

SENATE JOINT RESOLUTION 26

By Taylor

A RESOLUTION to appoint a committee to authorize the Speakers of the Senate and House of Representatives to appoint a committee to consider the removal of Steven J. Mulroy from the office of District Attorney General for the Thirtieth Judicial District.

WHEREAS, Article II, Section 1 of the Constitution of Tennessee states that "[t]he powers of the Government shall be divided into three distinct departments: the Legislative, Executive, and Judicial"; and

WHEREAS, Article II, Section 3 of the Constitution of Tennessee provides that "[t]he Legislative authority of this State shall be vested in a General Assembly"; and

WHEREAS, Article VI, Section 6 of the Constitution of Tennessee sets out a process by which the General Assembly may remove an Attorney for the State from office for cause by a concurrent two-thirds vote of both Houses of the General Assembly, each House voting separately; and

WHEREAS, Steven J. Mulroy is a duly elected District Attorney General for the Thirtieth Judicial District; and

WHEREAS, General Mulroy has committed serious ethical violations and abused his authority by pursuing a personal and partisan agenda in violation of State law and his oath of office, the General Assembly finds it necessary to commence proceedings for the removal of Steven J. Mulroy from office as District Attorney General of the Thirtieth Judicial District for the following causes:

- (1) Participating in the illegal commutation of a criminal sentence, which is the subject of an ongoing investigation by the Board of Professional Responsibility;

(2) Mismanagement of the office of District Attorney General, including in employment practices and fiscal irresponsibility;

(3) Failure to uphold and respect the rights guaranteed to victims of crime by Article I, Section 35 of the Constitution of Tennessee; and

(4) Abuses of discretion that infringe on the legislative authority of the General Assembly resulting in a violation of the separation of powers required by Article II, Section 2 of the Constitution of Tennessee; and

WHEREAS, the Tennessee Supreme Court has held in *McCully v. State*, 102 Tenn. 509 (1899) that Article VI, Section 6 of the Constitution of Tennessee guarantees General Mulroy a right to be heard on the causes alleged for removal from office as District Attorney General of the Thirtieth Judicial District; and

WHEREAS, the Tennessee Supreme Court noted in *In re Murphy*, 726 S.W.2d 509 (Tenn. 1987) that a removal under Article VI, Section 6 of the Constitution of Tennessee could be affected after notice and hearing; and

WHEREAS, the Tennessee Attorney General and Reporter has opined that "an individual accepts a public office subject to any conditions placed on that office, including conditions for removal" (Tenn. Op. Atty Gen. 90-27 (1990)) and an office is a species of property in which the officer has property rights as noted by the Tennessee Supreme Court in *State v. Blazer*, 619 S.W.2d 370 (Tenn.1981); and

WHEREAS, although a property right is defined by State law and State law permits removal from office for cause, the removal must be done in compliance with the constitutional mandates of due process (Tenn. Op. Att'y Gen. 93-21 (1993)), and the concept of due process is a flexible one which "calls for such procedural protections as the particular situation demands". *Mathews v. Eldridge*, 424 U.S. 319, 334 (1976), quoting *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972); and

WHEREAS, in order to commence removal proceedings and provide General Mulroy with procedural due process, the Speaker of the Senate shall appoint five (5) members of the Senate to meet jointly with a like number of House of Representatives members to be appointed by the Speaker of the House of Representatives; and

WHEREAS, the joint committee shall have all powers conferred upon standing or select committees of the Senate by Tennessee Code Annotated, Title 3, including, but not limited to, the power to issue subpoenas, including subpoenas duces tecum, to enforce the attendance of witnesses and the production of any records, documents, papers, or other items of evidence; and

WHEREAS, the joint committee shall be convened by the member with the most continuous service at which time it shall elect such officers as are deemed appropriate; and

WHEREAS, the joint committee shall meet and consider the causes specified in this resolution, or consider additional causes not contained herein, and determine if the causes warrant a due process hearing on the removal of General Mulroy; and

WHEREAS, if the joint committee determines a due process hearing is in order, it shall establish the rules and procedures to be utilized at the hearing, the parameters of the hearing, the date, time, and place of the hearing, and the extent, if any, to which witnesses will be heard and evidence received; and

WHEREAS, the joint committee shall provide General Mulroy with written notice of the date, time, and place of any hearing at least ten (10) days prior to the hearing; and

WHEREAS, at the conclusion of the hearing, if one is conducted, the joint committee shall vote "for recommending removal" or "against recommending removal" as to each cause presented against General Mulroy at the hearing and the committee may vote "for recommending removal" based on the cumulative effect of all the causes presented even

though they vote "against recommending removal" as to one (1) or more of the individual causes; and

WHEREAS, within ten (10) days from the date the committee has voted and concluded its hearing, the committee shall make and file its report with the respective speakers, who shall forthwith convene a joint convention of the General Assembly for the purpose of acting upon the report of the joint committee. Consideration before the joint convention shall be limited to the record; but oral argument will be permitted; and

WHEREAS, upon the conclusion of the argument, the joint convention shall adjourn and each house shall repair to its respective chamber, and vote separately, in the manner prescribed in Article VI, Section 6 of the Constitution of Tennessee. Each house shall vote "for" or "against" removal of Steven J. Mulroy as to each cause for which the joint committee recommended removal. Any member, by a motion properly seconded, may call for a vote of the member's respective House on any cause considered by the joint committee but for which such committee recommended "against" removal. In the event two thirds (2/3) of the members to which one (1) House may be entitled vote to remove Steven J. Mulroy for a cause which the joint committee recommended "against removal," the vote and the cause receiving such two thirds (2/3) vote shall be transmitted forthwith to the other House which shall then vote on it as if the cause was one recommended "for removal" by the joint committee; and

WHEREAS, if two-thirds of the members to which each House is entitled vote for removal on one (1) or more of the causes alleged then the judge is removed from office and the votes shall be entered in the journals as required by Article VI, Section 6 of the Constitution of Tennessee; now, therefore,

BE IT RESOLVED BY THE SENATE OF THE ONE HUNDRED FOURTEENTH GENERAL ASSEMBLY OF THE STATE OF TENNESSEE, that the Speaker of the Senate shall appoint a committee of five (5) members of the Senate to meet with a like number of

Representatives to be appointed by the Speaker of the House of Representatives pursuant to a similar House Resolution to meet and determine if cause exists to conduct a hearing on the removal of Steven J. Mulroy from the position of District Attorney General of the Thirtieth Judicial District.

BE IT FURTHER RESOLVED, that the joint committee shall be convened by the member with the most continuous service at which time the committee shall elect such officers as are deemed appropriate.

BE IT FURTHER RESOLVED, that the joint committee shall have all powers conferred upon standing or select committees of the Senate by Tennessee Code Annotated, Title 3, including, but not limited to, the power to issue subpoenas, including subpoenas duces tecum, to enforce the attendance of witnesses and the production of any records, documents, papers, or other items of evidence.

BE IT FURTHER RESOLVED, that the joint committee shall meet and consider the causes specified in this resolution, or consider additional causes not contained herein, and determine if the causes warrant a due process hearing on the removal of Steven J. Mulroy as District Attorney General of the Thirtieth Judicial District.

BE IT FURTHER RESOLVED, that if the joint committee determines that a due process hearing is in order, the joint committee shall establish the rules and procedures to be utilized at the hearing; the parameters of the hearing; the date, time, and place of the hearing; and the extent, if any, to which witnesses will be heard and evidence received.

BE IT FURTHER RESOLVED, that the joint committee shall provide General Mulroy with written notice of the date, time, and place of any hearing at least ten (10) days prior to the hearing.

BE IT FURTHER RESOLVED, that at the conclusion of the hearing, if one is held, the joint committee shall vote "for recommending removal" or "against recommending removal" as

to each cause presented against General Mulroy at the hearing and the committee may vote "for recommending removal" based on the cumulative effect of all the causes presented even though they vote "against recommending removal" as to one (1) or more of the individual causes.

BE IT FURTHER RESOLVED, that within ten (10) days from the date the committee has voted and concluded its hearing, the committee shall make and file its report with the respective speakers.

BE IT FURTHER RESOLVED, that a signed and certified copy of this resolution be transmitted to Steven J. Mulroy ten (10) days before the committee appointed pursuant to this resolution, and the similar House resolution, conducts a hearing to consider his removal from office as District Attorney General of the Thirtieth Judicial District pursuant to Article VI, Section 6 of the Constitution of Tennessee.

BE IT FURTHER RESOLVED, that this resolution and the similar House resolution serve as notice to General Mulroy of the General Assembly's intention to remove him from the office of District Attorney General of the Thirtieth Judicial District for cause; provided that if the joint committee appointed pursuant to this resolution, and the similar House resolution, determines it is necessary to consider any cause not contained herein, the joint committee shall provide General Mulroy with notice of any additional cause not contained herein at least ten (10) days before the committee conducts a hearing to consider him removal from office as District Attorney General of the Thirtieth Judicial District pursuant to Article VI, Section 6 of the Constitution of Tennessee.