

4923 Liberty

The State of South Carolina



Office of the Attorney General

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August 17, 1992

The Honorable Harry F. Cato
Member, House of Representatives
115 Williams Road
Travelers Rest, South Carolina 29690

Dear Representative Cato:

You had inquired as to whether South Carolina law addresses the removal of a mayor from office when he is willfully and intentionally directing the Chief of Police to disregard and not enforce certain municipal ordinances. (You have advised that there is nothing in the city ordinances addressing removal of a mayor for cause.) You also asked whether the Governor could intervene and, if so, under what circumstances.

At the outset, it is understood that whichever mayor may be involved is not under any indictment or is not facing any criminal charges in conjunction with your question. Specific facts of the situation are unknown to this Office and could have some bearing on how the matter is resolved. Interested parties may wish to discuss the situation with their local solicitor to determine whether any investigation and/or prosecution would be warranted. The following comments are thus necessarily general.

No state law governs the specific situation described in your letter. Forfeiture of office of a mayor or city council member is governed by S. C. Code Ann. §5-7-200, which provides:

(a) A mayor or councilman shall forfeit his office if he (1) lacks at any time during his term of office any qualification for the office prescribed by the general law and the Constitution; (2) violates any express prohibition of Chapters 1 to 17; or (3) is convicted of a crime involving moral turpitude.

(b) A vacancy in the office of mayor or council shall be filled for the remainder of the

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unexpired term at the next regular election or at a special election if the vacancy occurs one hundred eighty days or more prior to the next general election.

The process to effect such forfeiture is outlined in §5-7-210, as follows:

The council shall be the judge of the election and qualifications of its members and of the grounds for forfeiture of their office and for that purpose shall have power to subpoena witnesses, administer oaths and require the production of evidence. A member charged with conduct constituting grounds for forfeiture of his office shall be entitled to a public hearing, and notice of such hearing shall be published in one or more newspapers of general circulation in the municipality at least one week in advance of the hearing. Decisions made by the council under this section may be appealed to the court of common pleas.

Whether the situation described in your letter would constitute grounds for forfeiture of office is a decision to be made by city council.

The South Carolina Code contains various provisions as to removal or suspension of certain public officials. At this time, none seems to apply to the above situation, however. Section 1-3-240 et seq. provides a procedure whereby the governor may remove county or state officers guilty of misconduct, persistent neglect of duty, and the like; a mayor is not considered a county or state officer but is instead a municipal officer. Section 8-1-90 provides for the removal of a public officer convicted of misconduct, habitual negligence, and so forth. Section 8-1-100 provides for the suspension of state or county officers indicted for any crime in the discretion of the Governor. Section 8-1-110 permits the Governor to suspend public officials deemed "probably guilty of embezzlement," upon indictment. Article VI, §8 of the State Constitution involves suspension of officers when embezzlement or misappropriation or indictment for a crime of moral turpitude may be involved.

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I trust that the foregoing is sufficiently responsive to your inquiry. Please advise if clarification or additional assistance should be needed.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP:klw

REVIEWED AND APPROVED BY:



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