CHAPTER 1

General Provisions

**SECTION 8‑1‑10.** “Public officers” defined.

The term “public officers” shall be construed to mean all officers of the State that have heretofore been commissioned and trustees of the various colleges of the State, members of various State boards and other persons whose duties are defined by law.

HISTORY: 1962 Code Section 50‑1; 1952 Code Section 50‑1; 1942 Code Sections 1512, 3042; 1932 Code Sections 1512, 3042; Civ. C. ‘22 Section 733; Cr. C. ‘22 Section 460; Civ. C. ‘12 Section 649; Cr. C. ‘12 Section 535; 1901 (23) 754.

CROSS REFERENCES

Actions against usurpers or for forfeiture of office, see Sections 15‑63‑60, 15‑63‑80 to 15‑63‑160.

Appointment and removal of officers, see Sections 1‑3‑210 et seq., 8‑11‑60.

Constitutional provision regarding qualification for elected office, see SC Const, Art 17, Section 1A.

Constitutional rule regarding property qualification for an election to or the holding of any office, see SC Const, Art 17, Section 1B.

Emergency interim successors to public officers, see Sections 1‑9‑10 et seq.

Employees of Office of Criminal Justice Programs, see Section 23‑4‑540.

Fraudulently impersonating an officer, see Section 16‑13‑290.

Jurisdiction and venue of actions affecting State boards, commissions, agencies and officials, see Section 15‑77‑50.

Venue of actions against public officers, see Section 15‑7‑20.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Governor Section 15, Neglect of Office.

S.C. Jur. Public Officers and Public Employees Section 3, Statutory Offices and Officers.

S.C. Jur. Public Officers and Public Employees Section 5, Public Employment and Public Employees.

Forms

Am. Jur. Pl. & Pr. Forms Public Officers and Employees Section 1 , Introductory Comments.

LAW REVIEW AND JOURNAL COMMENTARIES

Durational residency requirements for public office, 27 S.C. L. Rev. 847.

Attorney General’s Opinions

A cadet who has yet to obtain certification as a law enforcement officer and has not completed the firearms qualification program otherwise required by Section 23‑23‑40 is not a “public officer” within the meaning of Section 8‑1‑80 or the common law definition. S.C. Op.Atty.Gen. (December 31, 2012) 2012 WL 6966190.

An individual holding a position as trustee of a county school district while also serving as Assistant Director of the Office of Vocational Education does not violate the dual office‑holding provision of the State Constitution. 1969‑70 Op Atty Gen, No 3065, p 362.

Dual office‑holding. A director of the South Carolina Recreation Commission may not serve as a commission member of the Irmo‑Chapin Recreation District without violating the constitutional prohibition against dual office‑holding. 1968‑69 Op Atty Gen, No 2715, p 166.

Municipal supervisor of registration and commissioner of election are officers. Op Atty Gen, May 15, 1963.

NOTES OF DECISIONS

In general 1

1. In general

Cited in State v. McMillan (S.C. 1939) 189 S.C. 444, 1 S.E.2d 626.

Nor chief of police. A municipal corporation is a part of the sovereign power of the State. Therefore, its chief of police, who is charged with the preservation of the peace and order of the town and with the enforcement of its laws in which the public is concerned, is a public officer. Edge v. Town of Cayce (S.C. 1938) 187 S.C. 171, 197 S.E. 216. Municipal Corporations 182; Public Employment 5

Scope of section. The intention of this section [Code 1962 Section 50‑1] probably was to include in its definition all persons whose public duties are defined by law. Sanders v. Belue (S.C. 1907) 78 S.C. 171, 58 S.E. 762.

Fiduciaries are excluded. The literal meaning of the words “other persons whose duties are defined by law” could hardly have been intended. The duties of guardians, administrators and other trustees are defined by law, and yet it could scarcely have been the intention to include such persons in the definition of public officers. Sanders v. Belue (S.C. 1907) 78 S.C. 171, 58 S.E. 762.

But not superintendent of poorhouse. The definition of this section [Code 1962 Section 50‑1] would include the superintendent of the poorhouse and farm. Sanders v. Belue (S.C. 1907) 78 S.C. 171, 58 S.E. 762.

Department of State Police, and Director of State Police, acting officially, were not “persons” subject to liability under 42 USCA Section 1983. Will v. Michigan Dept. of State Police, U.S.Mich.1989, 109 S.Ct. 2304, 491 U.S. 58, 105 L.Ed.2d 45.

**SECTION 8‑1‑20.** Illegal collecting and retaining rebates, commissions or discounts.

A state or county officer who receives or collects a rebate, commission, or discount from a person upon the purchase of books or other property or supplies or from printing or advertising, whether for use of the State or a county, and fails or refuses to pay it to the proper state or county authority at the time of receiving it is guilty of a felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than ten years. A person convicted under this section must forfeit his office.

HISTORY: 1962 Code Section 50‑2; 1952 Code Section 50‑2; 1942 Code Section 1254; 1932 Code Section 1254; Cr. C. ‘22 Section 149; Cr. C. ‘12 Section 303; Cr. C. ‘02 Section 223; 1897 (22) 519; 1993 Act No. 184, Section 14, eff January 1, 1994.

Effect of Amendment

The 1993 amendment rewrote this section so as to change portions from misdemeanors to felonies and the maximum term of imprisonment to conform to the new crime classification system.

LIBRARY REFERENCES

67 C.J.S., Officers Sections 120‑126.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Clerks of Court Section 9, Discipline and Removal.

S.C. Jur. Public Officers and Public Employees Section 79, All Officers and Public Employees.

**SECTION 8‑1‑30.** Knowingly allowing false claims by witnesses or jurors of mileage traveled.

It is unlawful for an officer, whose duty it is to certify to the mileage of any juror, witness, or other person required to attend court or to travel to perform any legal duty, to knowingly allow a claim for mileage other than prescribed by law.

A person who violates the provisions of this section is guilty of a misdemeanor. Upon conviction, the officer must be fined in the discretion of the court or imprisoned not more than one year, or both. The officer is liable in a civil action to pay to the county a penalty equal to ten times the amount which the county may lose by reason of the excess payment for mileage.

HISTORY: 1962 Code Section 50‑3; 1952 Code Section 50‑3; 1942 Code Section 1517; 1932 Code Section 1517; Cr. C. ‘22 Section 465; Cr. C. ‘12 Section 302; Cr. C. ‘02 Section 222; 1897 (22) 732; 1993 Act No. 184, Section 143, eff January 1, 1994.

Effect of Amendment

The 1993 amendment rewrote this section so as to change the maximum term of imprisonment to conform to the classification established for each offense.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Clerks of Court Section 9, Discipline and Removal.

S.C. Jur. Public Officers and Public Employees Section 80, Certain Officers.

NOTES OF DECISIONS

In general 1

1. In general

Cited in Singletary v. Wilson (S.C. 1939) 191 S.C. 153, 3 S.E.2d 802.

**SECTION 8‑1‑40.** Failure of clerk, sheriff or magistrate to pay over fines or penalties.

Any clerk of the circuit court, county sheriff or magistrate who shall neglect or refuse immediately to pay over, as required, any and all fines and penalties collected by him in any criminal cause or proceeding shall, on conviction thereof, be subject to a fine of not less than one hundred nor more than one thousand dollars and imprisonment for not less than three nor more than six months and shall be dismissed from office and disqualified from holding any office of trust and profit under this State.

HISTORY: 1962 Code Section 50‑4; 1952 Code Section 50‑4; 1942 Code Section 1519; 1932 Code Section 1519; Cr. C. ‘22 Section 467; Cr. C. ‘12 Section 540; Cr. C. ‘02 Section 383; G. S. 2553; R. S. 300; 1871 (15) 656.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Clerks of Court Section 9, Discipline and Removal.

S.C. Jur. Public Officers and Public Employees Section 80, Certain Officers.

NOTES OF DECISIONS

In general 1

1. In general

Section is constitutional. This section [Code 1962 Section 50‑4], though omitting the element of intention to defraud, is apparently not unconstitutional as violating the constitutional provision preventing imprisonment for debt except in cases of fraud. State v. Moore (S.C. 1924) 128 S.C. 192, 122 S.E. 672.

Local officers may be removed without impeachment. This section [Code 1962 Section 50‑4] is one of a number that recognizes a line of cleavage on the subject of removal from office of local officers and of officers having jurisdiction over the entire State; and it seems that officers whose authority is limited to a single election or judicial district may be removed without impeachment. McDowell v. Burnett (S.C. 1912) 92 S.C. 469, 75 S.E. 873.

**SECTION 8‑1‑50.** Allowing records to be taken from office.

If any clerk of any court of record, judge of probate, master, register of deeds or sheriff shall allow any record, or any part thereof, to be taken or removed from their respective offices by any person whomsoever, he shall be guilty of a misdemeanor and upon conviction thereof he shall be punished by a fine of fifty dollars for the first offense and for the second and any subsequent offense by a fine of one hundred dollars. Nothing herein contained shall be held to apply to the attendance of any of such officers with any of the records of their respective offices in any court when the actual production of such record is required by the proper process of such court for the purpose of evidence in any trial then proceeding therein nor shall the provisions of this section apply to the taking or removal of any books or records when done under any order of a circuit judge for the better preservation or protection of such books or records.

HISTORY: 1962 Code Section 50‑5; 1952 Code Section 50‑5; 1942 Code Section 1526; 1932 Code Section 1526; Cr. C. ‘22 Section 473; Cr. C. ‘12 Section 547; Cr. C. ‘02 Section 390; G. S. 2557; R. S. 307; 1882 (18) 871; 1885 (19) 415; 1997 Act No. 34, Section 1, eff January 1, 1998.

Code Commissioner’s Note

1997 Act No. 34, Section 1, directed the Code Commissioner to change all references to “Register of Mesne Conveyances” to “Register of Deeds” wherever appearing in the 1976 Code of Laws.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Clerks of Court Section 9, Discipline and Removal.

S.C. Jur. Public Officers and Public Employees Section 80, Certain Officers.

**SECTION 8‑1‑60.** Neglect of duty.

Any clerk of the court of common pleas and general sessions, sheriff, judge of probate or register of deeds in this State who shall wilfully fail or neglect to discharge all the duties and perform all the services which are required of him by law shall, in addition to his liability to the person aggrieved, be liable to be indicted as for a misdemeanor and upon conviction thereof shall be fined, at the discretion of the court, not exceeding five hundred dollars.

HISTORY: 1962 Code Section 50‑6; 1952 Code Section 50‑6; 1942 Code Section 1527; 1932 Code Section 1527; Cr. C. ‘22 Section 474; Cr. C. ‘12 Section 548; Cr. C. ‘02 Section 391; G. S. 2558; R. S. 308; 1837 (6) 577; 1997 Act No. 34, Section 1, eff January 1, 1998.

Code Commissioner’s Note

1997 Act No. 34, Section 1, directed the Code Commissioner to change all references to “Register of Mesne Conveyances” to “Register of Deeds” wherever appearing in the 1976 Code of Laws.

LIBRARY REFERENCES

67 C.J.S., Officers Section 120‑126.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Clerks of Court Section 9, Discipline and Removal.

S.C. Jur. Public Officers and Public Employees Section 80, Certain Officers.

NOTES OF DECISIONS

In general 1

1. In general

Cited in State v Elliott (1913) 94 SC 35, 77 SE 728. State v McMillan (1939) 189 SC 444, 1 SE2d 626.

Offense here is of passive nature. This section [Code 1962 Section 50‑6] makes it unlawful for the officers therein mentioned willfully to fail or neglect to discharge the duties of their respective offices, such failure or neglect being only passive in nature, and not of such active character as those offenses prohibited by Code 1962 Section 50‑8. State v. Green (S.C. 1898) 52 S.C. 520, 30 S.E. 683.

Neglect must be willful. In order to constitute an offense under this section [Code 1962 Section 50‑6], it is necessary that the failure or neglect be willful. State v. Green (S.C. 1898) 52 S.C. 520, 30 S.E. 683. Public Employment 1053

Indictment of judicial officer may precede impeachment. A constitutional and judicial officer who violates the law and trust of office confided to his care is not entitled to be impeached and removed from office before an indictment is brought against him. State v. Green (S.C. 1898) 52 S.C. 520, 30 S.E. 683. Public Employment 1063

Indictment charging failure to perform duty. An indictment charging that defendant, “being the judge of probate, and by virtue of said office a public guardian having in charge certain estates, \* \* \* did fail or neglect to make his annual report to the court of common pleas \* \* \* of all his acts and doings as such public guardian,” was founded upon this section [Code 1962 Section 50‑6] and not Code 1962 Section 50‑8. State v. Green (S.C. 1898) 52 S.C. 520, 30 S.E. 683.

Construction. This section [Code 1962 Section 50‑6] is construed with Code 1962 Section 50‑8. State v. Hall (S.C. 1874) 5 S.C. 120.

Application. An indictment which in effect and substance charges neglect of any official duty imposed by law on the officers named in this section is founded upon this section [Code 1962 Section 50‑6] and not upon Code 1962 Section 50‑8. State v. Hall (S.C. 1874) 5 S.C. 120.

**SECTION 8‑1‑70.** Officers reported by circuit solicitor for neglect of duty; indictment.

If any clerk of the court of common pleas and general sessions, sheriff, judge of probate or register of deeds in this State shall be reported by a circuit solicitor as having wilfully failed or neglected to discharge any of the duties or to perform any of the services appertaining to his office which are required of him by law, the court shall order a bill of indictment to be preferred against such delinquent officer.

HISTORY: 1962 Code Section 50‑7; 1952 Code Section 50‑7; 1942 Code Section 1528; 1932 Code Section 1528; Cr. C. ‘22 Section 475; Cr. C. ‘12 Section 549; Cr. C. ‘02 Section 392; G. S. 2559; R. S. 309; 1837 (6) 577; 1997 Act No. 34, Section 1, eff January 1, 1998.

Code Commissioner’s Note

1997 Act No. 34, Section 1, directed the Code Commissioner to change all references to “Register of Mesne Conveyances” to “Register of Deeds” wherever appearing in the 1976 Code of Laws.

LIBRARY REFERENCES

67 C.J.S., Officers Sections 260 to 263.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Clerks of Court Section 9, Discipline and Removal.

S.C. Jur. Public Officers and Public Employees Section 80, Certain Officers.

**SECTION 8‑1‑80.** Misconduct, habitual negligence and the like of public officer; office declared vacant.

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.

HISTORY: 1962 Code Section 50‑8; 1952 Code Section 50‑8; 1942 Code Section 1525; 1932 Code Section 1525; Cr. C. ‘22 Section 472; Cr. C. ‘12 Section 545; Cr. C. ‘02 Section 388; R. S. 305; 1829 (6) 391; 1993 Act No 181 Section 66, eff July 1, 1993.

Effect of Amendment

The 1993 amendment added the second and third sentences, relating to declaring office vacant.

LIBRARY REFERENCES

67 C.J.S., Officers Sections 117‑126, 260‑263.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Clerks of Court Section 9, Discipline and Removal.

S.C. Jur. Governor Section 16, Procedure to Suspend and Remove.

S.C. Jur. Public Officers and Public Employees Section 12, Power to Suspend or Remove.

S.C. Jur. Public Officers and Public Employees Section 19, Misconduct, Arrest, or Criminal Conviction.

S.C. Jur. Public Officers and Public Employees Section 35, Method of Filling a Vacancy.

S.C. Jur. Public Officers and Public Employees Section 79, All Officers and Public Employees.

S.C. Jur. Public Officers and Public Employees Section 80, Certain Officers.

Attorney General’s Opinions

An official commits a crime of moral turpitude if his willful and unlawful use of deadly force is deemed sufficient to constitute misconduct in office. S.C. Op.Atty.Gen. (December 2, 2016) 2016 WL 7425912.

Discussion of the legal status of Robert W. Harrell, as both a member and Speaker of the House following indictments of Mr. Harrell in the Court of General Sessions for Richland County. S.C. Op.Atty.Gen. (September 11, 2014) 2014 WL 4659414.

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. S.C. Op.Atty.Gen. (May 12, 2014) 2014 WL 2538230.

A cadet who has yet to obtain certification as a law enforcement officer and has not completed the firearms qualification program otherwise required by Section 23‑23‑40 is not a “public officer” within the meaning of Section 8‑1‑80 or the common law definition. S.C. Op.Atty.Gen. (December 31, 2012) 2012 WL 6966190.

Misconduct in office is a misdemeanor. 1966‑67 Op Atty Gen, No 2340, p 171.

NOTES OF DECISIONS

In general 1

Sufficiency of evidence or allegations to constitute offense; miscellaneous applications 2

1. In general

Cited in State ex rel. Lyon v Rhame (1912) 92 SC 455, 75 SE 881. State v Wilson (1965) 246 SC 580, 145 SE2d 20.

Nature of violations. This section [Code 1962 Section 50‑8] provides for violations of the law that are principally of an active character, and the punishment is greater than in Code 1962 Section 50‑6. State v Green (1898) 52 SC 520, 30 SE 683. State v Tarrant (1884) 24 SC 593.

And penalties therefor. The penalties imposed by this section [Code 1962 Section 50‑8] and Code 1962 Section 50‑6 differ essentially. As they cannot be treated as cumulative, the punishment prescribed by Code 1962 Section 50‑6 must displace that prescribed by this section [Code 1962 Section 50‑8], since it regards all offenses embraced within Code 1962 Section 50‑6. State v Hall (1874) 5 SC 120. State v Green (1898) 52 SC 520, 30 SE 683.

Guilty plea to a charge of official misconduct in office, arising from improperly causing traffic charge to be dismissed while acting as municipal judge, warranted seven‑month, rather than four‑month, suspension from the practice of law, retroactive to interim suspension. Matter of Chiles (S.C. 1997) 329 S.C. 21, 495 S.E.2d 202. Attorney And Client 59.13(5)

Pleading guilty to official misconduct in office warranted interim suspension. Matter of Chiles (S.C. 1997) 325 S.C. 218, 481 S.E.2d 134. Attorney And Client 48

Conflict exists between this section [Code 1962 Section 50‑8] and Code 1962 Section 50‑6. A repugnancy appears between this section [Code 1962 Section 50‑87] and Code 1962 Section 50‑6, and a person violating one of these sections cannot be indicted under the other. State v. Green (S.C. 1898) 52 S.C. 520, 30 S.E. 683.

Scope of “official misconduct.” ‑ The words “official misconduct” in this section [Code 1962 Section 50‑8] must be construed so as not to embrace those cases provided for in Code 1962 Section 50‑6. State v. Green (S.C. 1898) 52 S.C. 520, 30 S.E. 683.

Indictment after leaving office. An officer whose term has expired, or who has resigned or been removed, may be indicted under this section [Code 1962 Section 50‑8]. State v. Sellers (S.C. 1854) 7 Rich. 368. Public Employment 1063

General official misconduct is punishable only under this section [Code 1962 Section 50‑8]. State v. Hall (S.C. 1874) 5 S.C. 120.

2. Sufficiency of evidence or allegations to constitute offense; miscellaneous applications

Indictment count referring to several vouchers charges single offense. A count in an indictment which sets up several vouchers that defendant falsely made up and procured payment on only charges the one offense of official misconduct based on specific transactions. It is not multifarious. State v. Sharpe (S.C. 1925) 132 S.C. 236, 128 S.E. 722.

A count in an indictment under this section [Code 1962 Section 50‑8], which charges that defendant falsely made up vouchers and then procured their payment, does not charge separate and distinct offenses. State v. Sharpe (S.C. 1925) 132 S.C. 236, 128 S.E. 722.

Trustee of school board is indictable. A trustee of a school board, which charged him with certain duties incumbent upon the board, is a public officer under this section [Code 1962 Section Section 50‑8], and as such is indictable as for violating the law and not simply for failure to perform duties imposed on him by the board. State v. Elliott (S.C. 1913) 94 S.C. 35, 77 S.E. 728.

The board of trustees must necessarily perform its duties through its several members; and when a trustee is assigned to do work which the statute imposes on the board, he is in the discharge of a duty imposed upon him by the statutes. State v. Elliott (S.C. 1913) 94 S.C. 35, 77 S.E. 728.

A former standing of Code 1962 Section 14‑201 provided that one of the commissioners should be present and act with the county supervisor in inspecting and receiving repairs under contracts for road and bridge repair when contract price exceeded ten dollars. Under this standing, acceptance of repairs and allowance of claims under a contract exceeding ten dollars by the supervisor in the absence of a commissioner was official misconduct on the part of the supervisor, making him liable under this section [Code 1962 Section 50‑8]. State v. Jaques (S.C. 1903) 65 S.C. 178, 43 S.E. 515.

Failure to let contract to lowest bidder. Allegations in indictment of a county supervisor for misconduct that he did not let the contracts for repairs of bridges to the lowest bidder do not state an act of official misconduct, it not being required by statute. State v. Jaques (S.C. 1903) 65 S.C. 178, 43 S.E. 515. Counties 60; Public Employment 1063

Approval of improper claims as misconduct. An indictment of a county supervisor alleging that he approved claims for work that was not performed and for material that was not furnished when he had knowledge of such facts or should have known them, states acts of official misconduct. State v. Jaques (S.C. 1903) 65 S.C. 178, 43 S.E. 515. Counties 60; Public Employment 1063

Supplying liquor to prisoners. Furnishing prisoners with spirituous liquors by jailer is official misconduct. State v. Sellers (S.C. 1854) 7 Rich. 368. Prisons 440

False voucher of treasurer is an official fraud. State v. Cardoza (S.C. 1878) 11 S.C. 195.

**SECTION 8‑1‑90.** Repealed by 1993 Act No. 181, Section 1617(A), eff July 1, 1993.

Editor’s Note

Former Section 8‑1‑90 was entitled “Removal of officer convicted of misconduct, habitual negligence and the like” and was derived from 1962 Code Section 50‑9; 1952 Code Section 50‑9; 1942 Code Section 985; 1932 Code Section 985; Cr P. ‘22 Section 76; Cr. C. ‘12 Section 546; Cr. C. ‘02 Section 389; G. S. 2556; R. S. 306; 1896 (22) 312.

NOTES OF DECISIONS

In general 1

1. In general

Power of removal by Governor. The power of removal from office by the Governor is not an incident to his office, but exists only when conferred by the Constitution or statutes, or is implied from the conferring of the power of appointment. State v. Rhame (S.C. 1912) 92 S.C. 455, 75 S.E. 881, Am.Ann.Cas. 1914B,519.

**SECTION 8‑1‑100.** Suspension of officer indicted for crime.

Except as provided in Section 8‑1‑110, 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 event of suspension shall appoint another in his stead until he shall be acquitted. In case of conviction, the office shall be declared vacant by the Governor and the vacancy filled as provided by law.

HISTORY: 1962 Code Section 50‑10; 1956 (49) 1841; 1993 Act No 181, Section 67, eff July 1, 1993.

Effect of Amendment

The 1993 amendment added “Except as provided in Section 8‑1‑110,” at the beginning of the section.

CROSS REFERENCES

Being disabled to hold office on conviction of dueling, see Sections 16‑3‑410, 16‑3‑420.

Being ineligible to hold office upon conviction of conspiring against any citizen’s civil rights, see Section 16‑5‑10.

Constitutional provision for removal of executive officers by the governor on address of the General Assembly, see SC Const, Art 15, Section 3.

Officer convicted of permitting a prisoner to be taken by a mob forfeiting and being ineligible for office, see Section 16‑9‑440.

Suspension and removal for embezzlement, see Section 8‑1‑110.

Suspension of magistrates, see Section 22‑1‑30.

LIBRARY REFERENCES

67 C.J.S., Officers Sections 74‑79, 108‑113.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Clerks of Court Section 9, Discipline and Removal.

S.C. Jur. Governor Section 16, Procedure to Suspend and Remove.

S.C. Jur. Public Officers and Public Employees Section 12, Power to Suspend or Remove.

Attorney General’s Opinions

If public official were to successfully complete pretrial intervention program, there would be no conviction for purposes of Section 8‑1‑100 or resulting vacancy, but there would be “noncriminal disposition” or dismissal of criminal charge; Governor possesses discretionary authority to remove official under Section 1‑3‑240; whether this situation is appropriate for purposes of that section or whether proceedings should be initiated pursuant to such section is beyond scope of opinion of Attorney General’s Office. 1990 Op Atty Gen No. 90‑51.

Offense of furnishing false personal property tax receipts is crime of moral turpitude. 1990 Op Atty Gen No. 90‑51.

The Governor may not suspend a public officer who has been charged in an Information rather than by Indictment with a crime involving moral turpitude, but upon the conviction of such officer, the office shall be declared vacant. 1980 Op Atty Gen, No 80‑18, p 41.

An officer appointed to serve in the stead of one who has been indicted for a crime involving moral turpitude, continues to serve until the position is filled by election or appointment, irrespective of the resignation from office of the suspended officer. 1979 Op Atty Gen, No 79‑74, p 96.

The Governor has the authority to suspend an officer for an offense involving moral turpitude and also the authority to appoint an officer to serve in the place of the suspended official pending his trial. Article VI, Section 8, Constitution of South Carolina; Section 8‑1‑100, Code of Laws, 1976. 1978 Op Atty Gen, No. 78‑208, p 239.

The authority of the Governor in certain specific instances to suspend or remove judicial officers of less than statewide jurisdiction includes the power to appoint by executive order an advisory commission to hear complaints and grievances against magistrates, municipal and county judges. 1975‑76 Op Atty Gen, No 4244, p 34.

The Governor does not have authority to suspend an officer of the judicial or legislative branch when such officer has been indicted for embezzlement or other crimes of moral turpitude. 1975‑76 Op Atty Gen, No 4358, p 189.

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. 1974‑75 Op Atty Gen, No 4202, p 249.

Governor does not have power to remove a mayor only upon such person’s indictment. 1969‑70 Op Atty Gen, No 2878, p 115.

Clerk of court as temporary appointee was entitled to salary of probate judge during period such officer was suspended. 1966‑67 Op Atty Gen, No 2354, p 191.

NOTES OF DECISIONS

In general 1

1. In general

Constitutionality. This section [Code 1962 Section 50‑10] is not an unconstitutional delegation of legislative power to the Federal Government or that of a sister state, since the power to suspend reposes with the Governor, not the grand jury, whether it be State or Federal, and no legislative powers are thereby delegate. State ex rel. Thompson v. Seigler (S.C. 1956) 230 S.C. 115, 94 S.E.2d 231.

An order of suspension under this section [Code 1962 Section 50‑10] can in no wise be said to deprive a suspended sheriff of his life or liberty, and such office holder acquires no vested property right in the office of which he is deprived in violation of Art 1, Section 5 (now Art 1, Section 3) of the SC Constitution. State ex rel. Thompson v. Seigler (S.C. 1956) 230 S.C. 115, 94 S.E.2d 231.

Legislature may provide for removal of sheriffs. The Constitution has provided no mode for removal of sheriffs for incapacity, misconduct or neglect of duty; hence, such removal may be provided by the legislature, which was done by this section [Code 1962 Section 50‑10], within the framework of Art. 3, Section 27 of the SC Constitution. State ex rel. Thompson v. Seigler (S.C. 1956) 230 S.C. 115, 94 S.E.2d 231.

And power to remove includes suspension. Temporary suspension being a step and incident to removal is implied in the power of removal. State ex rel. Thompson v. Seigler (S.C. 1956) 230 S.C. 115, 94 S.E.2d 231.

The governor may suspend without notice so long as he does not act arbitrarily. State ex rel. Thompson v. Seigler (S.C. 1956) 230 S.C. 115, 94 S.E.2d 231. Public Employment 453; States 52

But suspension must not be arbitrary. Where suspension is within the contemplation of Art. 3, Section 27, of the Constitution as to incapacity, misconduct or neglect of duty as authorized by this section [Code 1962 Section 50‑10] and neither arbitrary nor indefinite, it is proper where provision is made for the exercise of the power in the interim. State ex rel. Thompson v. Seigler (S.C. 1956) 230 S.C. 115, 94 S.E.2d 231.

**SECTION 8‑1‑110.** Suspension of officer charged with embezzlement or misappropriation of funds; removal upon conviction.

Whenever it shall be brought to the notice of the Governor by affidavit that any officer who has the custody of public or trust funds is probably guilty of embezzlement or the appropriation of public or trust funds to private use then the Governor shall direct his immediate prosecution by the proper officer and, upon true bill found, the Governor shall suspend such officer and appoint one in his stead until he shall have been acquitted by the verdict of a jury. In case of conviction the office shall be declared vacant and the vacancy filled as may be provided by law.

HISTORY: 1962 Code Section 50‑205; 1952 Code Section 50‑205; 1942 Code Section 985; 1932 Code Section 985; Cr. P. ‘22 Section 76; Cr. C. ‘12 Section 546; Cr. C. ‘02 Section 389; G. S. 2556; R. S. 306; 1896 (22) 312.

CROSS REFERENCES

Disability to hold office of person convicted of embezzling public funds, see Section 16‑13‑210.

Suspension and removal of officers indicted for crime, see Section 8‑1‑100.

Suspension of officer indicted for crime, generally, see Section 8‑1‑100.

LIBRARY REFERENCES

67 C.J.S., Officers Section 58.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Clerks of Court Section 9, Discipline and Removal.

S.C. Jur. Governor Section 14, Financial Mismanagement.

S.C. Jur. Governor Section 16, Procedure to Suspend and Remove.

S.C. Jur. Public Officers and Public Employees Section 12, Power to Suspend or Remove.

S.C. Jur. Public Officers and Public Employees Section 19, Misconduct, Arrest, or Criminal Conviction.

**SECTION 8‑1‑115.** Lien on public retirement or pension plan of persons convicted of embezzling public funds; procedures; exceptions.

(A) There is hereby created a general lien upon any public retirement or pension plan not governed by ERISA of any public officer, public employee, or any other person who is convicted of an offense involving embezzlement or misappropriation of public funds or public property to the private use of himself or any other person, to the extent of the total loss, damage, and expense to the State, or to a county or municipality, or to any agency or political subdivision of the State, or to any state, county or municipal agency, any college or university, or to any school, special or public service district within the State, that is authorized by law to perform a governmental function or provide a governmental service.

(B)(1) The presiding judge before whom any public officer, employee, or any other person is convicted of an offense described in subsection (A) must send to the Attorney General and the appropriate retirement or pension plan system a notice of the lien showing the name of the person convicted whose retirement or pension plan is subject to the lien created by subsection (A) and the date of the conviction, which is the date upon which the lien attaches. The presiding judge must set the lien at the time of conviction and the presiding judge’s notice of lien must state the amount of the lien.

(2)(a) Within ten days of the date of conviction, the convicted person’s spouse or representative of the convicted person’s minor children may file a petition with the presiding judge requesting the judge to dissolve the lien, in whole or in part, in favor of the spouse or minor children because the spouse or minor children would suffer extreme financial hardship if the lien were to attach. If the petition is filed, the lien is stayed pending a hearing on the petition and the ruling of the judge. Any benefits occurring during the stay accrue to the potential benefit of the spouse and minor children, if the petition is successful, and do not accrue to the benefit of the convicted person. The judge’s ruling must be based on clear and convincing evidence that the spouse or minor children would suffer extreme financial hardship were the lien to attach and that the spouse or minor children have not been convicted of the same offense involving the embezzlement of public funds for which the lien was created. To the extent that the lien is dissolved in whole or in part in favor of the spouse or minor children, the appropriate retirement or pension plan system is directed to make payment directly to the spouse or representative of the minor children. The dissolution extends only until the minor children reach majority or the spouse dies or remarries at which time the lien reattaches.

(b) If the convicted person is divorced and is subject to a Qualified Domestic Relations Order (QDRO) pursuant to Section 9‑18‑10, et seq., then the lien shall not attach to the alternate payee’s portion of the retirement benefit, unless the alternate payee has been convicted of the same offense involving embezzlement of public funds for which the lien was created. The pension plan is directed to make payment to the alternate payee in accordance with the provisions of the QDRO.

(c) If the convicted person’s pension benefit is subject to an order for child support, then the lien shall not attach to the portion of the convicted person’s benefit which goes to pay support for any minor child who has not been convicted of the same offense involving embezzlement of public funds for which the lien was created.

(C) In addition to any other sentence imposed upon a person convicted of an offense described in subsection (A) and taking into account the petition process set forth in subsection (B), the presiding judge may require full restitution of all public funds embezzled or misappropriated and full payment for the conversion, use, and value of public property appropriated to private use and may provide for an indeterminate sentence of incarceration or probation, or both, until restitution in full has been made.

(D) The Attorney General is charged with an affirmative duty to recover public funds and property embezzled or converted to private use, or the value thereof, and he or his designee may bring an action to enforce the lien created by this section at any time up to the death of a person whose retirement or pension plan is subject to the lien created by subsection (A).

(E) The Attorney General or his designee shall file a satisfaction and discharge of the lien created by this section after restitution has been made by payment of the amount of the lien in full or after the death of the person whose retirement or pension plan is subject to the lien created by subsection (A). If the beneficiary of the person whose retirement or pension plan is subject to the lien created by subsection (A) was, himself, convicted of the same offense involving the embezzlement or misappropriation of public funds or public property for which the lien was created, the lien must continue until restitution has been made or until the death of the beneficiary.

(F) The lien created by this section and the action to enforce the lien are cumulative and in addition to all other remedies provided by law.

HISTORY: 2001 Act No. 16, Section 1, eff April 10, 2001.

Editor’s Note

2001 Act No. 16, Section 6, provides as follows:

“This act is intended to create remedies to more efficiently recover restitution due to state and local governmental entities in cases involving embezzlement or misappropriation of public funds or public property to the private use of a public officer or employee, or any other person. As such, it is remedial legislation intended to be retroactive as well as prospective in its application, so as to attach the general lien created by Section 8‑1‑115(A) to any public retirement or pension plan not governed by ERISA of any public officer, public employee, or any other person who has been convicted of an offense described in Section 8‑1‑115(A). In cases where a living person was convicted of an offense described in Section 8‑1‑115(A) before the effective date of this act, the lien attaches to their public retirement or pension plan not governed by ERISA immediately upon approval of this act by the Governor. In cases concluded before the effective date of this act the Attorney General or his designee may send the notice of lien required by Section 8‑1‑115(B) to the appropriate retirement or pension plan system instead of the presiding judge.”

CROSS REFERENCES

Exception allowing liens on benefits under the Police Officers Retirement System in cases of embezzlement, see Section 9‑11‑270.

Exception allowing liens on benefits under the Retirement System for Judges and Solicitors in cases of embezzlement, see Section 9‑8‑190.

Exception allowing liens on benefits under the Retirement System for Members of the General Assembly in cases of embezzlement, see Section 9‑9‑180.

Exception allowing liens on benefits under the South Carolina Retirement System in cases of embezzlement, see Section 9‑1‑1680.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Constitutional Law Section 101, Nature of Ex Post Facto Laws.

NOTES OF DECISIONS

In general 1

1. In general

Imposing statutory lien on retirement plan funds of a public official convicted of embezzling or misappropriating public funds does not violate the constitutional prohibition of ex post facto laws, even if the lien exceeds the amount of restitution previously ordered at criminal sentencing, because the lien is a civil sanction that serves an important nonpunitive goal, i.e., the recovery of public funds. McMaster v. South Carolina Retirement System (S.C. 2005) 362 S.C. 362, 608 S.E.2d 843, rehearing denied. Constitutional Law 2842; Public Employment 392

Imposition of statutory lien on retirement plan funds of a public official convicted of embezzling or misappropriating public funds does not violate double jeopardy, even if the lien exceeds the amount of restitution previously ordered at criminal sentencing, because the lien is a civil sanction that serves an important nonpunitive goal, i.e., the recovery of public funds. McMaster v. South Carolina Retirement System (S.C. 2005) 362 S.C. 362, 608 S.E.2d 843, rehearing denied. Double Jeopardy 25

Statutory lien on retirement plan funds of a public official convicted of embezzling or misappropriating public funds is not limited to the amount of restitution previously ordered at criminal sentencing; rather, the lien is for the total amount of loss to the government entity, subject to reduction for familial hardship. McMaster v. South Carolina Retirement System (S.C. 2005) 362 S.C. 362, 608 S.E.2d 843, rehearing denied. Public Employment 392

**SECTION 8‑1‑120.** County health employees entitled to same employee benefits as other public employees.

All county health department employees, without regard to whether they are compensated partially or wholly by the State or county, shall be entitled to all benefits to which other state or county employees are entitled including, but not limited to, group insurance benefits.

HISTORY: 1962 Code Section 32‑108.1; 1974 (58) 2184.

CROSS REFERENCES

Retirement systems and social security coverage for public officers and employees, see Title 9.

Attorney General’s Opinions

Employees of the Charleston County Aviation Authority are not employees of the State, and therefore would not be included under the State Health Insurance Plan. 1975‑76 Op Atty Gen, No 4428, p 284.

**SECTION 8‑1‑130.** Holding certain offices and serving as city attorney not to constitute dual officeholding.

Any member of a lawfully and regularly organized fire department, county veterans affairs officer, constable, or municipal judge serving as attorney for another city is not considered to be a dual officeholder, by virtue of serving in that capacity, for the purposes of the Constitution of this State.

HISTORY: 1987 Act No. 127 Section 1, eff June 8, 1987.

Code Commissioner’s Note

1988 Act No. 652, Section 1, which proposed to enact a Section 8‑1‑130, has been renumbered Section 8‑1‑150 by direction of the Code Commissioner.

Cross References

For constitutional prohibitions against dual office holding, see South Carolina Constitution Article VI, Section 3 and Article XVII, Section 1A.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Public Officers and Public Employees Section 21, Dual Office Holding.

Attorney General’s Opinions

There would not be any dual office holding violations for an individual both serving as a member of a fire department and holding either law enforcement credentials or a position as a fire/arson investigator certified by the State Fire Marshal; however, an individual holding law enforcement credentials who is simultaneously holding a position as a fire/arson investigator certified by the State Fire Marshal, thereby exercising the sovereign power of the State, would be dual office holding. S.C. Op.Atty.Gen. (July 19, 2012) 2012 WL 3142775.

The terms of Section 8‑1‑130 of the Code would permit a city police officer to also hold a constable’s commission. 1987 Op Atty Gen, No. 87‑79, p 203.

**SECTION 8‑1‑140.** Repealed by 1990 Act No. 382, Section 2, eff March 19, 1990.

Editor’s Note

Former Section 8‑1‑140 was derived from 1988 Act No. 294.

Former Section 8‑1‑140 provided procedures for an elected officeholder to tender an irrevocable resignation to be effective at a future date, and for the election to fill the vacancy created thereby. For similar provisions, see Section 8‑1‑145.

**SECTION 8‑1‑145.** Irrevocable resignation of elected office holder to take effect in future; election to fill vacancy.

(A) A person holding an office in this State filled by a vote of qualified electors may submit a written irrevocable resignation from that office which is effective on a specific date.

(B) An election must be held in accordance with the provisions of Section 7‑13‑190 or other applicable provisions of law to fill the office to be vacated as if the vacancy occurred on the date the written irrevocable resignation is submitted.

(C) The newly elected official may not take office until the vacancy actually occurs.

HISTORY: 1990 Act No. 382, Section 1, eff March 19, 1990.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Public Officers and Public Employees Section 35, Method of Filling a Vacancy.

S.C. Jur. Public Officers and Public Employees Section 45, Method of Abandonment or Resignation.

**SECTION 8‑1‑150.** Filling vacancies.

Whenever a vacancy occurs in the membership of the governing body of a special purpose district or public service district, and the duties of the governing body are prescribed by law, and there is no provision for filling the vacancy, it must be filled in the same manner of original appointment or election for the remainder of the unexpired term.

HISTORY: 1988 Act No. 652, eff June 3, 1988.

Code Commissioner’s Note

1988 Act No. 652, Section 1, enacted provisions relating to general provisions regarding public officers and employees, with the assigned codification as Section 8‑1‑130. Since a previous Section 8‑1‑130 had been enacted in 1987 by Act No. 127, Section 1, the provisions of 1988 Act No. 652, Section 1, have been codified as Section 8‑1‑150 by direction of the Code Commissioner.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Public Officers and Public Employees Section 35, Method of Filling a Vacancy.

**SECTION 8‑1‑155.** Preference to resident of State.

Notwithstanding another provision of law, if a vacancy occurs in a state agency, other than an institution of higher learning, or if an agency acts to fill a new position, the agency shall give preference to a resident of this State, if the applicants are equally qualified for the vacancy or new position.

HISTORY: 2008 Act No. 353, Section 2, Pt 20D, eff July 1, 2008.

**SECTION 8‑1‑160.** Performance increase or decrease in salary; redress for decrease.

Notwithstanding other provisions of law, state agencies may increase or decrease individual employee salaries based upon performance. Such increase or decrease shall be determined by the agency. Performance increases shall not place an employee’s salary above the maximum of the grade or executive compensation level. Performance decreases may not place an employee’s salary below the minimum of the grade or executive compensation level. Performance decreases shall be based on the results of an EPMS evaluation. Employees assessed salary decreases may seek redress through the state employees’ grievance system.

HISTORY: 1993 Act No. 178, Section 7, eff July 1, 1993.

CROSS REFERENCES

Salary increases, see S.C. Code of Regulations R. 19‑705.04.

Salary decreases, see S.C. Code of Regulations R. 19‑705.05.

LIBRARY REFERENCES

67 C.J.S., Officers and Public Employees Section 229.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Public Officers and Public Employees Section 39, Setting and Altering Compensation.

S.C. Jur. Public Officers and Public Employees Section 62, Subject Matter Jurisdiction of the State Employee Grievance Committee.

**SECTION 8‑1‑170.** Group productivity incentive programs.

State agencies are authorized to develop group productivity incentive programs for the recognition and award of team accomplishments through group performance. Employees of any organizational unit within each of the various agencies are eligible to share equally twenty‑five percent of the identified savings resulting from reduced operational costs in the unit up to a maximum of two thousand dollars per employee in a fiscal year. The agency shall adopt policies and procedures to determine unit expenses or base data and for the year of participation in the group productivity incentive program. Records of proposals, actual dollar savings, and employee awards will be reported to the Department of Administration or its designee. Any bonus or cash award paid as a group productivity incentive shall not become a part of the employee’s base salary and shall not be considered as compensation in terms of contributions to and determination of benefits for any of the state’s retirement systems.

HISTORY: 1993 Act No. 178, Section 7, eff July 1, 1993.

Code Commissioner’s Note

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1), effective July 1, 2015.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Public Officers and Public Employees Section 39, Setting and Altering Compensation.

**SECTION 8‑1‑180.** Tokens of recognition and other rewards; limit on amount per individual.

State agencies and institutions shall be allowed to spend public funds on employee plaques, certificates, and other events, including meals and similar types of recognition to reward innovations or improvements by individual employees or employee teams that enhance the quality of work or productivity or as a part of employee development programs of their agency or institution. Awards shall be limited to fifty dollars for each individual.

HISTORY: 1993 Act No. 178, Section 7, eff July 1, 1993.

**SECTION 8‑1‑190.** Pilot programs to create innovation in state government.

Notwithstanding other provisions of law, the Budget and Control Board is authorized to enter into pilot programs with individual agencies or groups of agencies in order to create innovations in State Government. The Budget and Control Board will monitor the findings and results of pilot programs to determine if legislative recommendations should be provided to the General Assembly.

HISTORY: 1993 Act No. 178, Section 7, eff July 1, 1993.

Code Commissioner’s Note

At the direction of the Code Commissioner, reference in this section to the former Budget and Control Board has not been changed pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1), until further action by the General Assembly.