GEORGIA DEPARTMENT OF LAW
40 Capitol Square SW
Atlanta, Georgia 30334-1300

CHRISTOPHER M. CARR
ATTORNEY GENERAL

www.law.ga.gov
(404) 458-3600

OFFICIAL OPINION

Honorable Brian P. Kemp
Governor
State Capitol
Atlanta, Georgia 30334

Re: As used in O.C.G.A. § 45-10-4, the phrase "[u]pon formal charges being filed" does not mean that a citizen can simply submit information to the Governor and trigger the hearing process contemplated by the Code Section.

Dear Governor Kemp:

This responds to your request for an official opinion regarding O.C.G.A. § 45-10-4. You have specifically asked about the meaning of the phrase "upon formal charges being filed" as used in O.C.G.A. § 45-10-4 and whether this language provides for a citizen to present information that constitutes "formal charges" within the meaning of the statute. As discussed herein, it is my official opinion that as used in O.C.G.A § 45-10-4, the phrase "[u]pon formal charges being filed" does not mean that a citizen can simply submit information to the Governor and trigger the hearing process contemplated by the Code Section.

O.C.G.A. § 45-10-4 provides as follows:

> Upon *formal charges being filed with the Governor relative to a violation of Code Section 45-10-3 on the part of a member of any such board, commission, or authority*, the Governor or his designated agent shall conduct a hearing for the purpose of receiving evidence relative to the merits of such charges. The member so charged shall be given at least 30 days' notice prior to such hearing. If such charges are found to be true, the Governor shall forthwith remove such member from office and the vacancy shall be filled as provided by law. Such hearing shall be held in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," and judicial review of any such decision shall be in accordance with such chapter.

(emphasis added). By its terms, O.C.G.A. § 45-10-4 applies only to the prohibitions contained in O.C.G.A. § 45-10-3. Statutory interpretation begins with the plain language of the text itself. *Star Residential, LLC v. Hernandez*, 311 Ga. 784, 785 (2021). "[W]e begin by examining the statute's plain language, reading the text in its most natural and reasonable way, as an ordinary speaker of the English language would." *Green v. State*, 311 Ga. 238, 242 (2021) (internal citations omitted).

The General Assembly chose the phrase 'formal charges' to indicate the requirement of something more than simply a generalized grievance brought by a member of the public. "Formal" is defined to mean "of, relating to, or involving established procedural rules, customs, and practices." *Black's Law Dictionary* 794 (11th ed. 2019). While the phrase "formal charges" remains undefined in the statute, it appears fairly obvious that the phrase requires something more than "informal" complaints, grievances, or letters. Instead, a "formal charge" must be sufficient to provide due process notice to the "member of any such board, commission, or authority" being accused of a violation of O.C.G.A. § 45-10-3. This heightened requirement of formality is further supported by the fact that O.C.G.A. § 45-10-4 provides that any decision of the Governor under this statute may be appealed in accordance with the Georgia Administrative Procedure Act and is subject to judicial review. O.C.G.A. § 50-13-19.[1]

The phrase "formal charges" is also used in the context of a similar investigatory framework under the jurisdiction of the Judicial Qualifications Commission ("JQC"). *See GeorgiaCarry.Org, Inc. v. Atlanta Botanical Gardens, Inc.*, 306 Ga. 829, 834 (2019) ("For context, we may look to other provisions of the same statute, the structure and history of the whole statute, and the other law—constitutional, statutory, and common law alike—that forms the legal background of the statutory provision in question.") (internal citations omitted). Under O.C.G.A. § 15-1-21, the JQC is responsible for, among other things, "[a]djudicating *formal charges* filed by the investigative panel." O.C.G.A. § 15-1-21(e)(3)(A) (emphasis added). Additionally, O.C.G.A. § 15-1-21(k) states that all disciplinary action is to be kept confidential prior to issuance of "formal charges" against a judicial officer.

In the context of a JQC proceeding, the "formal charges" result from an investigative process and resemble pleadings sufficient to provide due process notice to judges being investigated. *See Inquiry Concerning Judge Coomer*, 315 Ga. 841 (2023) ("formal charges . . .comprise 36 counts alleging [violations]"). In contrasting "formal charges" with other inquiries in the context of the JQC, the Supreme Court has noted that "imposing discipline on a judge based solely on the judge's response to a JQC inquiry, without the JQC first filing *formal charges* against the judge ... might raise due

---

[1] A 2012 decision of the Georgia Supreme Court involving O.C.G.A. § 45-10-4 makes reference to a "[l]ocal resident [who] along with other residents, filed a complaint with the Governor" against members of a local school board. *Roberts v. Deal*, 290 Ga. 705, 705 (2012). While the hearing process under O.C.G.A. § 45-10-4 did take place in the *Roberts* case, the Supreme Court's decision does not address the adequacy of the "formal charges" submitted to commence that process to any extent.

process concerns." *Inquiry Concerning Judge Coomer*, 316 Ga. 855,874 n.19 (2023); *see also Inquiry Concerning Judge Baker*, 313 Ga. 359 (2022) (a complaint against respondent was submitted to the JQC concerning judicial misconduct, who in turn filed 'formal charges' against respondent). Implicit in the Supreme Court's holding is that "formal charges" are distinguished from mere inquiries and are in the nature of notice sufficient to satisfy due process.

In a 2002 Opinion, this Office advised the State Ethics Commission that it could "choose to adopt its own guidelines for how situations such as those described above [involving O.C.G.A. § 45-10-3] would be handled so that it would be prepared to address this problem should it ever develop."[2] 2002 Op. Att'y Gen. 02-4. Thus, Op. Att'y Gen. 02-4 contemplates formality to the process of invoking O.C.G.A. § 45-10-4 by a commission.

A number of entities of state government are granted the express power to take action to remove their own members. For example, the Lake Lanier Islands Development Authority is empowered to remove or discipline its members for failure to disclose certain interests to the Authority. O.C.G.A. § 12-3-340(a). Members of the Savannah-Georgia Convention Center Authority are subject to removal "for failure to perform the appropriate duties of membership." O.C.G.A. § 50-7-55(i). Members of the Professional Standards Commission are subject to removal by the Governor "for misconduct or malfeasance in office, incapacity, or neglect of duty." O.C.G.A. § 20-2-983(a). The members of the Professional Standards Commission are also subject to removal by the Commission itself "for neglect of duty, incompetency, or revocation or suspension of his or her certificate issued by the Professional Standards Commission or when such commissioner ceases to be employed full time as an educator in the capacity and position from which he or she was appointed." O.C.G.A. § 20-2-983(e). Many boards, commissions and authorities of state government are not granted their own specific express provision regarding removal of members. It appears that O.C.G.A. § 45-10-4 is designed in part to provide for boards, commissions and authorities to have a process to submit formal charges related to removal where not otherwise provided by law.

Where the General Assembly intends to provide for an informal process that can be initiated by citizens, it has done so with clear language. The General Assembly did not do so in O.C.G.A. § 45-10-4. In contrast to the formality requirements contained in O.C.G.A. § 45-10-4, the requirements and obligations for government bodies under the Georgia Open Records Act are triggered simply by a citizen request made "orally or in writing," with no legislative requirement that this request have any formal procedure involved. O.C.G.A. § 50-18-71(b)(1)(B); *see also Howard v. Sumter Free Press, Inc.*, 272 Ga. 521, 531 (2000) (holding that even though some of plaintiff's requests to examine records were oral rather than written did not diminish their efficacy under the Open Records Act), *overruled in part*, *Blalock v. Cartwright*, 300 Ga. 884 (2017). Under any interpretation, "formal charges" definitely must require some significantly more

---

[2] The State Ethics Commission rules, in contrast to O.C.G.A. § 45-10-3, expressly contemplate that a "complainant" is simply a "person who files a written complaint alleging a violation of one or more laws. . . ." Ga. Comp. R. & Regs. 189-2-.01(2).

heightened standard than that which triggers a government response to an Open Records Act request.

Similarly, under O.C.G.A. § 50-13-9, "[a]n interested person" may request that a state agency promulgate, amend, or repeal a rule upon petition to that agency. O.C.G.A. § 50-13-4 also obligates that notice about agency rule changes must be given to "all persons who have requested [notice] in writing." O.C.G.A. § 50-13-4. Both of these Code Sections reflect the clear intention of the General Assembly to authorize any citizen to initiate or participate in these related rule-making processes in sharp contrast to the process created under O.C.G.A. § 45-10-4, which the General Assembly specifically provided is commenced only "upon formal charges being filed" with the Governor.

In summary, had the General Assembly intended to create an informal process in O.C.G.A. § 45-10-4 that could be initiated by any member of the public, it would have done so as it has in other areas of the law discussed herein. Instead, it provided for a structured process that is only commenced "upon formal charges being filed."

Based on the foregoing, it is my official opinion that as used in O.C.G.A. § 45-10-4, the phrase "[u]pon formal charges being filed" should not be interpreted to mean that a citizen can simply submit information to the Governor and trigger the hearing process contemplated by the Code Section.

Issued this 6th day of September, 2024.

CHRISTOPHER M. CARR
Attorney General

Prepared by:

Wright Banks
Chief Deputy Attorney General

OFFICIAL OPINION