

1975 S.C. Op. Atty. Gen. 249 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 4202, 1975 WL 22499

Office of the Attorney General

State of South Carolina

Opinion No. 4202

November 26, 1975

*1 As assault and battery is not an offense ordinarily construed as involving moral turpitude, conviction of a municipal officer on such a charge would not, in itself, be adequate grounds for removal of the officer by the Governor.

TO: Executive Assistant
Office of the Governor

QUESTION PRESENTED:

Could a Mayor be removed from office by the Governor upon his conviction on a charge of assault and battery?

AUTHORITIES CITED:

Article 6, § 8 Constitution of South Carolina;

Article 6, § 9 Constitution of South Carolina;

§ 1–124 CODE OF LAWS OF SOUTH CAROLINA;

§ 50–8 CODE OF LAWS OF SOUTH CAROLINA;

§ 50–9 CODE OF LAWS OF SOUTH CAROLINA;

§ 50–10 CODE OF LAWS OF SOUTH CAROLINA;

[Smith v. Smith](#), 194 S.C. 247, 9 S.E.2d 584 (1940);

[U. S. v. Smith](#), 8 F.2d 663 (W.D.N.Y.—1925);

[Ciambelli v. Johnson](#), 12 F.2d 465 (D.Mass.—1926);

[U. S. v. McCandless](#), 28 F.2d 287 (E.D.Pa.—1928);

[Gillman v. State](#), 165 Ala. 135, 51 So. 722 (1910);

[Burford v. Commonwealth](#), 179 Va. 752, 20 S.E.2d 509 (1942).

DISCUSSION:

Authority for removal of certain public officers upon conviction of a criminal offense is granted the Governor in various Constitutional and statutory provisions. Among these provisions is Article 6, § 8, of the Constitution of South Carolina which states in part as follows:

‘Any officer of the State or its political subdivision, except members and officers of the Legislature and Judicial Branch, who has been indicted by a grand jury for a crime involving moral turpitude or who has waived such indictment if permitted by law 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.’

Declaring an office to be vacant is, of course, tantamount to removal of the officer. Thus, as the Mayor of any city or town is an officer of a political subdivision of the State, such an officer must be removed from office upon conviction of a crime involving moral turpitude.

The difficulty in applying Article 6, § 8, to any situation lies in the determination of what constitutes a crime involving moral turpitude. In [Smith v. Smith](#), 194 S.C. 247, 9 S.E.2d 584 (1940), the Court quoted from a North Carolina case the following definition of moral turpitude:

‘[A]n 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.’

Such a definition provides little guidance for determination of whether a specific offense involved moral turpitude.

Although there is no South Carolina authority on point, the federal courts have held that assault and battery, even aggravated assault, is not a crime involving moral turpitude. See [U. S. v. Smith](#), 8 F.2d 663 (W.D.N.Y.—1925); [Ciambelli v. Johnson](#), 12 F.2d 465 (D.Mass.—1926); [U.S. v. McCandless](#), 28 F.2d 287 (E.D.Pa.—1928). Some state courts likewise have held assault and battery not to be an offense involving moral turpitude. See [Gillman v. State](#), 165 Ala. 135, 51 So. 722 (1910); [Burford v. Commonwealth](#), 179 Va. 752, 20 S.E.2d 509 (1942). While none of the authority cited is binding on the courts of this state, it is doubtful that South Carolina Courts would conclude that assault and battery, even assault and battery of a high and aggravated nature, is a crime involving moral turpitude which would enable the Governor to declare the office occupied by a person convicted of this offense to be vacant.

*2 A second constitutional provision regarding removal of officers is Article 6, § 9, which states:

‘Officers shall be removed for incapacity, misconduct, or neglect of duty, in such manner as may be provided by law when no mode of trial or removal is provided in this Constitution.’

In accordance with this provision, the Governor is authorized by § 1–124 CODE OF LAWS OF SOUTH CAROLINA to remove any officer, county or state, when it appears to the satisfaction of the Governor that the officer is guilty of misconduct, persistent neglect of duty in office or incapable of properly discharging his duties. Further, § 50–10 of the CODE authorizes the Governor to declare vacant any office, county or state, occupied by a person convicted of any crime.

As noted, §§ 1–124 and 50–10 relate only to county and state offices and do not include municipal officers. Provision is made, however, in § 50–9 for removal by the Governor of any public officer convicted under provision of § 50–8. Offenses listed in § 50–8 for which a public officer may be removed upon conviction include official misconduct, habitual negligence, habitual drunkenness, corruption, fraud or oppression.

Thus, before the Governor could remove a municipal officer from office under provisions of § 50–9, there first must be a conviction of the officer on one of the offenses named in § 50–8.

CONCLUSION:

There appears to be no authority whereby a municipal officer could be removed from office by the Governor solely on the basis of a conviction of assault and battery as such an offense is not one ordinarily construed as involving moral turpitude. Removal of a municipal officer by the Governor could be accomplished only upon his conviction of official misconduct, habitual negligence, habitual drunkenness, corruption, fraud or oppression.

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