

The State of South Carolina



Office of the Attorney General

T. TRAVIS MEDLOCK
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211
TELEPHONE: 803-734-3970
FACSIMILE: 803-253-6283

September 18, 1991

The Honorable James M. Waddell, Jr.
Senator, District No. 46
111 Gressette Building
Columbia, South Carolina 29202

Dear Senator Waddell:

By your letter of September 12, 1991, you have asked how to accomplish the removal of an individual presently appointed to and serving on the Beaufort-Jasper Water Authority. As you noted, Act No. 349 of 1975 (and other acts relative to the Authority) contains no mechanism for removal of Authority members.

The answer to your question is most difficult because the Authority is an entity serving more than one county; thus, it is not a county entity or a state entity, so that its members are neither county nor state officers. Removal of county or state officers by the Governor is authorized under the specified circumstances by S.C. Code Ann. § 1-3-240 (1976); thus, this section is not applicable to Authority members. Impeachment, as authorized by Article XV of the State Constitution, is not applicable since the Authority members would not fall within the categories of officers for whom impeachment may be sought. There is no provision for "recall" in this State.

There are other constitutional or statutory provisions which permit suspension or removal of public officials upon indictment for or conviction of specified crimes. See, as examples, § 8-1-80; § 8-1-90; § 8-1-100; § 8-1-110; and Article VI, Section 8 of the State Constitution. As we understand the situation, apparently the individual in question has not been indicted for or convicted of any criminal offense, nor is such pending. Thus, it is unnecessary to determine whether any of these provisions might be relevant.

The Honorable James M. Waddell, Jr.
Page 2
September 18, 1991

We finally note that Article VI, Section 9 of the State Constitution provides that "[o]fficers shall be removed for incapacity, misconduct, or neglect of duty, in such manner as may be provided by law when no mode of trial or removal is provided in this Constitution." This constitutional provision is not self-executing, however, and resort must be made to statutes such as § 1-3-240 if removal is not provided within the Constitution.

Based on the foregoing, it is the opinion of this Office that there is presently no statutorily-specified means of removing a member of the Beaufort-Jasper Water Authority from office, at least in the absence of an indictment for or conviction of certain criminal offenses. Because the Authority is a multi-county entity, the General Assembly could most likely remedy this absence of authority by legislation for the Authority.

With kindest regards, I am

Sincerely,

Patricia D. Petway
Patricia D. Petway
Assistant Attorney General

PDP/an

REVIEWED AND APPROVED BY:

Robert D. Cook
Robert D. Cook
Executive Assistant for Opinions