

FILED

MAY 20 2014

JAMES R. PARKS
CLERK, STATE GRAND JURY

STATE GRAND JURY OF SOUTH CAROLINA

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

ORDER

This matter initially came before me on motion of Robert W. Harrell, Jr. to disqualify Attorney General Wilson from participation in the Grand Jury proceedings. In considering the matter an issue of subject matter jurisdiction and specifically the impact of the case of Rainey v. Haley, 404 S.C. 320, 745 S.E.2d 81 (2013) arose. Arguments have been held separately before me as to the motion to disqualify and as to subject matter jurisdiction. Based upon the conclusions reached herein and because the court has determined that it lacks subject matter jurisdiction, it also lacks subject matter jurisdiction to determine the motion to disqualify as well. As is well established in this state, subject matter jurisdiction is the authority of the court to hear and determine the matter before it. If subject matter jurisdiction is present the court may hear and determine the matter. If subject matter jurisdiction is lacking, any decision by the court is void and of no effect.

The case of Rainey v. Haley involved allegations of ethics misconduct against Governor Haley. The undersigned, acting as judge in the lower court in the matter, concluded that subject matter jurisdiction concerning ethics violations are exclusively within the jurisdiction of the South Carolina House of Representatives Legislative Ethics Committee and that the court lacked subject matter jurisdiction. On appeal to the South Carolina Supreme Court my opinion was affirmed.

In the affirmation the South Carolina Supreme Court set forth several principles applicable herein. These are as follows:

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...

... 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... id. at 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... id. at 745 S.E.2d 84-85

Rainey also recognized that the South Carolina House of Representatives Legislative Ethics Committee was required to refer the matter to the Attorney General if it determined that the actions under consideration were allegedly criminal.

The affidavit of the Attorney General on file herein states that a complaint regarding possible

ethics violations by Speaker Robert Harrell was brought before him by a private citizen but because of a concern whether the House Ethics Committee would have a conflict of interest, Attorney General Wilson referred the matter to SLED for investigation. At the hearing before me held on March 21, 2013, Attorney General Wilson confirmed that the normal procedure would have been to have sent the matter to the South Carolina House of Representatives Ethics Committee, but because of his concerns regarding conflict of interest he sent the matter to SLED. The letter upon which the referral to SLED was made is also part of the record herein and confirms that the primary concern was Ethics Act violations by Speaker Harrell. Based upon the foregoing I find that the matter under consideration is an Ethics Act violation complaint.

Notwithstanding that the matter is an Ethics Act violation complaint Attorney General Wilson contends that it also rises to the level of criminal activity under his jurisdiction. This argument, however, is contrary to the finding in State v. Thrift, 312 S.C. 282, 440 S.E.2d 341, 355 (1994), which provides that Ethics Act violations are civil in nature, not criminal. Thus, until the South Carolina House of Representatives Ethics Committee has either referred the matter back to Attorney General Wilson as criminal or has otherwise acted on complaint, exclusive jurisdiction resides solely within the South Carolina House of Representatives Ethics Committee.

Based upon the foregoing and after full consideration of this matter I conclude that the State Grand Jury, a part of the court system and the judicial branch of government, lacks subject matter jurisdiction at the present time to consider and investigate the alleged Ethics Act violations. This is a matter solely within the purview of the South Carolina House of Representatives Legislative Ethics Committee. Accordingly, this court lacks subject matter jurisdiction to have received a petition to convene a Grand Jury and to have convened a Grand Jury and the action heretofore taken

in that regard is null and void as the Grand Jury lacked jurisdiction to have acted in this matter.¹

Based upon the foregoing and after full consideration of the matter,

IT IS HEREBY ORDERED AND DETERMINED that this court lacks subject matter jurisdiction; that the court also lacks subject matter jurisdiction to have convened a Grand Jury with regard to Speaker Robert W. Harrell, Jr. and that the action in doing so is null and void.

IT IS FURTHER ORDERED that the order convening the Grand Jury is hereby rescinded and revoked and that neither the Grand Jury nor any other investigative agency shall take any further action concerning the investigation of Speaker Harrell until such time as a final determination is made by the House of Representatives Legislative Ethics Committee, and/or referred by the House of Representatives Legislative Ethics Committee to the Attorney General as an alleged criminal violation.

AND IT IS SO ORDERED.

_____, 2014

L. Casey Manning
Presiding Judge

¹This order is not issued pursuant to S.C. Code Ann. §14-7-1630(G) because, as this order makes clear, subject matter jurisdiction was lacking to convene the Grand Jury in the first instance.