

FILED

MAY 20 2014

JAMES R. PARKS
CLERK, STATE GRAND JURY

STATE GRAND JURY OF SOUTH CAROLINA

In the Matter of State Grand Jury
Investigation # M 2014-237

MEMORANDUM OF
ROBERT W. HARRELL, JR.

Robert W. Harrell, Jr. submits that the case of Rainey v. Haley, 404 S.C. 320, 745 S.E.2d 81 (2013) provides that ethics investigations concerning members of the legislature are intended to be solely within the Legislature's purview, to the exclusion of the courts, except in limited circumstances not involved herein. The affidavit of Alan Wilson filed herein confirms that a citizen's complaint was delivered to his office regarding possible ethics violations by Speaker Robert Harrell. As set forth in Rainey v. Haley,

The Legislature has established a comprehensive statutory scheme for regulating the behavior of elected officials... To enforce the state ethics act, the legislature statutorily created the State Ethics Commission and the Senate and House Legislative Ethics Committees, respectively...

Although the State Ethics Commission is generally responsible for the handling of ethical violations by most public officials and employees, the House and Senate Legislative Ethics Committees are charged with the exclusive responsibility for the handling of ethics complaints involving the members of the General Assembly and their staff...

Therefore it is clear the Legislature intended the respective Ethics Committees to have exclusive authority to hear alleged ethics violation of its own members and staff.... 745 S.E.2d 83

Absent this one narrow situation within the fifty-day period before an election, the Legislature has granted exclusive authority over ethical complaints to the appropriate Ethics Committee... It is therefore clear the Legislature intended the respective Ethics Committee to otherwise have exclusive authority to hear alleged ethics violations of its own members and staff.... 745 S.E.2d 84

... the South Carolina Constitution and this Court have expressly recognized and respected the Legislature's authority over the conduct of its own members. *See, e.g.,*

Const. Art. 3, § 11 (stating each house has the authority to judge the election returns and qualifications of its own members); Const. Art. 3, § 12 (providing that each chamber shall determine its own rules of procedure, punish its members for disorderly behavior, and expel a member) ... Consequently, a court's exercise of jurisdiction over Appellant's ethical complaint against Governor Haley would not only contravene the clear language of the State Ethics Act, it would also violate separation of powers. *See* S.C. Const. art. I, § 8 ("In the government of this state the legislative, executive, and judicial powers of the government shall be forever separate and distinct from each other, and no person or persons exercising the functions of one of said departments shall assume or discharge the duties of any other.").

In sum, ethics investigations concerning members and staff of the Legislature are intended to be solely within the Legislature's purview, to the exclusion of the courts... 745 S.E.2d 84-85

The foregoing language conclusively shows, in accordance with S.C. Code 8-13-510 and 8-13-530, the statutory scheme and the creation of the House of Representatives Legislative Ethics Committee. It also confirms that their powers and duties include that of receiving complaints filed by individuals and to investigate such complaints. S.C. Code 8-13-540 sets forth the specific manner in which investigations and hearings shall be conducted and requires the Ethics Committee shall determine its findings of fact.

To the extent that the Attorney General may take the position that the Attorney General may nevertheless investigate criminal activity, Section 8-13-540 also provides that in the first instance whether criminal activity is involved is within the purview of the House of Representatives Legislative Ethics Committee. Section 8-13-540 (3)(d) provides that if the Ethics Committee finds a violation of Chapter 13 of Title 8 or of Chapter 17 of Title 2 it shall, in the case of an alleged criminal violation, refer the matter to the Attorney General for investigation. In this same section it is provided that if the Ethics Committee finds there has not been a violation of a code or statutory provision, it shall dismiss the charges. In addition to Section 8-13-540, State v. Thrift, 312 S.C. 282,

440 S.E.2d 341, 355 (1994) determined that a narrow reading of the Ethics Act which recognizes the civil nature of ethics act complaints was adopted and, therefore, the referral system only applies to civil complaints to the Ethics Commission “which are referred by it to the Attorney General for criminal prosecution.”

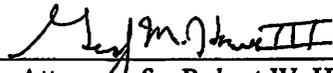
In light of the foregoing Robert W. Harrell, Jr. respectfully submits that the exclusive subject matter jurisdiction for consideration and investigation of complaints under the Ethics Act, as is occurring here, is exclusively by the House of Representatives Legislative Ethics Committee and this court therefore lacks subject matter jurisdiction.

For the foregoing reasons it is respectfully submitted that this court lacks subject matter jurisdiction in this matter.

Respectfully submitted,

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4/1, 2014