

The State of South Carolina

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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

May 23, 1990

The Honorable Joe Wilson
Senator, District No. 23
606 Gressette Building
Columbia, South Carolina 29202

Dear Senator Wilson:

By your letter of May 1, 1990, you have advised that a member of the State Highway Commission has been publicly reprimanded for violation of the State Ethics Act. You have asked what additional actions would be appropriate in this matter.

Section 8-13-510 of the South Carolina Code of Laws (1976) sets forth various remedies for breach of ethical standards by public officials or employees. Subsection (1) provides that the provisions of that statute (and two other statutes not applicable herein) are "in addition to all other civil and administrative remedies... which are provided by law." Subsection (2) permits a written reprimand such as that already issued by the State Ethics Commission. Recovery of the value of anything received by a public employee or official is authorized by subsection (3); it appears from the written reprimand that the commissioner did not ultimately benefit from his actions and thus there is likely no value of a benefit to be recovered. 1/ Notice and an opportunity for a hearing prior to removal of a public officer or termination of a public employee are required by subsection (4), if such is initiated due to a violation of the State Ethics Act.

1/ This conclusion is reached on the basis that the road in question was apparently not paved, according to the written reprimand. If it could be shown that the commissioner's actions or lack thereof under the State Ethics Act did cause him to receive some value in the transactions, another conclusion might be warranted under Section 8-13-510(3).

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The statutes relative to the State Highway Commission, in Title 57 of the Code of Laws, do not contain any sanctions to be imposed upon a commissioner in a circumstance such as this. Section 57-3-230 contemplates that a vacancy on the Commission could occur by the removal of a commissioner, but no means of removal or reason for removal is specified. Based on the lack of such a statute in what is now Title 57, former Attorney General Daniel R. McLeod opined in opinions dated December 9, 1970 and February 24, 1971 (copies enclosed), that the only method of removal of a State Highway Commissioner would be by action of the Governor. While those opinions do not cite the particular statutory authority, the language therein appears to be that of present Section 1-3-240 of the Code.

Section 1-3-240 authorizes the Governor to remove a county or state officer "who is guilty of misconduct or persistent neglect of duty in office..." The individual must be informed in writing of the specific charge against him and given an opportunity, upon reasonable notice, to be heard, 2/ prior to removal. Whether the instant situation is one appropriate for the Governor to initiate his authority under Section 1-3-240 is, of course, a matter to be exclusively decided by the Governor. This Office recently noted with respect to the question of removal, that "[a]s is the case with any discretionary decision, that is a judgment that only the officer delegated with authority to make the decision, in this case the Governor, can make." Op. Atty. Gen., December 21, 1989. Of course, upon initiation of proceedings, removal would be effected only if the Governor should be satisfied as to the misconduct or neglect of duty. Hearon v. Calus, 178 S.C. 381, 183 S.E. 13 (1936).

The foregoing sets forth the relevant statutory authority of which we are aware which could be applicable in this instance. Whether proceedings should be initiated under one or more of these statutes is outside the scope of an opinion of this Office.

2/ This process would comport with the requirements of Section 8-13-510(4).

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With kindest regards, I am

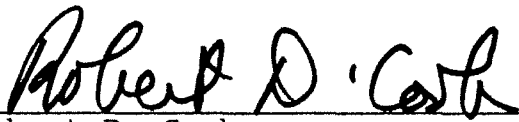
Sincerely,

Patricia D. Petway
Patricia D. Petway
Assistant Attorney General

PDP/nnw

Enclosures

REVIEWED AND APPROVED BY:



Robert D. Cook
Executive Assistant for Opinions