

1973 WL 26816 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

July 16, 1973

*1 The Honorable John C. West
Governor
Columbia, South Carolina

Dear Governor West:

You have requested my opinion as to whether a charge of misconduct may properly be brought against the Chairman of the South Carolina Commission for the Blind as a basis for his removal from office under the removal powers vested in you by the statutes of this State. This Office has extensively investigated the affairs of the Commission for the Blind and the following summary of facts appears appropriate.

The only matter of any serious import concerns an allegation that the Chairman 'ordered' the payment of fees for services which had been rendered by a member of the Commission who was an ophthalmologist after having received an opinion of this Office that members of the Commission could not enter into contracts with the Commission. Section 71-295 of the Code of Laws authorizes the Commission to arrange for the examination of the eyes of visually handicapped persons and to secure and pay for medical and surgical treatment of such persons whenever, in the judgment of an ophthalmologist, the eyes of such persons may be benefited thereby. There is a limited number of ophthalmologists in South Carolina and the member-physician is an ophthalmologist practicing in an area approximately 40 miles distant from the nearest such qualified physician. The procedure followed by the Commission is for those visually handicapped persons needing the services of an ophthalmologist to choose such an ophthalmologist from a list of physicians submitted to them, which list is compiled from physicians who indicate their willingness to serve the blind. The Director of the Commission inquired of this Office whether a member of the Commission could properly perform services for the Commission for which he would be paid by the Commission. By letter dated January 24, 1973, this Office advised the Director that 'public policy prohibits a member of the Commission for the Blind from contracting with the Commission to perform services for which he will be compensated.' This opinion was sent to the Chairman by the Director shortly after its receipt and apparently was known to other members of the Commission. The opinion was apparently also taken up with the members of the Commission at its next meeting following the receipt thereof. The Commission appears to have discussed the matter and considered that the services of the member-ophthalmologist were needed by the blind because of the limited number of available specialists of that type and particularly because the member was the only such qualified physician in a rather large area. No specific action was taken by the Commission and no instructions were at that time given to the Director by it. A question was raised about this time as to the status of the member-physician in view of a contention that he also held at that time another city office and was thereby in violation of the dual officeholding provision of the Constitution. This Office advised the Commission that the member in question was required to continue to serve on the Commission until he should be replaced by a successor. It is my opinion that the Commission took no action one way or the other but merely acquiesced in a continuance of the previous procedures.

*2 The Director, about February 1972, directed the Commission accountant to withhold payment of the fees which were received by the Commission from the member. This does not seem to have been reported to the Commission nor was the member informed that his fees were no longer to be paid. The member made several inquiries of the Director about the delinquency of payments for his services. The member states that he was told by the Director that he (the Director) did not know why the bills had not been paid.

These circumstances continued until June 1972 when, at a meeting of the Commission, the member raised the question as to why his bills had not been paid. The Chairman then made inquiry of the Director who stated that non-payment was because of

the opinion of the Attorney General. The Chairman then stated that the member had rendered the services in good faith, that no member of the Commission had interposed an objection to having the member-physician render his services, and that the bills were due and should be paid. At this meeting, all members were present except one. No vote was taken at the meeting and no protest against such instruction to the director was interposed by any member. The bills were then paid.

The payment of the fees in these circumstances may have been legally improper. The Chairman was of the view that the opinion of this Office was not controlling under the circumstances and that opinion was, in fact, directed to a single bare question without knowledge of the factual situation which prompted the inquiry. The answer would probably have been the same in any event but I recognize that an honest, good faith question could arise as to the applicability of the January 1972 opinion in the circumstances described above.

Moreover, the Chairman has no greater power than a majority of the members of the Commission and in my opinion has no greater degree of culpability than the other members.

I do not believe that the Chairman or the members of the Commission can properly be charged with misconduct in these circumstances.

The entire matter appears to be the product of an unfortunate period of dissension between the former Director of the Commission and the Chairman and some of the other members of the Commission, which finally culminated in the resignation of the former Director and the selection of the present Director.

The matter rests in your discretion, of course, but, in my opinion, a charge of misconduct against the Chairman should not be made.

Very truly yours,

Daniel R. McLeod
Attorney General

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