

The State of South Carolina



Office of the Attorney General

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The Honorable Patrick B. Harris
Member, House of Representatives
213 Blatt Building
Columbia, South Carolina 29211

Dear Representative Harris:

I am writing in response to your request for an opinion of this Office regarding the House of Representatives Legislative Ethics Committee. Where an investigation has been conducted by SLED and the evidence obtained by the Solicitor is forwarded to the Ethics Committee, you have asked whether the Committee can make any resolution of the matter without a formal complaint being filed, based solely on the information received. You also ask, in the event of a request for an advisory opinion by any member of the House or attaché as outlined in House Rule 4.16, could the Committee make any resolution of the matter without a formal complaint.

Pertinent to your first question, the House of Representatives Legislative Ethics Committee has, pursuant to statute, the responsibility to "(r)ecieve any complaint which alleges a breach of any privilege," member misconduct, or violation of ethical provisions, to "(o)btain the information with respect to any complaint filed," and "(a)ct as an advisory body to the General Assembly and to individual (House) members ... on questions relating to possible conflict of interest." South Carolina Code Ann. § 8-13-230 (Emphasis added). South Carolina Code Ann. § 8-13-240(a) provides that, when a complaint is filed, the Committee shall forward a copy to the alleged violator. The Committee then makes a determination as to whether the complaint "allege(s) facts sufficient to constitute a violation, ..." and, thereafter, conducts an appropriate investigation and resolution as outlined in the statutes. South Carolina Code Ann. § 8-13-240(a).

It is the opinion of this Office that the applicable statutes discussed above appear to contemplate Committee action upon receipt of a complaint. The statutes contain no limitation upon those from whom the Committee is permitted to receive complaints. Therefore, it appears that anyone, including any House member, may make a complaint to the Committee. Of course, whether investigative information compiled by SLED, evidence obtained by the Solicitor, or other

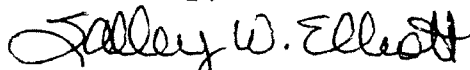
The Honorable Patrick B. Harris
Page 2
July 17, 1990

information forwarded to the Committee constitute a complaint as contemplated by the statutes is a matter which lies within the broad discretion of the Committee. Such is a legislative function, and, because of the doctrine of separation of powers, it would be inappropriate for this Office to attempt to preempt the Legislature's role in determining precisely what constitutes a "complaint" as that term is used pursuant to the foregoing statutes. S. C. CONST. Art. I, § 8; Myrick v. Williams, et al., Order dated January 17, 1963; Andersen v. Blackwell, 168 S.C. 137, 167 S.E. 30; 72 Am.Jur.2d States, §§ 40; 49; 52; 41; 44-45. Suffice it to say that the statutes involved are silent as to the form or sufficiency of the complaint except that the complaint must set forth sufficient facts to constitute "a breach of any privilege of the (House of Representatives), misconduct of any (House) member, or any violation" regarding ethics, conduct, campaign practices, or disclosures. South Carolina Code Ann. § 8-13-230(1); § 8-13-240, and Chapter 13 of Title 8. Clearly, then there is no magical formula for the filing of a complaint beyond this express language and the General Assembly has left it to the judgment of the Committee as to what actually constitutes a complaint for purposes of Section 8-13-240.

Your second inquiry concerns House Rule 4.16 which provides that in addition to the statutory duties, the Committee shall "render advisory opinions regarding legislative ethics" upon the request of "any member, officer or employee of the House "when the committee deems that the opinion would "serve the public interest." Rule 4.16(a)(1) of the Rules of the House of Representatives. The Rule appears to require a request for an advisory opinion regarding legislative ethics rather than receipt of a complaint. Again however, where a rule of the House is involved, the doctrine of separation of powers mandates that the General Assembly and, in this instance its Committee, remains the final interpreter of its rules. S. C. CONST. Art. I, § 8; Art. III, § 12; State ex. rel. Coleman v. Lewis, 181 S.C. 10, 186 S.E. 625 (1936); 72 Am.Jur.2d States, § 43, p. 442-443.

If additional information or discussion is required, please advise.

Sincerely,



Salley W. Elliott
Assistant Attorney General

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REVIEWED AND APPROVED BY:



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