

LEGISLATIVE SERVICES COMMISSION

ASSEMBLYMAN
ALFIO SIBILIA
Chairman

SENATOR
BERNARD F. KENNY, JR.
Vice-Chairman

SENATE

MYRON M. BARR
ANTHONY R. BUCCO
RICHARD J. COONEY
WILLIAM E. DELL
LEONARD LANCE
ROBERT E. LITTELL
ROBERT W. SINGER

GENERAL ASSEMBLY

CHRISTOPHER "KIP" BATHMAN
FRANCIS J. BIELE
JOHN J. BUNZICHIELLI
ALEX SECROCE
GUY R. GREGG
JOSEPH J. ROBERTS, JR.
LUCETTA WEDGFIELD



LEGISLATIVE COUNSEL

ALBERT PORRONTI
Legislative Counsel

LEONARD J. LAWSON
First Assistant Legislative Counsel

MARGI LEVY HOGUE-LAN
Assistant Legislative Counsel

JAMES D. WILSON
Assistant Legislative Counsel

New Jersey State Legislature

OFFICE OF LEGISLATIVE SERVICES

STATE HOUSE ANNEX
PO BOX 068
TRENTON NJ 08625-0068

ALBERT PORRONTI
Executive Director
(609) 292-4625

May 9, 2005

Senate Republican Office
State House South Addition
P.O. Box 099
Trenton, New Jersey 08625

You requested a legal opinion as to whether the Governor possesses the authority to remove the Secretary of State for cause. For the reasons set forth below, you are advised that the Governor does possess such authority.

Article V, Section IV, paragraph 2 of the New Jersey Constitution states that the head of each principal department in the Executive Branch "shall serve at the pleasure of the Governor during his term of office . . . except as herein otherwise provided with respect to the Secretary of State and the Attorney General." Article V, Section IV, paragraph 3 provides that "[t]he Secretary of State and the Attorney General shall be nominated and appointed by the Governor with the advice and consent of the Senate to serve during the term of office of the Governor."

Although the Constitution makes a distinction regarding the length of terms of the Secretary of State and the Attorney General and other department heads in the Executive Branch who serve at the pleasure of the Governor and may be dismissed without cause, no such distinction is made as to removal of such officers in Article V, Section IV, paragraph 5. That paragraph states in its entirety:

The Governor may cause an investigation to be made of the conduct in office of any officer or employee who receives his compensation from the State of New Jersey, except a member, officer or employee of the Legislature or an officer elected by the Senate and General Assembly in joint meeting, or a judicial officer. He may require

such officers or employees to submit to him a written statement or statements, under oath, of such information as he may call for relating to the conduct of their respective offices or employments. After notice, the service of charges and an opportunity to be heard at public hearing the Governor may remove any such officer or employee for cause. Such officer or employee shall have the right of judicial review, on both the law and the facts, in such manner as shall be provided by law.¹ (Emphasis added).

According to the transcripts of the Proceedings of the Constitutional Convention of 1947, there is no question that this provision was intended to apply to both the Secretary of State and the Attorney General. During the proceedings, some delegates expressed concern that the original language of this provision, namely the phrase "State officer or employee," could be construed to encompass county and lower-level officers, such as prosecutors, surrogates, sheriffs, and county clerks. As a result, a delegate proposed changing the phrase to the current version, "officer or employee who receives his compensation from the State of New Jersey." 1 Proceedings of the Constitutional Convention of 1947, 236-237. In the process of explaining his reasoning, the delegate stated:

I submitted the amendment because, after talking to some members of the committee² and some members of the Convention, they agreed with me that that was intended for the officers who were generally considered as officers of the State of New Jersey, such as the Attorney-General, the State Treasurer, the Secretary of State, and the Superintendent of the State Police. I, therefore, drew the amendment, describing the persons intended as persons who receive their compensation from the State of New Jersey. That, of course, would eliminate the class of persons to whom I have previously referred, and would include such persons as get their pay check from the State of New Jersey, as against the county or the municipality. I think that was the intention of the committee. I might be wrong. *Id.* at 237.

Another delegate confirmed that this was, in fact, the reasoning behind the amendment,

¹ See N.J.S.A. 52:14-17.2 et al.

² The delegate was referring to the Committee on the Executive, Militia, and Civil Officers, which was responsible for presenting proposals relating to the Executive Branch to the entire Convention.

stating that "it was definitely our intention that the Governor should have the power to investigate and to remove for cause what we understood as state officers." *Ibid.* The amendment was then adopted by the Convention. *Id.* at 242.

In Russo v. Governor of New Jersey, 22 N.J. 156, 166 (1956), the Supreme Court noted that the "avowed purpose [of this provision] was to give the Governor adequate supervision over public officers and employees consistent with the responsibility imposed on the Governor for the executive administration of government, on the one hand, and the doctrine of the separation of powers on the other." In that case, pursuant to his authority under Article V, Section IV, paragraph 5 of the Constitution, the Governor ordered the removal of the Assistant Chief Examiner in the Department of Civil Service for misconduct in office while he held the position of Chief Examiner and Secretary, *id.* at 159, positions which the Court described as "almost comparable to cabinet rank," *id.* at 170. Although ultimately remanding the decision to the Governor for further proceedings, the Court noted that the Governor's constitutional power of removal included the authority to "impose all intermediate or lesser degrees of punishment suitable to the proven misconduct." *Id.* at 167. The Court further noted that it was not the Court's function to review the adequacy of the punishment imposed by the Governor. *Id.* at 175.

In his dissent, Justice Heher expounded on the definition of removal for cause:

"Cause" for removal within the Intendment of the constitutional grant to the Governor . . . does not mean fraud or bad faith to the exclusion of all else; it signifies "just" cause, encompassing also incapacity, unfitness, neglect of duty, and official incompetence and irresponsibility justifying removal in the essential public interest, or some lesser measure of discipline which, in the view of the Governor, would be suitable in the particular circumstances. And, unless the action taken be so disproportionats to the nature of the transgression or misbehavior as to be plainly arbitrary and capricious, and thus an abuse of power, the judgment of the Governor as to discipline is not subject to judicial superintendence. There must be just cause for discipline as an element of the constitutional power to remove; but where there is such cause the measure of discipline, including removal from office in the public interest, is the province of the Governor alone. *Id.* at 178-79 (Heher, J., dissenting).

See also Golaine v. Cardinals, 142 N.J. Super. 385, 397 (Law Div. 1976), *aff'd o.b.*, 163 N.J. Super. 453 (App. Div. 1978), *certif. denied*, 79 N.J. 497 (1979) ("Because . . . removal for cause is a remedial proceeding, that cause and the culpability upon which it is based need not necessarily involve either commission of a crime or an improper purpose.").

Page 4
May 9, 2005

Thus, the Proceedings of the Constitutional Convention of 1947 demonstrate that the framers intended that both the Secretary of State and the Attorney General be subject to removal for cause by the Governor.³ This finding is further supported by the New Jersey Supreme Court's interpretation of the Governor's power to remove State officers.

In conclusion, you are advised that the Governor possesses the authority to remove the Secretary of State for cause.

Very truly yours,

Albert Porroni
Legislative Counsel

By: *Danielle A. Brucchieri*
Danielle A. Brucchieri
Deputy Counsel

AP:B/jb

³ Please note that the impeachment of State officers, including the Governor, under Article VII, Section III of the Constitution, is a process committed to the Legislature.