

1983 S.C. Op. Att'y. Gen. 47 (S.C.A.G.), 1983 S.C. Op. Att'y. Gen. No. 83-30, 1983 WL 142701

Office of the Attorney General

State of South Carolina

Opinion No. 83-30

July 8, 1983

*1 Honorable Harriet H. Keyserling

Box 1108

Beaufort, South Carolina 29902

Dear Representative Keyserling:

Attorney General Medlock has forwarded to me notes he dictated following his meeting with you on May 31, 1983, and has asked me to respond to a number of the questions you posed to him at that meeting. Specifically, he has asked me to address your inquiries concerning how members of a Grand Jury are selected, the types and the extent of powers granted to a Grand Jury and concerning what action can be taken if a Grand Jury exceeds its authority.

Addressing your inquiries in the order in which they were given to me, please be informed that the drawing and selection of grand jurors, as with jurors who serve on petit juries, is governed by statute in this State. [Sections 14-7-1510 through 14-7-1560, Code of Laws of South Carolina \(1976\)](#). A Grand Jury consists of eighteen members, twelve of whom must agree in any matter before submitting it to the Court. [Article V, Section 18, Constitution of the State of South Carolina](#). As to how these eighteen individuals are selected, statutory law requires that twelve 'new' people be drawn once a year to serve as grand jurors and that they, together with six 'holdover' members drawn by lot from the previous year's Grand Jury constitute the Grand Jury for the upcoming year. [Section 14-7-1510 and 14-7-1520, Code of Laws of South Carolina \(1976\)](#); [Moorer v. State, 244 S.C. 102, 135 S.E.2d 713 \(1964\)](#). As to how the twelve 'new' members of the Grand Jury are selected, Section 14-7-1550 states, in its pertinent parts, that 'Grand jurors shall be drawn, summoned and returned in the same manner as jurors for trials and when drawn at the same time as jurors for trials, the persons whose names are first drawn, to the number required, shall be returned as grand jurors . . .'. Sections 14-7-110 through 14-7-660 set forth the procedures for drawing and selecting petit jurors.

The leading case in South Carolina addressing the powers of the Grand Jury is [State v. Bramlett, 166 S.C. 323, 164 S.E. 873 \(1932\)](#). I have enclosed a copy of this case for your review. After reviewing [State v. Bramlett](#) and other authorities on this subject, it is apparent that a duly selected Grand Jury has broad investigative and inquisitorial powers but that these powers, while broad, are not without some limitation. Also reaching this conclusion are three previous opinions issued by this Office.¹ I have also enclosed a copy of these opinions for your review.

Your last inquiry concerns what action, if any, can be taken against a Grand Jury which has exceeded or abused the authority it possesses. The following except from [Corpus Juris Secundum](#) is the general law in this area:

Grand Jurors are protected in the discharge of their duties during the whole of their proceedings, and it is a general rule, recognized by statute in some jurisdictions, that a person cannot be held to answer in an action for malicious prosecution for what he said or did, as a member of the grand jury, however malicious or destitute of probable foundation his actions may have been. 38 C.J.S. [Grand Jury](#), Section 45.

*2 However, members of a Grand Jury and the Grand Jury as an entity are, under very limited circumstances, subject to the supervision and control of the Court, for violations of their duties.

(A) grand jury transcends its powers and exceeds its duty when in its presentment it expresses its opinion of the force and effect of the evidence which it has heard, *ex parte*, or has itself collected in its investigations, or when it discusses that evidence, and/or,

when it presents an officer or person by name, and with words of censure and reprobation, without presenting him for indictment, or without finding a true bill against him on a bill of indictment in its hands. [State v. Bramlett](#), 164 S.E. 873 at 875–876.

As to what action can be taken against a Grand Jury which exceeds or abuses its authority, it appears from reviewing [State v. Bramlett](#) and other authorities in the State that the Supreme Court of this State recognizes the right of a lower court to expunge the offending portions of a Grand Jury's report from the record and that the Supreme Court recognizes by implication, the right of the lower court to purge the offending Grand Jury, if the violation is of such magnitude to warrant such a severe penalty. [State v. Bramlett](#), *supra*.

If this Office can be of any further assistance to you, or if I can personally provide you with any further information on this topic, please do not hesitate to contact me, I am

Sincerely,

Larry L. Vanderbilt
Assistant Attorney General

Footnotes

- 1 1949–50 Op. Atty. Gen. 115
 1959 –60 Op. Atty. Gen. 267
 1960 –61 Op. Atty. Gen. 178
 1983 S.C. Op. Atty. Gen. 47 (S.C.A.G.), 1983 S.C. Op. Atty. Gen. No. 83-30, 1983 WL 142701