A county legislative delegation possesses no inherent powers and cannot exercise sovereign authority, absent a delegation of authority to it by the General Assembly. State v. Watkins, 259 S.C. 185, 191 S.E.2d 135 (1972). In addition, a legislative delegation is not permitted to execute or enforce a law. See, Knotts v. S.C. Dept. of Natural Resources, 348 S.C. 1, 558 S.E.2d 511, 514 (2002). The members of a county delegation may not participate in a determination as legislators because they may only exercise legislative power as members of the General Assembly. See, Gunter v. Blanton, 259 S.C. 436, 441, 192 S.E.2d 473 (1972)

Op. S.C. Atty. Gen., June 3, 2005. Thus, for the Delegation to delegate any authority it may have to the County Administrator, the General Assembly as a whole must act. Therefore, we do not believe the Delegation alone may delegate any authority to the County Administrator.

Conclusion

Based on our review of the law governing county veterans' affairs officers, we are of the opinion that while not free from doubt, a court could find that the Delegation has authority to suspend such officers incident to its authority under section 25-11-40 to remove them. However, we do not believe the County Administrator holds such authority and do not believe that if the

Mr. Bryan
Page 5
December 2, 2009

Delegation holds the authority to suspend, it may delegate such authority to the County Administrator.

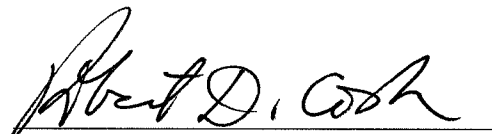
Very truly yours,

Henry McMaster
Attorney General



By: Cydney M. Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General