

1974 WL 27193 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 11, 1974

***1 In Re: Removal from Office of Member of Homeland Park Water Commission**

Mr. Wm. L. Watkins
Messrs. Watkins, Vandiver, Kirven, Long & Gable
Attorneys at Law
500 S. McDuffie Street
Post Office Box 4086
Anderson, South Carolina 29621

Dear Mr. Watkins:

Thank you for your letter of February 20, 1974, concerning the circumstances existing with respect to two members of the Board of Commissioners of the Homeland Park Water District of Anderson County. One Commissioner, according to your letter, has pled guilty to a charge of drawing and issuing a fraudulent check and to a charge of obtaining property under false pretenses. He has received a sentence of five years, suspended upon restitution and three years probation.

The offense of obtaining property under false pretenses involves moral turpitude. It is my opinion that the provisions of Article VI, Section 8, of the Constitution of this State are therefore applicable. This section provides, in pertinent part: 'Any officer of the State or its political subdivisions—who has been indicted by a grand jury for a crime involving moral turpitude—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.'

The above constitutional provision appears clearly to vest in the Governor discretionary authority to suspend an officer of a political subdivision following his indictment for a crime involving moral turpitude. Where, however, such an officer has been convicted of such a crime, the constitutional provision uses the word 'shall' and equally clearly places upon the Governor the mandatory duty of declaring that the office is vacant. The discretionary function of the Governor with respect to suspension, at least, is shown by reference to the comments of the Committee which formulated the new constitutional provision. Committee Report, p. 117.

It is not necessary that prior suspension has been made in order for the Governor to declare a vacancy in office consequent upon a conviction for an offense involving moral turpitude.

This constitutional provision appears clearly self-executing and, in my view, it is incumbent upon the Governor to declare a vacancy in the office upon it being made known to him that an officer has been convicted of an offense involving moral turpitude. The provisions of the Constitution are to be construed to be mandatory and prohibitory, except where expressly made directory. Article I, Section 23.

I, therefore, advise that, in the opinion of this Office, the councilman who has been convicted or has pled guilty to the charges above set forth may not hold office subsequent to a declaration by the Governor that a vacancy exists in such office. I advise further that, in the opinion of this Office, the Governor should forthwith declare that such a vacancy exists, and I will so recommend to him.

*2 With respect to another member of the Commission who has become entirely inactive, attending only one of some 20 or 30 Commission meetings held since June 1, 1973, I advise that, in my opinion, the Governor has no authority under present law to undertake removal proceedings. Sections 1-124, et seq., Code of Laws, 1962, provide for the removal of county or State officers for misconduct or persistent neglect of duty, but those sections do not appear to reach officers of political subdivisions, such as is here involved. Article VI, Section 9, provides a vehicle upon which the Legislature may provide for such removal, but that section does not appear to be self-executing, and has not, at the present time, been implemented. Sections 1-124, et seq., do not, therefore, appear to be available for removal proceedings against officers of political subdivisions. See Notes of Drafting Committee, which recognized the deficiency in the older Constitution and expressed its intent that the prior section should 'be expanded to cover all employees of the State, including those of local political subdivisions.'

I, therefore, advise that, in my opinion, with respect to the latter officer, the Governor does not presently possess removal authority.

With best wishes,
Very truly yours,

Daniel R. McLeod
Attorney General

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