



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

August 20, 2003

Brian M. Gibbons, Esquire
Great Falls Town Attorney
Post Office Drawer 808
Chester, South Carolina 29706-0808

Dear Mr. Gibbons:

In a letter to this office you raised questions regarding Mr. Glenn Ross, a town council member, who pled guilty to assault of a high and aggravated nature. Mr. Ross received a suspended sentence with probation. You indicated that Mr. Ross had been indicted for assault with intent to kill. Pursuant to S.C. Code Ann. Section 5-7-200 (1977), a councilman shall forfeit his office if convicted of a crime of moral turpitude.

In your first question you asked whether the offense of assault of a high and aggravated nature is a crime of moral turpitude. In its decision in In the Matter of J. Archie Lee, 313 S.C. 142, 143, 437 S.E.2d 85, 86 (1993), the state supreme court determined that while the offense of assault of a high and aggravated nature is not always a crime of moral turpitude, it "...may be depending on the facts".

As to the situation regarding Mr. Ross, this office cannot make factual conclusions in an opinion. Moreover, this office is unaware of the factual circumstances surrounding Mr. Ross' conviction. However, one method of resolving the question as to whether the offense constitutes a crime of moral turpitude would be to bring an action pursuant to S.C. Code Ann. Section 15-63-60 (1977) which provides for actions governing the forfeiture of an office by any private party upon leave of the circuit court.

You also asked whether the fact that Mr. Ross was indicted for assault with intent to kill disqualifies him from serving as a council member. A prior opinion of this office dated December 29, 1980 determined that the offense of assault with intent to kill is a crime of moral turpitude. See also: State v. Spinks, 260 S.C. 404, 196 S.E.2d 313 (1973). Pursuant to Article VI, Section 8 of the South Carolina Constitution,

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

Therefore, pursuant to such provision, suspension would have been in order for an indictment for assault with intent to kill.

In your last question, referencing Section 5-7-200 and its provision for forfeiture of an office upon conviction of a crime of moral turpitude, you asked what happens if Mr. Ross refuses to resign and who is authorized or required to take action against him to remove him from office. Assuming a court determines the offense is a crime of moral turpitude, pursuant to Section 5-7-200, a councilman forfeits his office upon conviction of a crime of moral turpitude. Consistent with Article VI, Section 8 of the Constitution, the office is vacant and the vacancy is to be filled as provided by law. Section 5-7-200(b) provides that any vacancy in a council office "...shall be filled for the remainder of the 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."

If there are any further questions, please advise.

Sincerely,



Charles H. Richardson
Senior Assistant Attorney General