

August 19, 2004

The Honorable Faye Lowery, Mayor
City of Henry
1232 Pioneer Road
Henry, Tennessee 38231

Re: Can the Henry Board Remove an Alderman From Office?

Dear Mayor:

You have asked the following question: Does the City of Henry have the legal authority to remove an alderman who has been arrested for DUI?

As I understand it, the alderman in question is also the Vice-Mayor. He was recently arrested for DUI at some point outside the city limits of Henry and while on personal business. It is also my understanding that this is the Vice-Mayor's second DUI arrest – although the first incident occurred before he took office on the Henry Board of Mayor and Aldermen.

The answer to your question is no. At this time, the Henry Board of Mayor and Aldermen have no statutory authority to remove the Vice-Mayor and any effort to do so would not be consistent with the city charter.

The basis of my opinion is Section 10 of the Henry city charter which reads as follows:

Vacancy on Board

The Board of Mayor and Aldermen shall declare that a vacancy exists if the Mayor or an Alderman resigns, dies, moves his residence from the City, is convicted of malfeasance or misfeasance in office, a felony, a violation of this Charter or election laws of the state, or a crime involving moral turpitude, fails to attend any meetings of the Board for a period of ninety (90) days with no extenuating circumstances, or has been continuously disabled for a period of six (6) months so as to prevent him from discharging the duties of his office.

In the case of the Henry Vice-Mayor, none of these conditions exist at the present time. While the Vice-Mayor may be charged with DUI, he has not been convicted of such and, therefore, the City lacks any authority to remove him from office.

The larger question, of course, is whether the Vice-Mayor can be removed from office by the Henry Board **IF** he is ultimately convicted of DUI. Here again, the answer is no. Here's why:

- ' I do not believe that a DUI conviction would constitute “malfeasance or misfeasance in office” – the alderman was not intoxicated during the performance of his official duties.
- ' DUI is not a felony in Tennessee. Tennessee Code Annotated 55-10-403(m) clearly states that DUI is a Class A misdemeanor. The Henry city charter does not permit the Board to remove an alderman for conviction of a misdemeanor.
- ' Neither the city charter nor state election laws address the issue of DUI.
- ' Finally, it is not readily apparent that DUI is a crime of “moral turpitude.” I have yet to see an adequate definition of this term, but would think that it is reserved for those crimes involving especially grotesque or offensive behavior. DUI is a fairly common crime -- too common, it seems to me, to require the removal of a popularly elected alderman from office. Except for very rare instances, I would not recommend that a City ever try to declare an alderman “morally unfit” for office – and this is not one of those instances.

The law quite properly protects elected officials against removal for any but the most serious of offenses. I do not want to minimize the seriousness of a DUI conviction, but I am doubtful that such a conviction will automatically be considered legal grounds for removing an alderman. The City of Henry would have to make a compelling case (at the City’s expense, I might add) that the Vice-Mayor’s continued participation on the Board of Mayor and Alderman presents an immediate danger to the viability of the city government, its treasury, or the safety of the citizens of Henry. Conviction for a DUI offense, at least in this instance, may be embarrassing for the City (not to mention the Vice-Mayor) but it does not seem to jeopardize the operation of the government in any way.

And, although you didn’t ask, neither State law nor the Henry city charter provide for an alderman to be recalled, either by citizen petition or special election. If citizens want to cast a vote to remove any elected official in Henry, they’ll have to wait until that official runs for re-election.

Sincerely,

THE MUNICIPAL TECHNICAL ADVISORY SERVICE

David Angerer
Municipal Management Consultant