

6277 July 1997



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

June 16, 1997

E.C. McGregor Boyle
Mayor Pro Tempore
Town of Pawley's Island
Post Office Box 1818
Pawley's Island, South Carolina 29585

Re: Informal Opinion

Dear Mayor Boyle:

Your recent opinion request has been forwarded to me for reply. You have informed this Office that in March of 1997, Dr. Julian L. Kelly, then mayor of Pawley's Island, was indicted for improper use of the telephone. Governor Beasley then suspended Dr. Kelly from the office of mayor. Since the suspension, you have been fulfilling the duties of the office of mayor as the mayor pro tempore. You have asked this Office's opinion as to the legality of two issues involving Dr. Kelly.

By order filed with the Secretary of State on March 14, 1997, Governor Beasley suspended Dr. Kelly from the office of mayor. In the order, the Governor cites S.C. Code Ann. § 8-1-100 (Supp. 1996) as authority to suspend Dr. Kelly. Section 8-1-100 provides in pertinent part as follows:

... any state or county officer who is indicted in any court for any crime may, in the discretion of the Governor, be suspended by the Governor, who in event of suspension shall appoint another in his stead until he shall be acquitted. In case of conviction, the office shall be declared vacant by the Governor and the vacancy filled as provided by law.

As to the first issue, you request this Office's opinion as to the legality of the following:

Request Letter

Mayor Boyle
Page 2
June 16, 1997

In May of 1997, I requested that Dr. Kelly obtain for me two or more bids for the sale of a surplus police car (valued approximately \$1,000.00). I authorized Dr. Kelly to drive the car in order to obtain the best price possible. These bids were to be returned to me to make a decision. Another member of Town Council has stated that this was a violation of the Governor's order and has accused me of mismanagement.

As to the second issue, you request this Office's opinion as to the legality of the following:

Also, in May of this year, I requested Councilman W.R. Turbeville to assume the responsibility of handling the details in connection with our annual 4th of July Parade. He requested permission to seek advice from Dr. Kelly on these details as he was the only person familiar with the process. I gave him approval to do so.

I have been unable to locate case law or prior opinions of this Office which speak directly to the two questions raised in your opinion request. As a general rule, an elected official has the right to seek advice from his or her constituents. However, in this case, this general rule is tempered by those cases which hold that an act which cannot be done directly cannot be done indirectly. See, Lurey v. City of Laurens, 265 S.C. 217, 217 S.E.2d 226 (1975); Westbrook v. Hayes, 253 S.C. 244, 169 S.E.2d 775 (1969); State ex rel. Edwards v. Osborne, 193 S.C. 158, 7 S.E.2d 526 (1940).

As to your first question, while I cannot state with absolute certainty that these actions were proper or improper, I believe that some may misinterpret these actions and conclude that Dr. Kelly may, in some circumstances, be indirectly acting as mayor. Therefore, I believe that it would be wise to discontinue this practice. As to your second question, while it may not be legally impermissible to merely seek advice from Dr. Kelly, due to the fact that Dr. Kelly is presently suspended from office, I believe that it would be prudent to refrain from seeking Dr. Kelly's advice on matters involving the town until his situation has been resolved.

In closing, since Governor Beasley issued the suspension order, it may be wise to check with the Governor's Office to get their thoughts on Dr. Kelly's status as it relates to the suspension order.

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

Mayor Boyle
Page 3
June 16, 1997

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 kindest regards, I remain

Very truly yours,

A handwritten signature in cursive script, reading "Paul M. Koch". The signature is written in dark ink and is positioned above the printed name.

Paul M. Koch
Assistant Attorney General