

6197 February



The State of South Carolina  
**OFFICE OF THE ATTORNEY GENERAL**

CHARLES MOLONY CONDON  
ATTORNEY GENERAL

March 3, 1997

The Honorable Ann Stevens  
Mayor, Town of Carlisle  
P.O. Box 305  
Carlisle, South Carolina 29031

Re: Informal Opinion

Dear Mayor Stevens:

This Office is in receipt of your opinion request dated February 24, 1997. You have informed this Office that certain members of the Carlisle Town Council have been arrested. Among the crimes the town council members have been arrested for are public drunkenness, resisting arrest, and interfering with a police officer. You ask whether a member of the town council charged with a crime may be suspended from the council pending disposition in a court of law. In addition, you ask whether a member of the town council may be removed from office if convicted of a crime.

In regards to your first question, Article VI, Section 8 of the South Carolina Constitution provides in pertinent part:

Any 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.

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According to the information that you have provided, the council members have been arrested but have not yet been indicted or waived indictment. Therefore, pursuant to the Constitution, 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.

In regards to your second question, S.C. Code Ann. § 5-7-200 (1977), provides that "[a] councilman shall forfeit his office if he ... (3) is convicted of a crime involving moral turpitude." A crime of moral turpitude is defined 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).

The Supreme Court has found that public drunkenness is not a crime of moral turpitude. State v. LaBarge, *supra*. In regards to the crime of resisting arrest, the Supreme Court has held that whether it is a crime of moral turpitude depends on the facts of the case. A violation which involves non-violent resistance does not constitute a crime of moral turpitude. However, if a violation involves violent resistance, the surrounding facts determine whether moral turpitude is involved. State v. Hall, 306 S.C. 293, 411 S.E.2d 441 (Ct. App. 1991).

Finally, the courts have not addressed whether the crime of interfering with a police officer is a crime of moral turpitude. Interfering with a police officer is not a crime specified in the South Carolina Code, but apparently is a crime set forth by an ordinance of the Town of Carlisle. Since you have not provided a copy of the ordinance detailing the components of this crime, I cannot comment with certainty as to whether this is a crime of moral turpitude.

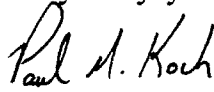
To summarize the foregoing, since the council members have not been indicted for these crimes or waived indictment, the Governor does not have the authority to suspend these individuals. If the council members are indicted or waive indictment, in order for the Governor to suspend these individuals, their crimes must be crimes of moral turpitude. Furthermore, if the council members are convicted of these crimes, they may only be removed from office if these are crimes of moral turpitude. The Supreme Court has held that public drunkenness is not a crime of moral turpitude. In addition, whether resisting arrest is a crime of moral turpitude depends on the surrounding facts of the crime. Finally, because the ordinance detailing the crime of interfering with a police officer has not been provided, I am unable to comment as to whether this is a crime of moral turpitude.

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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 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 that reads "Paul M. Koch".

Paul M. Koch  
Assistant Attorney General