

1974 S.C. Op. Atty. Gen. 34 (S.C.A.G.), 1974 S.C. Op. Atty. Gen. No. 3688, 1974 WL 21207

Office of the Attorney General

State of South Carolina

Opinion No. 3688

January 7, 1974

*1 Honorable William A. Dallis
Court Administrator
Supreme Court Building
Columbia, S. C.

Dear Mr. Dallis:

You have requested the opinion of this office as to where the power to remove a family court judge from office is vested.

It is my opinion that the power of removal upon appropriate charges is vested in the Governor, absent a specific procedure for removal which may exist in specific instances. The basis for this conclusion is set forth below.

Article VI, Section 9 of the Constitution of this state, ratified March 13, 1973, retains in precise language the provisions of a former section and reads as follows:

‘Section 9. 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.’

With respect to family court judges and judges possessing less than state-wide jurisdiction, there is, in my opinion, no mode of trial or removal provided in the constitution. The newly ratified article relating to impeachment (Article XV) does not in my opinion apply to judicial officers possessing less than state-wide jurisdiction. Section 1 of Article XV provides in part:

‘The House of Representatives alone shall have the power of impeachment in cases of serious crimes or serious misconduct in office by officials elected on a state-wide basis, state judges, and such other state officers as may be designated by law.’

The term ‘state judges’ must be construed in the light of decided cases considering former similar impeachment provisions, most significant of which appears to be [McDowell v. Burnett, 92 S.C. 469](#). Following the reasoning of that case, it is my opinion that a family court judge is not subject to impeachment.

Section 3 of Article XV further provides:

‘For any willful neglect of duty, or other reasonable cause, which shall not be sufficient grounds of impeachment, the Governor shall remove any executive or judicial officer on the address of two-thirds of each House of the General Assembly.’

I do not feel that this Section of the impeachment article reaches any officers except those identified in Section 1, i.e. ‘officials elected on a state-wide basis, state judges, and such other state officers as may be designated by law.’ This section is identical with former Article XV, Section 4 which the committee charged with drafting the proposed new constitutional provisions recommended be deleted from the new impeachment article:

'The committee feels that this section should be deleted. In the executive article, the Governor is given power to remove officers when there is adequate cause. Consequently, this section is not needed in the provisions related to impeachment.' Report, committee to make study of Constitution of 1895, page 121.

The General Assembly, however, included the section in the new Article XV and in my opinion it embraces only those officials subject to impeachment and is designed to provide a means of removing officers on address of the General Assembly whose conduct does not reach the gravity of 'serious crimes or serious misconduct in office' but who should, in the judgment of the General Assembly, be removed from office.

*2 The Judicial Department, Article (V), vests in the Supreme Court the power to remove or retire any judge from office upon a finding of disability seriously interfering with the performance of his duties which is, or is likely to become, of a permanent character. (Section 13) As initially drafted, this section would have vested in the Supreme Court the power to remove any judge from office upon a finding of misconduct in office or persistent failure to perform the duties of his office. This power was, however, stricken by the General Assembly in the course of passage. The committee which drafted the proposal felt that there should be some agency empowered to hear misconduct and other charges against judges as well as to determine disability and expressed a further belief that 'the Supreme Court is a proper agency for these purposes.' Committee Report, page 67. The Legislature chose, however, to not vest the Supreme Court with the power of removal except for permanent disability and in my opinion the court does not have such power.

It is my opinion that there is no code of trial or removal provided in the constitution with respect to family court judges and that, therefore, family court judges may be removed in such manner as may be provided by law. Article VI, Section 9 Constitution of South Carolina. The General Assembly has provided for a manner of removal by the provisions of Section 1-124 Code of Laws 1962.

I conclude that the Governor has authority to remove judicial officers who are not subject to impeachment pursuant to the provisions of Section 1-124 Code of Laws 1962, where no other specific statutory method of removal is provided for. There are no such provisions with respect to the family court of York County (Sections 15-1691 et. seq. and 15-1095 et. seq.). Such authority in the Governor does not violate the principle of the separation of power, [State v. Ballentine 152 S.C. 365, 150 S.E. 46](#); [State v. Whitmore 163 S.C. 97, 161 S.E. 340](#). The judge of that court is therefore, in my opinion, subject to removal by the Governor.

Very truly yours,

Daniel R. McLeod
Attorney General

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