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MUNICIPAL CORPORATIONS - OFFICIAL MISCONDUCT AS GROUND FOR REMOVAL OF OFFICER

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MUNICIPAL CORPORATIONS — OFFICIAL MISCONDUCT AS GROUND FOR REMOVAL OF OFFICER — Plaintiff, a member of the council of the city of Highland Park, Michigan, was removed by the council, as provided in the charter,[1] because of membership in the Black Legion. The Black Legion was a secret society founded on principles of racial, religious, and political discrimination. Its members took an oath to further these purposes by any means ordered by the officers of the organization, including violence and terrorism. Members were forbidden to expose the organization under penalty of death, and membership was supposedly permanent. The council found that membership in such a society rendered Wilson incompetent to perform the duties of his office, and that it constituted corrupt and wilful malfeasance in office, and wilful misconduct to the injury of the public service. The action of the council was affirmed by the circuit court. On appeal, it was *held* that the removal proceeding should be quashed. The majority of the court found that there was no official misconduct. The dissent took the view that by becoming a member of the Black Legion, plaintiff circumscribed his liberty of action in such a way that he would be unable to act in the interest of the public at large. *Wilson v. Council of Highland Park*, 284 Mich. 96, 278 N. W. 778 (1938).

It is the general rule that a municipal corporation possesses the implied power to remove corporate officers for cause.[2] There may be an express provision for the power.[3] Where the municipal charter or other law applicable

[1] Charter of the City of Highland Park, c. 23, § 3: "The Council may remove from office any of its members . . . for any of the following causes, to-wit: (a) Conviction by a court of competent jurisdiction of a felony. (b) Wilful violation of any provision of the charter or ordinances. (c) Intoxication or habitual drunkenness. (d) Incompetency to perform the duties of his office. (e) Wilful neglect of duty. (f) Corrupt or wilful malfeasance or misfeasance in office. (g) Wilful misconduct to the injury of the public service." Record in the principal case, pp. 383-384.

[2] 2 MCQUILLIN, MUNICIPAL CORPORATIONS, 2d ed., § 575 (1928); Hawkins v. Grand Rapids Common Council, 192 Mich. 276, 158 N. W. 953 (1916).

[3] Michigan has a constitutional provision, art. 9, § 8 of the Constitution of 1908: "Any officer elected by a county, city, village, township or school district may be removed from office in such manner and for such cause as shall be prescribed by law." There is also a statutory provision for removal by the governor, Mich. Comp. Laws (1929), § 3353: "The governor . . . shall also remove all . . . city or village officers chosen by the electors of any city or village . . . when he shall be satisfied from suf-

specifies the grounds for removal, the power of removal can be exercised only on the grounds specified.[4] Where the grounds specified for removal are misconduct in office, misfeasance in office, or a similar provision, misconduct to warrant removal must be such as affects the officer's performance of his official duties.[5] It is necessary to separate the character of the man from the character of the officer. Thus, removal on the ground of official misconduct has been upheld where a county clerk knowingly permitted official records to be materially altered,[6] and where a register of deeds falsely certified over his official signature that he had examined a title and found it unencumbered; [7] but has not been upheld where the officer was charged with profanity,[8] or with frequent expressions of his opposition to the war policy of this country.[9] Acts which would be regarded as proper for someone other than the officer have been regarded as official misconduct because of their relation to his duties as officer.[10] Some charters do contain provisions broad enough to warrant removal

ficient evidence submitted to him . . . that such officer has been guilty of official misconduct. . . ." In addition, under the implications of the Home Rule Act, Mich. Comp. Laws (1929), § 2228 et seq., provision for removal may be made in the local charter.

[4] 2 MCQUILLIN, MUNICIPAL CORPORATIONS, 2d ed., § 579 (1928); Shaw v. Mayor and Council of Macon, 19 Ga. 468 (1856).

[5] MECHEM, PUBLIC OFFICES AND OFFICERS, § 457 (1890); THROOP, PUBLIC OFFICERS, § 367 (1892). As to the right to remove an officer for official misconduct during a prior term of his incumbency of the same office, there is a decided conflict of authority, which is due in part to a difference in the constitutional and statutory provisions authorizing the removal of public officers. See note, Ann. Cas. 1916B 707. The Michigan court has taken the view that such misconduct can be ground for removal. Hawkins v. Grand Rapids Common Council, 192 Mich. 276, 158 N. W. 953 (1916), has often been cited as conclusive on the point. However, the court there held the removal proceedings void, as procedural provisions of the charter had not been followed. The point for which the case is often cited was dictum: "We are not prepared to find in this case, nor to hold as a general rule, that the misconduct of an officer, who is his own successor, committed during the preceding term, may not be inquired into and furnish ground for his removal." 192 Mich. at 287.

[6] Commonwealth v. Barry, 3 Ky. 237 (1808).

[7] State v. Leach, 60 Me. 58 (1872).

[8] Carroll v. City Commission, 265 Mich. 51, 251 N. W. 381 (1933).

[9] State ex rel. Martin v. Burnquist, 141 Minn. 308, 170 N. W. 201, 609 (1918), where the officer's conduct was regarded by the court as at variance with good citizenship, if not something more serious, yet affecting his character as an individual rather than as an officer.

[10] In State ex rel. Ryan v. Board of Aldermen, 45 Mont. 188, 122 P. 569 (1912), Ryan, an alderman, was removed because he had been retained as counsel by private persons in actions against the city. Held, removal properly made for misconduct in office. In Etzler v. Brown, 58 Fla. 221, 50 So. 416 (1909), removal was upheld where a councilman agreed for a consideration to help secure a valuable contract with the city, and also an increase in the appropriation for the contract in order to increase the profits unduly. In Pybus v. Smith, 80 Wash. 65, 141 P. 203 (1914), removal of councilman because of agreement to trade votes with another councilman was upheld.

of an officer for misconduct in his actions as a private citizen.[11] It is submitted that the majority of the court reached the proper conclusion in the principal case, since membership in the Black Legion affected plaintiff only in his character as a man, and not in his character as an officer. In view of the purposes of the Black Legion, the dissenting view that membership was ground for removal carries some force. However, this would open up a wide field of questions as to the character and purposes of countless organizations, and would impose on the court the unhappy duty of making distinctions where no differences could be found, at least not on a sound basis.

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[11] City of Macon v. Anderson, 155 Ga. 607, 117 S.E. 753 (1923). Removal of city officer because he embezzled the funds of a private lodge of which he was secretary was upheld, under charter provision authorizing removal "for continued neglect of duty, or other conduct unbecoming the station of such member" of the city board.