

The State of South Carolina



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September 29, 1994

The Honorable Nick A. Theodore
Lieutenant Governor
State of South Carolina
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Dear Lieutenant Governor Theodore:

You have asked that we confirm by official opinion our verbal opinion announced some time ago as to whether you as Lieutenant Governor possess the authority to suspend a member of the Senate upon indictment for a crime enumerated in Section 8-13-560. Section 8-13-560, part of "The Ethics, Government Accountability and Campaign Reform Act of 1991" provides in pertinent part:

Unless otherwise currently or hereafter provided for by House or Senate rule as is appropriate:

(1) A member of the General Assembly who is indicted in a state court or a federal court for a crime that is a felony, a crime that involves moral turpitude, a crime that has a sentence of two or more years, or a crime that violates election laws must be suspended immediately without pay by the presiding officer of the House or Senate, as appropriate. The suspension remains in effect until the public official is acquitted, convicted, pleads guilty, or pleads nolo contendere. In the case of conviction, the office must be declared vacant. In the event of an acquittal or dismissal of charges against the public official, he is entitled to reinstatement and back pay. (Emphasis added).

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It is our understanding that the member in question was indicted for and pled guilty to certain federal offenses committed in the 1980's. It is also our understanding that these offenses in question were misdemeanors, carrying with them a sentence of up to 5 years.

However, Section 8 of the Act provides in pertinent part:

Except as otherwise provided, this act governs only transactions which take place after December 31, 1991.

Thus, the transactions in question occurred prior to the effective date of the Act. Accordingly, Section 8-13-560, by its own terms, is clearly inapplicable. Cf. State v. Thrift, 440 S.E.2d 341 (1994).

For at least two reasons, you also do not possess authority under the governing Senate Rule. Current Senate Rule 45.1 provides that

(b) A member who enters a plea of guilty or nolo contendere to ... [a felony or offense against the election laws] must be suspended by the President Pro Tempore immediately, without a hearing and without pay, from all privileges and membership of the Senate through the remainder of that member's term. In addition, the Senate Ethics Committee shall recommend expulsion of such member in accordance with Section 12 of Article III of the Constitution of this State.

It appears this Rule governed at the time of the transactions in question. Of course, while we defer to the Senate's interpretation of its own Rules, it does not appear on its face that the Rule is applicable to crimes other than felonies or those against the election laws. As we understood it, at the time the offenses were committed, these offenses were misdemeanors.

Moreover, the Rule expressly places the authority of suspension in the hands of the President Pro Tem of the Senate, not the President. While the Rule does state in Section (d) that the "action provided for in subsections (a), (b) and (c) of this rule is in addition to any action provided by law ...", as noted earlier, Section 8-13-560 is applicable only to transactions occurring after December 31, 1991. Moreover, former Section 8-13-260 of the old Ethics Act, in existence at the time of the offenses, see State v. Thrift, supra, states that "[n]otwithstanding any other provision of this article, in the event a member of the Senate is indicted, informed against, pleads guilty or nolo contendere to, or is convicted of, a felony or offense against the election laws, the Senate may take

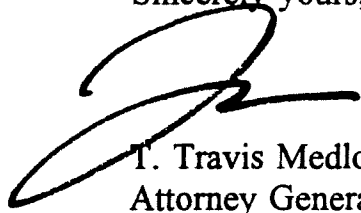
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disciplinary action as provided by Senate rule." (emphasis added). In short, both the applicable Senate Rule and the governing statute dealing with indictment for or conviction of criminal conduct by Senate members, spoke only to felonies or crimes against the election laws. It did not encompass misdemeanors. This Office cannot create law which does not exist.

Accordingly, as we have already verbally stated, it is our opinion that you as Lieutenant Governor possess no authority to suspend the member in question.

With kindest regards, I am

Sincerely yours,

A handwritten signature in black ink, appearing to be 'T. Travis Medlock', written over the typed name.

T. Travis Medlock
Attorney General

TTM/an