



ALAN WILSON
ATTORNEY GENERAL

May 12, 2014

Mark A. Keel, Chief
S. C. Law Enforcement Division
P. O. Box 21398
Columbia, South Carolina 29221-1398

Dear Chief Keel:

Attorney General Alan Wilson has referred your letter dated April 14, 2014 to the Opinions section for a response. The following is this Office's understanding of your question and our opinion based on that understanding.

Issue: Would a former elected county official who pled guilty to misconduct in office pursuant to South Carolina Code § 8-1-80 et seq. pursuant to a State Grand Jury indictment be guilty of a crime of moral turpitude for using state property for his own personal and pecuniary gain?

Law/Analysis:

By way of background, South Carolina Code § 8-1-80 states:

Any public officer whose authority is limited to a single election or judicial district who is guilty of any official misconduct, habitual negligence, habitual drunkenness, corruption, fraud, or oppression shall be liable to indictment and, upon conviction thereof, shall be fined not more than one thousand dollars and imprisoned not more than one year.

The presiding judge before whom any public officer convicted under this section is tried shall order a certified copy of the indictment to be immediately transmitted to the Governor who must, upon receipt of the indictment, by executive order declare the office to be vacant. The office must be filled as in the case of the death or resignation of the officer.

S. C. Code § 8-1-80 (1976 Code, as amended). This Office has previously stated concerning a crime of moral turpitude:

A crime of moral turpitude is defined by the Supreme Court of South Carolina as:

. . . an act of baseness, vileness or depravity in the private and social duties that a man owes to his fellow man or to society in general, contrary to the accepted and customary rule of right and duty between man and man.

State v. Smith, 194 S.C. 247, 259, 9 S.E.2d 584 (1940); State v. Horton, 271 S.C. 413, 238 S.E.2d 263 (1978); State v. Lilly, Supreme Court of South Carolina, Op.No. 21840 (January 4, 1983). Usually, a crime of moral turpitude is an offense mala in se, i.e., 'immoral in itself', as opposed to one which is mala prohibitum, prohibited by law. State v. Horton, supra; Op.Atty.Gen. (March 18, 1983, letter to the Honorable Richard W. Riley).

Op. S.C. Atty. Gen., 1983 WL 181876 (May 5, 1983). In the past, this Office has opined that misconduct in office can be a crime of moral turpitude. Ops. S.C. Atty. Gen., 1995 WL 805825 (October 13, 1995) (based on the indictment charges the misconduct in office crimes by the Superintendent and Assistant Superintendent were crimes of moral turpitude); 1995 WL 606050 (September 14, 1995) (based on the indictment charges the School Superintendent's misconduct in office was a crime of moral turpitude); 1908 WL 81911 (March 7, 1980) (citing Op. dated November 1, 1979). Additionally, in the May 5, 1983 opinion this Office opined that a crime pursuant to South Carolina Code Section 8-1-80 was not a crime of moral turpitude based on the facts in the indictment in that funds were not used for personal gain. Op. S.C. Atty. Gen., 1983 WL 181876 (May 5, 1983). As this Office stated in that opinion:

It should first be noted that Article VI, Section 8, as a provision for the suspension of public officers, is penal in nature and, thus, must be strictly construed. 'Nothing can be added' to a removal or suspension provision 'by inference or intendment.' 67 C.J.S. Officers § 117, pp. 479-480; Op.Atty.Gen. (March 30, 1983, letter to the Honorable Richard W. Riley). Accordingly, unless the offenses alleged in the Indictment are clearly ones 'involving moral turpitude', the Governor has no power to suspend the officer, pursuant to Article VI, Section 8.

...

It is well established that not every crime is one involving moral turpitude. State v. LaBarge, 275 S.C. 168, 268 S.E.2d 278 (1980). The decision does not rest simply upon whether the offense is a felony or misdemeanor. State v. Horton, supra. While some crimes involve moral turpitude as a matter of law, there are many other offenses, such as assault and battery of a high and aggravated nature, in which the factual situation must be examined on a case by case basis. State v. Bailey, 275 S.C. 444, 272 S.E.2d 439 (1980); 58 C.J.S. Moral at p. 1204. With respect to these offenses, all of the surrounding circumstances must be carefully scrutinized.

I would advise that the offense of official misconduct probably falls in the category of offenses which must be viewed in light of all circumstances. 'Official misconduct' is defined generally

as any unlawful behavior by a public officer in relation to the duties of his office, willful in character, involving intentional wrongdoing or total lack of concern for the conduct. The phrase 'misconduct in office' [or 'official misconduct'] is broad enough to embrace any willful malfeasance, misfeasance or nonfeasance in office, including any act involving moral turpitude, or which is contrary to justice, honesty, principles of good morals,

if performed by virtue or authority of office; but it does not necessarily imply corruption, in improper purpose or criminal intent. [Emphasis added.] 67 C.J.S. Officers § 121, p. 490. In other words, there are obviously some forms of official misconduct where moral turpitude is involved, such as in the willful failure by a public supervisor to perform his duty to inspect and receive repairs with the intention of defrauding the county. See, State v. Jacques, 65 S.C. 178, 43 S.E. 515 (1903); State v. Hess, South Carolina Supreme Court, Op.No. 21880 (March 15, 1983). On the other hand however a conviction for official misconduct does ‘not necessarily involve moral turpitude.’ [Emphasis added.] People ex rel. Rice v. Appellate Court, 48 Ill.2d 195, 268 N.E.2d 420, 422 (1971). For, in some instances, the underlying basis for the official misconduct may well be a violation of a statute which is malum prohibitum, rather than mala in se, supra. Therefore, the facts alleged in the Indictment must be scrutinized to determine if official misconduct is in this instance an offense involving moral turpitude; and the same reasoning applies with equal force to the allegations of habitual negligence. The Governor may not look beyond those facts alleged in the Indictment.

Op. S.C. Atty. Gen., 1983 WL 181876 (May 5, 1983).

Moreover, this Office has opined that the crime of misconduct of office is not always a crime of moral turpitude, but rather it depends on the facts in the indictment. Ops. S.C. Atty. Gen., 2012 WL 3057450 (July 17, 2012) (based on the specific facts in the indictment found the crime was not a crime of moral turpitude but acknowledged misconduct in office may be a crime of moral turpitude depending on the facts in the indictment); 2004 WL 736932 (March 16, 2004) (opining misuse of public funds by a supervisor is a crime of moral turpitude but each crime of misconduct in office depends on the facts as to whether it constitutes a crime of moral turpitude). These opinions followed case law holding misconduct in office may be a crime of moral turpitude depending on the facts in the case. See In the Matter of Lee, 313 S.C. 142, 437 S.E.2d 85 (1993) (misconduct in office depends on the facts as listed in the indictment as to whether it constitutes a crime of moral turpitude; the use of a public office to obtain sexual favors is a crime of moral turpitude); In the Matter of Chiles, 327 S.C. 105, 490 S.E.2d 259 (1997) (official misconduct in office for a judge is a crime of moral turpitude or a serious crime pursuant to Rule 502, SCACR); State v. Bailey, 275 S.C. 444, 272 S.E.2d 439 (1980) (determination of a crime of moral turpitude depends on specific facts of the case).

As this Office stated in a prior opinion concerning the Bailey case:

In State v. Bailey, 275 S.C. 444, 272 S.E.2d 439 (1980), the South Carolina Supreme Court addressed the question of whether assault and battery of a high and aggravated nature is a crime of moral turpitude. There, the Court noted that this crime “... does not, ... invariably constitute a crime of moral turpitude, since that determination depends on the facts of each particular case.” 275 S.C. at 446. This is consistent with the general law which is that

... the question of moral turpitude depends not only on the nature of the offense, but also on the attendant circumstances. The standard is public sentiment, and this may change as the moral views and opinions of the public change.

21 Am.Jur.2d, Criminal Law, § 23, p. 138.

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Op. S.C. Atty. Gen., 1994 WL 199758 (April 19, 1994). In determining a crime of moral turpitude, this Office has previously stated:

In determining whether a crime involves moral turpitude, one looks, not to instances involving self-destructive behavior but, rather, instances where the duty to society and fellow man ... is breached by the commission of the crime ...
State v. Ball, 292 S.C. 71, 73, 354 S.E.2d 908 (1987).

Op. S.C. Atty. Gen., 1991 WL 474741 (February 12, 1991).

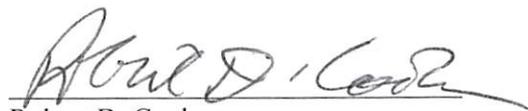
Conclusion: This Office believes a court will look at the facts as listed in the indictment to determine whether or not the specific crime of misconduct in office constitutes a crime of moral turpitude. Based on all the above cases and opinions and based on the facts in the indictment as this Office understands them, this Office believes a court will likely find a public official's use of his office for personal and pecuniary gain would constitute a crime of moral turpitude. However, if there are additional facts in the indictment or you seek further clarification, please let us know, or you may seek a declaratory judgment from a court of law pursuant to South Carolina Code § 15-53-20, et al.

Sincerely,



Anita S. Fair
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General