



The State of South Carolina  
**OFFICE OF THE ATTORNEY GENERAL**

CHARLES MOLONY CONDON  
ATTORNEY GENERAL

July 1, 1999

Jack M. Scoville, Jr., Esquire  
Georgetown County Attorney  
Post Office Drawer 1250  
Georgetown, South Carolina 29442

**RE: Informal Opinion**

Dear Mr. Scoville:

Your opinion request has been forwarded to me for reply. You have been requested by the Chairman of the Georgetown County Council to seek an opinion of this Office regarding the grounds for and the procedure to be followed in removing a member of the Georgetown County Planning Commission. I appreciate your incorporating a thorough legal analysis of the issue within your request.

You have informed this Office of the following:

The Planning Commission was established pursuant to S.C. Code Ann. §6-29-310, et. seq., the South Carolina Local Government Comprehensive Planning Enabling Act of 1994 (hereinafter the "Act"). Section 6-29-350 of the Act provides in pertinent part: "The governing authority or authorities creating the commission may remove any member of the commission for cause." The statute does not define what cause for removal entails or specify the length or conditions of the term of office for a planning commission member. The Act does not provide a procedure to be followed in removing a commissioner.

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Georgetown County Council adopted an ordinance creating the Commission in conformance with the model ordinance suggested by the Comprehensive Planning Guide for Local Governments, published by the Municipal Association and the Association of Counties. The model ordinance and the ordinance adopted by County Council contain a provision for the removal of members for cause. The County's version reads as follows:

Members of the Planning Commission may be removed at any time by County Council for cause. The existence of cause shall be discussed by County Council in executive session as permitted by the Freedom of Information Act, S.C. Code §30-4-70(a)(1), and the determination of removal shall be by vote in public session declaring a vacancy without a statement of cause. Any fact which, in the discretion of Council, is deemed to adversely affect the public interest, including a lack of attendance at meetings, may constitute cause.

As you state in your request, the Act does not define the phrase "for cause." However, this is a phrase found in many removal statutes throughout the country and has developed a common and ordinary meaning over the years. The following discussion of the term "for cause" is found in 63C Am. Jur. 2d Public Officers and Employees §183 (1997):

"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

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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).

In addition to the common and ordinary meaning of the phrase "for cause," County Council may also want to review portions of the South Carolina Constitution and statutes for examples of what may constitute cause for removal in various situations. Examples of such behavior 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. S.C. Const. art. VI, §§ 8, 9; S.C. Code Ann. §§ 1-3-240, 8-1-10 et seq. Further, other states have found that persistent absences from meetings of a board or commission constitute cause for removal. Ark. Op. Atty. Gen. dated November 5, 1990, Ky. Op. Atty. Gen. dated August 22, 1980, La. Op. Atty. Gen. dated August 11, 1978.

You also correctly state in your request that the Act does not contain a provision governing the manner of removal of a member of the Planning Commission. As such is the case, we would defer to the County Council and the County Attorney to determine the specific procedures to be followed in this regard. However, since the Act requires that removal must be "for cause," I call your attention to the following passage found in 67 C.J.S. Officers §148 (1978):

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).

The courts in South Carolina have long operated under this general rule. For example, in Walker v. Grice, 162 S.C. 29, 159 S.E. 914 (1931), the supreme court concluded

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“[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.” Further support for this proposition is found in Williamson v. Wannamaker, 213 S.C. 1, 48 S.E.2d 601 (1948). Thus, while the County Council appears to have some discretion in determining the precise procedures to be followed when removing a member of the Planning Commission, the removal must be done with the above stated legal rule in mind.

This letter is an informal opinion only. It has been written by a designated assistant attorney general and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With best personal regards, I am

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Paul M. Koch".

Paul M. Koch

Assistant Attorney General