



SPONSOR: Sen. Sokola & Sen. Townsend & Sen. Lockman &
Rep. Schwartzkopf & Rep. Longhurst & Rep. Mitchell

DELAWARE STATE SENATE
151st GENERAL ASSEMBLY

SENATE CONCURRENT RESOLUTION NO. 63

REQUESTING AN ADVISORY OPINION OF THE JUSTICES OF THE DELAWARE SUPREME COURT
REGARDING THE PROPER CONSTRUCTION OF § 13 OF ARTICLE III OF THE DELAWARE CONSTITUTION.

1 WHEREAS, the General Assembly does not believe a General Assembly has ever made a bill of address to the
2 Governor under § 13 of Article III of the Delaware Constitution (“Section 13”); and

3 WHEREAS, the General Assembly desires the opinion of the Justices of the Delaware Supreme Court on the
4 proper construction of Section 13; and

5 WHEREAS, § 141 of Title 10 of the Delaware Code authorizes the General Assembly, by a vote of a majority of
6 the members elected to each House, to request an opinion of the Justices of the Delaware Supreme Court regarding the
7 proper construction of any provision of the Delaware Constitution to enable the General Assembly to discharge its duties.

8 NOW, THEREFORE:

9 BE IT RESOLVED by the Senate of the 151st General Assembly of the State of Delaware, the House of
10 Representatives concurring therein, that the General Assembly requests the opinion of the Justices of the Delaware
11 Supreme Court as to the following:

12 (1) May “reasonable cause” under Section 13 include an indictment returned by a grand jury?

13 (2) Does the authority under Section 13 to remove a public official implicitly include the authority to take a
14 lesser action, such as suspension of that public official? If Section 13 does implicitly include the authority to take a
15 lesser action, must the General Assembly address the Governor on the lesser action or can the Governor choose to take
16 a lesser action than that addressed to the Governor?

17 (3) Does the application of Section 13 require a hearing on the matter prior to a vote in either House to
18 address the Governor to remove an officer?

19 a. If the application of Section 13 requires a hearing, must each House hold a hearing prior to its
20 respective vote to address the Governor, or does a hearing in the first House satisfy the requirement?

21 b. If the application of Section 13 requires a hearing in each House, would a joint hearing satisfy the
22 requirement?

23 c. If the application of Section 13 requires a hearing, what are the elements that must be satisfied? For
24 example, must the person against whom each House seeks to proceed be provided the opportunity to attend the
25 hearing, to be represented at the hearing by counsel, to testify at the hearing, to call witnesses, or to introduce
26 evidence at the hearing?

27 (4) Does Section 13 require a 10-day notice for only the first House to take action, or are separate notices
28 required for each House? If Section 13 requires separate 10-day notices for each House's action, may those notices be
29 issued concurrently, or must the second House issue its notice only after the first House has acted pursuant to its
30 respective notice?

31 (5) Is there a mechanism for an appeal of the decision by the Governor to remove a public officer under
32 Section 13?

33 BE IT FURTHER RESOLVED that the General Assembly directs the President Pro Tempore of the Senate and
34 the Speaker of the House of Representatives to forward a copy of this Concurrent Resolution to the Justices of the Delaware
35 Supreme Court within 5 days of final passage of this Concurrent Resolution.

36 BE IT FURTHER RESOLVED that the General Assembly directs the President Pro Tempore of the Senate and
37 the Speaker of the House of Representatives to forward a copy of this Concurrent Resolution to the Governor within 5 days
38 of forwarding a copy of this Concurrent Resolution to the Justices of the Delaware Supreme Court.

SYNOPSIS

This Concurrent Resolution requests an advisory opinion of the Justices of the Delaware Supreme Court regarding the proper construction of § 13 of Article III of the Delaware Constitution.

Author: Senator Sokola