



ALAN WILSON
ATTORNEY GENERAL

November 16, 2015

The Honorable Joe Nates
Chief of Police, Irmo Police Department
P.O. Box 406
Irmo, SC 29063-0406

Dear Chief Nates:

We are in receipt of your opinion request concerning the authority of town council to have an elected member of council removed by vote. Specifically, you ask: (1) whether town council possesses “the legal authority to have an elected council member of that council removed by vote?” and (2) if so, whether council possesses “the authority to order someone to remove the voted-out member of council?” Our response follows.

Law/Analysis

Your question requires us to review council’s authority to *summarily remove* one of its members; particularly, whether town council, as a statutorily-created deliberative body, possesses the authority to remove a fellow councilmember from a meeting via a vote. We believe it does not possess such a power.

In a prior opinion we advised that an officeholder has a “right to hold office during a fixed term.” Op. S.C. Att’y Gen., 2007 WL 655614 (February 2, 2007). Continuing, we explained that absent “an unequivocal grant of power from the Legislature to remove at pleasure,” summary removal of an officeholder is unauthorized and, as a result, he or she may only be removed for cause.¹ Op. S.C. Att’y Gen., 2007 WL 655614 (February 2, 2007).

Moreover, we have acknowledged that members of a deliberative body also possess a right to be present at meetings. Op. S.C. Att’y Gen., 1989 WL 406144 (May 2, 1989). This is supported by Section 5-7-250(C)’s requirement that meetings of a deliberative body must comply with the requirements of the Freedom of Information Act (“FOIA”)—particularly FOIA’s notice requirements. Op. S.C. Att’y Gen., 1989 WL 406144 (May 2, 1989).

In light of these rights, we believe council does not possess the authority to summarily remove a fellow councilmember, either from office or attendance at a meeting, absent the

¹ Pursuant to the terms of Section 5-15-40, councilmembers clearly hold office for a fixed term. See S.C. Code Ann. § 5-15-40 (2004) (establishing that a mayor and councilmen “shall be elected for terms of two or four years”).

The Honorable Joe Nates
Page 2
November 16, 2015

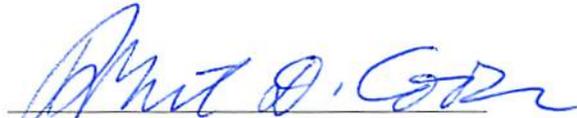
existence of cause.² Indeed, to do so would be to ignore not only the recognized rights of officeholders, but also the representational interests of their constituents.

Sincerely,



Brendan McDonald
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General

² While we decline to describe what constitutes “cause” in every case, we note that the Legislature has codified “cause,” for purposes of a councilmember’s forfeiture of office, in Section 5-7-200 of the Code. See S.C. Code Ann. § 5-7-200 (explaining a mayor or councilman forfeits his office only where one or more of the following occur: (1) the member “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.”). Likewise, while perhaps not all-encompassing, we believe an example of “cause” for purposes of an officer forfeiting his or her right to attendance at a meeting would be a breach of the peace, which in the context of the common law, may encompass “all criminal offenses.” See e.g., Op. S.C. Att’y Gen., 2015 WL 1881429 (April 17, 2015) (discussing cases interpreting the phrase “breach of the peace” and finding this include “all criminal offense.”). More broadly speaking, and as we have previously advised:

[c]ause 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.

Op. S.C. Att’y Gen., 2005 WL 1609288 (June 27, 2005) (quoting C.J.S. Officers & Employees, § 183 (1997)).