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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON
ATTORNEY GENERAL

December 10, 1999

Gary H. Smith, III, Esquire
Aiken City Attorney
Post Office Box 519
Aiken, South Carolina 29802

Dear Mr. Smith:

You have informed this Office that a City of Aiken municipal election commissioner served as a volunteer campaign chairman for a candidate for the State House of Representatives. The other candidate in the race brought this matter to the City's attention, alleged the commissioner's conduct violated S.C. Code Ann. § 7-13-75 and asked that action be taken by the city council on the matter. You have asked whether the municipal election commissioner violated S.C. Code Ann. § 7-13-75 by volunteering for the candidate's campaign. If the answer is yes, you ask whether removal is the only appropriate sanction or if there are other appropriate sanctions.

Section 7-13-75 of the Code provides as follows:

No member of a county or municipal election commission, voter registration board, or combined election and voter registration commission may participate in political management or in a political campaign during the member's term of office. No member may make a contribution to a candidate or knowingly attend a fundraiser held for the benefit of a candidate over whose election the member has jurisdiction. Violation of this section subjects the member to removal by the Governor or appropriate appointive authority.

When interpreting a statute, a court must apply the clear and unambiguous terms of a statute according to their literal meaning. State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1991). The words of a statute must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation. Bryant v. City of Columbia, 295 S.C. 408, 368 S.E.2d 899 (1988).

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The American Heritage Dictionary (3rd ed. 1993) defines "participate" as meaning to take part in something or to share in something. See also 31 Words and Phrases 227 (1957). Section 7-13-75 provides "[n]o member of a county or municipal election commission, voter registration board, or combined election and voter registration commission may participate in political management or in a political campaign during the member's term of office." On its face, it would appear a member of a municipal election commission serving as a volunteer campaign chairman of a political campaign would be taking part in political management or in a political campaign during the member's term of office thus violating the statute. However, the particular facts of this case must be reviewed before reaching a final decision. As this Office is not authorized to make factual determinations in a legal opinion, we must defer to the city council's judgment in this matter.

If a member of a municipal election commission participates in political management or in a political campaign during the member's term of office, Section 7-13-75 authorizes the removal of the member. Specifically, "[v]iolation of this section subjects the member to removal by the Governor or appropriate appointive authority." Here, the appropriate appointive authority is the municipal governing body. S.C. Code Ann. § 5-15-90. Generally, when the word "subjects" is used in regards to a penalty, it is being used in a qualified sense of being liable or exposed to penalty, and not in the sense of being absolutely penalized. Blackshear Mfg. Co. v. Talmadge, 161 S.E. 256 (Ga. 1931); The Motorboat, 53 F.2d 239 (1931). Thus, the municipal governing body is not required to remove the member of the municipal election commission, but has the discretion to do so if the facts warrant removal.

The only sanction specifically authorized by Section 7-13-75 is a member violating the statute is subject to removal. A cardinal rule of statutory construction is "expressio unius est exclusio alterius" or "the enumeration of particular things excludes the idea of something else not mentioned." Pennsylvania National Mutual Casualty Insurance Company v. Parker, 282 S.C. 546, 320 S.E.2d 458 (1984). As the General Assembly has only enumerated potential removal as punishment for committing the prohibited acts, it would appear removal, and possibly those powers implied from removal, would be the only appropriate sanction.

This Office has previously concluded the power to remove implies the power to suspend. Ops. Atty. Gen. dated September 27, 1989 and March 30, 1983. This conclusion is based on general law found in 67 C.J.S. Officers 108(a) which provides:

[w]here the power of removal is limited to cause, the power to suspend, made use of as a disciplinary power pending charges, has been regarded as included within the

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power of removal, and it has been stated that the power to suspend is an incident to the power to remove for cause, and, according to some authorities, the power to remove necessarily includes the power to suspend.

In general, if an officer is appointed for a set term, as is the case with municipal election commissioners, there must exist good cause to remove the officer.¹ State ex rel. Williamson v. Wannamaker, 213 S.C. 1, 48 S.E.2d 601 (1948); Op. Atty. Gen. dated December 10, 1997. The General Assembly has determined the prohibited conduct found in Section 7-13-75 is cause for removal. Thus, it may be argued that the municipal governing body has the power to suspend the municipal election commissioner pending resolution of the charges. However, in light of Rose v. Beasley, 327 S.C. 197, 489 S.E.2d 625 (1997), I would caution that this conclusion is not free from doubt.

With best personal regards, I am

Sincerely yours,



Paul M. Koch
Assistant Attorney General

REVIEWED AND APPROVED BY:


Zeb C. Williams, III
Deputy Attorney General

¹ The terms of members of a municipal election commission shall be six years except of those first appointed one shall serve a term of four years and one a term of two years. S.C. Code Ann. § 5-15-90.