

February 5, 2007

The Honorable Bobby E. Horton
Mayor, City of West Columbia
P. O. Box 4044
West Columbia, South Carolina 29171-4044

Dear Mayor Horton:

In a letter to this office you indicated that West Columbia Council member Douglas Reeves was arrested and charged with driving under the influence and leaving the scene of an accident. You have questioned whether the West Columbia City Council can petition the Governor to suspend or remove Mr. Reeves from office due to these offenses.

As referenced in a prior opinion of this office dated June 27, 2005,

As our Supreme Court long ago stated, “[t]he power of removal from office... is not an incident of the executive office, and it exists only where it is conferred by the Constitution or by the statute law, or is implied from the conferring of the power of appointment.” State ex rel. Lyon v. Rhame, 92 S.C. 455, 75 S.E. 881, 882 (1912). If an officer holds office for a fixed term, summary removal is not authorized. State v. Wannamaker, 213 S.C. 1, 48 S.E.2d 601 (1948). The right to hold an office during a fixed term unless removed for cause may be overcome only by an unequivocal grant of power from the Legislature to remove at pleasure. *Id.*

Moreover, the Governor possesses no inherent power to remove or suspend from office. The Chief Executive may not remove or suspend a public officer unless the power to do so is conferred by the Constitution or statute. Rose v. Beasley, 327 S.C. 197, 489 S.E.2d 625 (1997). The power to suspend from office stands separate and apart from the power to remove, and must itself be found in statutory or constitutional authority. *Id.*

...Article VI, § 8 of the South Carolina Constitution provides in pertinent part as follows:

[a]ny officer of the State or its political subdivisions, except members and officers of the Legislative and Judicial Branches, who has been

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indicted by a grand jury for a crime involving moral turpitude or who has waived such indictment if permitted by law may be suspended by the Governor until he shall have been acquitted. In case of conviction the office shall be declared vacant and the vacancy filled as may be provided by law.

Thus, the Constitution requires that for the Governor to suspend a public officer, such officer must have been indicted for a crime involving “moral turpitude.” (emphasis added).

Another prior opinion of this office dated March 3, 1997 stated that as to city council members who had been arrested but not yet indicted or waived indictment for any offenses, ,

...the Governor may not remove the council members merely upon their arrest. If the council members are indicted for these crimes or waive indictment, the Governor may only suspend these individuals if their crimes are crimes of moral turpitude.

As to your situation, inasmuch as Mr. Reeves has not been indicted for any crime, but has been only arrested for DUI and leaving the scene of an accident, Article VI, § 8 in authorizing the Governor to suspend and remove public officers is inapplicable. Therefore, it appears that any petition to the Governor with respect to Mr. Reeves would not be in order at this time.

As also noted in the June 27, 2005 opinion,

Article VI, § 8 authorizes the Governor to suspend and remove only for crimes involving “moral turpitude.” A crime of moral turpitude has been defined by our Supreme Court as “... an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellow man, or society in general, contrary to the accepted and customary right and duty between man and man...” State v. LaBarge, 275 S.C. 168, 268 S.E.2d 278 (1980). As the Court noted in LaBarge, “[w]hile all crimes involve some degree of social irresponsibility, all crimes do not involve moral turpitude.” 275 S.C. at 172. Most offenses involving moral turpitude “... seem to include some sort of dishonest behavior.” McAninch and Fairey, The Criminal Law of South Carolina, 49 (2d ed. 1989).

As to the offenses for which Mr. Reeves has been arrested, a prior opinion of this office dated August 13, 1984 determined that driving under the influence is not a crime of moral turpitude. See also: State v. Harry, 321 S.C. 273, 468 S.E.2d 76 (Ct.App. 1996). In its decision in State v. Horton, 271 S.C. 413, 238 S.E.2d 263 (1978), the State Supreme Court dealt with the question of whether the offense of “hit and run” involved moral turpitude. The Court stated that

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[a]n act in which fraud is an ingredient involves moral turpitude...One who leaves the scene of an accident is fraudulently attempting to relieve himself of any liability. We conclude that the offense of "hit and run" is contrary to justice, honesty and good morals. It involves moral turpitude....

271 S.C. at 414-415. Consistent with such, in the opinion of this office, leaving the scene of an accident would involve moral turpitude. However, again, inasmuch as there has not been any indictment of Mr. Reeves as yet, there would be no basis for the Governor to suspend Mr. Reeves from office at this time.

With kind regards, I am,

Very truly yours,

Henry McMaster
Attorney General

By: Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Assistant Deputy Attorney General