

1983 WL 181729 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 27, 1983

*1 The Honorable Alex Harvin, III
Majority Leader
House of Representatives
505 Blatt Building
Columbia, South Carolina 29211

Dear Representative Harvin:

Thank you for your letter of January 26, 1983, requesting the opinion of this office as to whether the chairman of the Clarendon County School District 1 board of trustees can be suspended or removed from his position. According to the information that you sent, he has been arrested on charges which include operating a lottery, conspiracy, marijuana sales and illegal liquor sales.

The members of the board of trustees for District 1 are appointed by the county board of education (county board). Act 530, Acts and Joint Resolutions of South Carolina, 1982. The only express provisions for their removal or suspension are contained in [§ 59-19-60, Code of Laws of South Carolina \(1976\)](#), which permits county boards of education to remove school trustees from office 'for cause'. This statute does not state that the county board may suspend trustees, but such powers are generally considered to be included in powers of removal. 63 AM.JUR.2d [Public Officers and Employees § 256](#). Thus, the country board in Clarendon County appears to have the power to suspend the trustee for 'cause'. I express no opinion as to whether this statute is applicable to districts with elected trustees.

'Cause' for suspension is not defined in the statute, but it should include indictments for some crimes. That indictments provide an additional safeguard in the criminal justice system in South Carolina and from the basis for the General Sessions Court's exercising jurisdiction indicates that arrest alone may not be sufficient 'cause'. Consistent with this conclusion is the constitutional grant of authority to the governor to suspend public officers upon indictment ([Art. 6 § 8 Constitution of South Carolina, \(1895\)](#)); however, if the trustee had been arrested for a crime involving his duties as an officer and the county board could independently establish his misdeeds, then sufficient 'cause' might exist without an indictment. The information provided to me indicates that the alleged crimes and duties are not directly related here.

In addition to the powers granted to the county board, the governor, as noted, is given constitutional authority to suspend public officials indicted for crimes involving moral turpitude. [Art. 6 § 8](#). This authority does not appear to be conditioned on whether the officers are appointed or elected. A previous opinion by former Attorney General McLeod dated October 26, 1976, interpreted this provision as applying to school districts including the unidentified school trustees that were the subject of that opinion. This, the governor appears to have the constitutional authority to suspend the trustee in question if he is indicted for a crime involving moral turpitude.

If the trustee is indicted, I will be happy to advise you as to whether the crimes are ones for which he may be suspended. The county board's suspension authority would extend only to crimes constituting legal 'cause' for suspension. [See](#), 63 AM.JUR.2d at § 202. The governor's express constitutional authority extends to crimes of 'moral turpitude'. Whether the crimes in question fall within these categories and whether the governor has any broader statutory authority ([see § 8-1-100 of the Code](#)) can best be considered upon an indictment.

*2 If [§ 59-19-60](#) is found to apply to any indictment and the county board chooses to suspend the trustee, the provisions in the statute for notice, a hearing and a right of appeal to the Court of Common Pleas may have to be followed. Although the rights

are expressly granted for cases of removal, the implied extension of the law to suspensions may require that the procedure be followed for these actions.

Permanent removal from office does not appear to be an option now. The constitutional provisions permitting the governor to suspend public officers upon their indictment declares an office vacant only upon a conviction. By analogy to this provision, I am reluctant to advise that the county board has authority under § 59-19-60 to remove the trustee permanently from office except upon conviction of the crimes with which he is charged. As noted above, he has not been charged with crimes associated with his duties as to which the county board could attempt to make an independent determination of the misdeeds.

In conclusion, my opinion is that the trustee in question cannot be suspended from office unless he is indicted. If he is indicted and my assistance is needed, I will be happy to advise you as to whether the crimes are ones to which the county board's and governor's suspension powers extend. Removal should be considered only upon his conviction.

If I may be of further assistance, please do not hesitate to contact me.

With best regards, I am
Sincerely yours,

T. Travis Medlock
Attorney General

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