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STATUTORY OFFICERS—POWER TO REMOVE

SAMUEL WANT *

State of South Carolina, ex rel. J. Stanley Williamson v. L. Banks Wannamaker, et al. (the respondents comprising the State Highway Commission of South Carolina together with the Chief Highway Commissioner), *Westbrook's Advance Sheets*, May 22, 1948, hews a new line across the realm of law dealing with the power of public agencies to terminate the employment of a subordinate who was appointed under statutory direction for a stated number of years.

The case arose out of the action of the State Highway Commission in removing from office the Chief Highway Commissioner. This office is created by Section 5868 of the Code. Under the statute the Commission is "authorized and directed to appoint a Chief Highway Commissioner." His term of office is fixed at four years, and the statute provides that "the right to remove or discharge the Chief Highway Commissioner is hereby reserved to the members of the State Highway Commission, or a majority thereof."

The Chief Highway Commissioner involved in this case was removed by a majority vote of the Commission. No formal charges were made against him, and no hearing was held to afford the official an opportunity to absolve himself from guilt of any charge that might be made. On the other hand, the Commission gave as its sole reason for the removal, its belief that the best interests of the South Carolina Highway Department would be subserved by terminating the tenure of the person then holding the office.

It will be perceived that no provision is made in the governing statute for the making of formal charges or the holding of a hearing; as technically expressed the statute contains no language indicating that removal may be effected only "for cause."

In this suit brought by the Chief Highway Commissioner against the Highway Commission and the newly appointed Chief Highway Commissioner, the petitioner sought a ju-

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dicial declaration that his term of office was fixed for four years from the date of his appointment, and that the Commission was without power to remove or discharge him, except for legal cause, after a hearing at which he would have the right and opportunity to be heard in defense of whatever charges were made against him.

The respondents demurred to the complaint, resting their main position upon the absence from the governing statute of any limitation or restriction on the power of removal or discharge of the Chief Highway Commissioner. In the Circuit Court the demurrer was sustained.

Upon appeal the Supreme Court held that the action of the Highway Commission was without warrant of law. The effect of the decision is that where a public official is appointed for a stated number of years, with the reservation of the right of removal or discharge by the appointing power, the exercise of this right is conditioned upon the making of formal charges and the holding of a public hearing conformable with the usual requisites of due process in the constitutional sense. The Court further held that this view of the matter was not altered by the fact that the Chief Highway Commissioner is merely an administrative officer, without power to bind the Commission except to the extent of acting on its behalf during the intervals between Commission meetings, at which all acts of the Chief Highway Commissioner are required by the statute to be ratified and approved.

After holding that the statute does not authorize summary removal of the Chief Highway Commissioner either in express language or by necessary implication, the Court concluded that in any event its duty was to seek the intention of the legislature in the enactment of Section 5868, and that if this intention is deemed to be a matter of doubt, the doubt should be resolved against the existence of the power. In this aspect of the matter the Court held that there was doubt as to the legislative intention, demanding the granting of the relief prayed.

In an earlier case¹ the Supreme Court had held that where State dispensary directors were appointed under a statute providing for a two year term, "unless sooner removed by the Governor", it was within the power of the governor

1. *State v. Ansel*, 76 S. C. 395, 57 S. E. 185, 11 Ann. Cas. 613.

to summarily discharge the director without giving any reason for such action, and without the making of charges or the holding of a hearing. This case, however, was distinguished by the Court on the ground that the language, "unless sooner removed by the Governor", had the effect of cutting down the definite term stated in the statute to an indefinite term, dependent wholly upon the will of the governor, and this was found not to be the case with the language of Section 5868 of the Code, wherein the power of the Commission is stated simply as a power "to remove or discharge." This language was held not to reduce the term of office to an indefinite basis.

The decision adopts for this State for the first time the definite and controlling principle that where the term of office of a public official is fixed by statute, even though a power to remove or discharge is reserved, the term may not be cut down by summary action of the removing power; but that where the language fixing the term, as in the dispensary case hereinbefore cited, has the effect of removing the element of definiteness from the term of office, and of therefore making the term indefinite, the reserved power to remove or discharge is not conditioned upon the making of charges and the holding of a hearing.