

From: Schimsa, Rebecca <RebeccaSchimsa@gov.sc.gov>
To: Pisarik, Holly <HollyPisarik@gov.sc.gov>
Date: 2/23/2016 11:45:43 AM
Subject: FW: Donnie Myers charge

Background:

Donnie Myers is currently serving as the Solicitor for the 11th Circuit. According to reports, Solicitor Myers was arrested last night for DUI after a single vehicle collision. In the past, he has pled guilty to DUI in 2005 and has been ticketed for open container in 2012. He has served as Solicitor since 1976.

Question:

Does the Governor have the authority to suspend or remove Solicitor Myers for being arrested for DUI?

Answer:

No. Although Solicitor Myers has been arrested, he has not been indicted, and the Governor's authority is limited to suspending a state officer upon indictment **for a crime of moral turpitude (constitutional) or for any crime (statutorily).**

Law:

Pursuant to Section 1-7-310, solicitors are elected by circuit and hold terms of four years. Solicitor Myers was last elected in 2012.

The SC Supreme Court has held solicitors to be "state officers" as well as "quasi-judicial officers." In the former, the Court has held that the Solicitor's position is part of the executive Department and has long been recognized by the Court. In the latter, the Court has held that Solicitors are quasi-judicial officers serving under the Attorney General who exists to properly insure the administration of the laws of this State through his constitutional authority to supervise and direct the activities of the solicitors located in each judicial circuit of the State.

The Court has stated that the power of removal only exists where it is conferred by the law or is implied from a conferring of the power of appointment. Therefore, the Governor may not remove or suspend a public officer unless the power to do so is provided by the Constitution or statute.

Article IV, Section 8 of the Constitution provides, "Any officer of the State or its political subdivisions, except members of the Legislative and Judicial Branches, who has been indicted by a grand jury for a crime of moral turpitude or who has waived such indictment if permitted by law may be suspended by the Governor until he shall have been acquitted."

Section 8-1-100 of the Code provides, "Any state or county officer who is indicted in any court for any crime may, in the discretion of the Governor, be suspended by the Governor, who in the event of suspension, shall appoint another in his stead until he shall be acquitted; in the case of conviction, the office shall be declared vacant by the Governor and the vacancy filled as provided by law."

There are conflicting AG Opinions as to how the two provisions are to be read together. Some AG Opinions require that the statute must be read in conjunction with Article IV, Section 8, and therefore the Governor's authority is limited to crimes of moral turpitude. However, other AG Opinions hold the statute to be constitutional, since it was enacted long before the constitutional provision and since statutes should be construed constitutional where possible. I agree that Section 8-1-100 is not limited to crimes of moral turpitude. Both the constitutional and statutory provisions are permissive ("may"), and therefore, they can be read together without conflict.

Note on Drunkenness: *Pursuant to Section 1-7-400, any solicitor who shall while in the public discharge of his duties be drunk or intoxicated shall be guilty of a misdemeanor and upon conviction shall be punished by fee and imprisonment and upon the discretion of the court be dismissed. Whenever it shall be brought to the attention of the AG that a solicitor has been charged with this offense, he shall be indicted, and if he is convicted, the Governor shall declare the office vacant and order an election to fill it.* There is no caselaw or AG opinion on this issue. In addition, it is unclear from the facts whether Myers was intoxicated "in the public discharge of his duties".

Note on Vacancy: *Pursuant to Section 1-7-390, a vacancy in the office of solicitor shall be filled by the Governor with advice and consent of the Senate.* Past governors have exercised the authority to appoint solicitors approximately 10 times via Executive Order after vacancies were caused by resignation, death, or election to the bench – however, it is unclear whether the Senate confirmed these appointments.

From: Adams, Chaney
Sent: Tuesday, February 23, 2016 10:02 AM
To: Pisarik, Holly; Schimsa, Rebecca
Cc: Godfrey, Rob
Subject: FW: Donnie Myers charge

Does our office have any jurisdiction here?

From: Symmes, Brian
Sent: Tuesday, February 23, 2016 10:00 AM
To: Godfrey, Rob
Cc: Adams, Chaney
Subject: FW: Donnie Myers charge

From: Flanagan, Glen [<mailto:gflanagan@thestate.com>]
Sent: Tuesday, February 23, 2016 9:48 AM
To: Symmes, Brian
Subject: Donnie Myers charge

Hi Brian,

I was told you're the person to speak to regarding some questions about the Donnie Myers DUI charge from yesterday. I'm trying to find out if the governor's office is considering disciplinary action in this case.

What's a good time to call you and number to reach you at? My cell is 803-470-4113.

I'm hoping to have this sorted out by this afternoon so I can tell my editors what to plan for a follow-up. Please give me a call or shoot me a note as soon as you can.

Thanks for your time,

Glen Luke Flanagan
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