

June 13, 2008

The Honorable Dennis Moss
Member, House of Representatives
306 Silver Circle
Gaffney, South Carolina 29340

Dear Representative Moss:

We received your request for an opinion of this Office concerning the removal of a county veterans affairs officer from office. Specifically, you ask that we “generally advise as to what constitutes removal for cause and what procedure the Cherokee County delegation should follow in considering whether or not to remove the county veterans affairs officer.”

Law/Analysis

As you mentioned in your letter, section 25-11-40 of the South Carolina Code (2007) governs the appointment and removal of county veterans affairs officers. According to this provision, the Director of the Division of Veterans Affairs appoints county veterans affairs officers upon the recommendation of a majority of the senators representing a county and a majority of the house members representing a county. S.C. Code Ann. § 25-11-40(B). In addition, as you referred to in your letter, this provision states as follows: “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.” This provision does not define what constitutes “cause.” Moreover, this provision does not provide guidance as to the procedure for removing a veterans affairs officer. Thus, you inquire as to our interpretation of section 25-11-40 to resolve these issues.

According to our Supreme Court: “If a statute’s language is plain, unambiguous, and conveys a clear meaning, then the rules of statutory interpretation are not needed and a court has no right to impose another meaning. The words must be given their plain and ordinary meaning without resorting to subtle or forced construction which limit or expand the statute’s operation.” Strickland v. Strickland, 375 S.C. 76, 88-89, 650 S.E.2d 465, 472 (2007)(citations omitted). While we did not find any South Carolina case law interpreting the term “cause” as used in section 25-11-40, we note that several opinions of this Office address the interpretation of this term with regard to the removal of individuals from various offices.

In July of 1999, we considered the grounds upon which a member of a county planning commission may be removed. Op. S.C. Atty. Gen., July 1, 1999. Initially, we looked to the statutory provisions governing planning commissions and discovered, pursuant to the statute, planning commission members may be removed for cause. Id. Similar to veterans affairs officers, the legislation governing planning commissions did not define what cause for removal entails. Id. Although our statutes do not define this term, we noted that “this is a phrase found in many removal statutes throughout the country and has developed a common and ordinary meaning over the years.” Id. Quoting 63C Am. Jur. 2d Public Officers and Employees §183 (1997), we stated:

Cause is a flexible concept that relates to an employee’s qualifications and implicates the public interest; cause for discharge has been defined as some substantial shortcoming that renders the person’s continuance in office in some way detrimental to the discipline and efficiency of the service and which the law and sound public policy recognizes as good cause for no longer holding the position; or, as sometimes stated, dismissal for cause is appropriate when an employee’s conduct affects his or her ability and fitness to perform his or her duties. The phrase for cause in this connection means for reasons which the law and sound public policy recognize as sufficient warrant for removal, that is, legal cause, and not merely cause which the appointing power in the exercise of discretion may deem sufficient. Relatively minor acts of misconduct are insufficient to warrant removal or discharge for cause. The cause must relate to and affect qualifications appropriate to the office, or employment, or its administration, and must be restricted to something of a substantial nature directly affecting the rights and interests of the public. Neglect of duty, inefficiency, and the good faith abolition of a position for valid reasons are all legally sufficient causes for removal. (Footnotes omitted).

Id. Moreover, we noted that examples of cause as found in the South Carolina Constitution and statutes include: “embezzlement or appropriation of public or trust funds to private use, crimes of moral turpitude, malfeasance, misfeasance, incompetency, absenteeism, conflict of interest, misconduct, persistent neglect of duty in office, and incapacity.” Id. (citing S.C. Const. art. VI, §§ 8, 9; S.C. Code Ann. §§ 1-3-240, 8-1-10 et seq.).

In addition to providing guidance as to what may constitute cause for removal, our 1999 opinion addressed the requester’s concern as to the manor in which a member of a planning commission may be removed. Id. We noted that the statutes governing planning commissions do

not specify the procedure for removal and thus, we deferred “to the County Council and the County Attorney to determine the specific procedures to be followed in this regard.” Id. Nonetheless, we alerted the requester to the following passage contained in a leading legal treatise:

Where an officer or public employee can be removed only for cause either for the reason that he holds for a term fixed by law, or during good behavior, or that a constitution or statute so provides, it is generally held that the power granted is not arbitrary to be exercised at pleasure, and the power can be exercised only after notice and opportunity to be heard. (Emphasis added).

Id. (quoting 67 C.J.S. Officers § 148 (1978)). Furthermore, we noted two South Carolina cases, Walker v. Grice, 162 S.C. 29, 159 S.E. 914 (1931) and State ex rel. Williamson v. Wannamaker, 213 S.C. 1, 48 S.E.2d 601 (1948), indicating that our courts are likely to require notice and an opportunity to be heard before a public official may be removed for cause. Id. According to Walker, 162 S.C. at 35, 159 S.E. at 916: “A removal for cause operates as a limitation upon the power to remove, and, in our opinion, the party to be removed, or attempted to be removed, is entitled to a hearing as to the charge that he has failed to perform his duty.”

In 2006, we addressed a county’s ability to remove members from a county recreation commission. Op. S.C. Atty. Gen., July 19, 2006. The requester asked that we review three particular situations and determine whether each constituted cause for removal. Id. We cited extensively to our 1999 opinion to interpret the meaning of cause. Id. However, we informed the requester that “The determination of whether cause exists is factual in nature and thus, is beyond the scope of this opinion and better addressed by a court.” Id. However, we informed the requester that a court would likely find a failure to comply with the South Carolina Freedom of Information Act is cause for removal. Id. Furthermore, we again noted our belief that in order to remove a member for cause, the county must provide the individual subject to removal with notice and an opportunity to be heard.

Conclusion

Section 25-11-40(B) allows the senators and house members representing a particular county to jointly remove veterans affairs officers appointed for that county. Because the section 25-11-40 does not contain a definition of the term “cause,” we look to the plain and ordinary meaning of the term. As indicated above, the definition of cause is a fluid concept. While minor acts of misconduct are unlikely to constitute cause, whether or not cause exists is deeply rooted in fact and must be determined on a case by case basis. Nonetheless, we direct you to the interpretations of the term cited above for guidance on what is considered cause for removal.

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Section 25-11-40(B), while allowing the house and senate members representing a county to remove veterans affairs officers, does not set forth a procedure by which they may be removed. Because the house and senate members representing particular counties are charged with the authority to remove veterans affairs officers, we defer to these individuals to develop a procedure. However, in accordance with our prior opinions, because veterans affairs officers may only be removed for cause, we believe at a minimum they must receive notice and an opportunity to be heard prior to their removal.

Very truly yours,

Henry McMaster
Attorney General

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Assistant Attorney General

REVIEWED AND APPROVED BY:

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