

1977 S.C. Op. Atty. Gen. 194 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-260, 1977 WL 24601

Office of the Attorney General

State of South Carolina

Opinion No. 77-260

August 16, 1977

*1 TO: Gary R. Baker
Executive Director
State Ethics Commission

QUESTIONS:

1. Does the Ethics Commission have the authority to fine or recommend a fine for an individual upon finding that a violation of the State Ethics Act has occurred?
2. Does the Commission have the authority to establish a penalty for public officials or employee who are late in filing required statements?
3. When a situation arises concerning an administrative department executive, should the Ethics Commission investigate the matter and report the disposition of the case to the Governor or should the Commission turn the entire case over to the Governor for investigation?

CITATIONS:

Section 8–13–120(f)(2), Code of Laws of South Carolina (1976);

Section 8–13–1010, Code of Laws of South Carolina (1976);

[South Carolina State Bd. of Dental Examiners v. Breeland](#), 208 S.C. 469, 38 S.E.2d 644, 167 A.L.R. 221;

2A [Sutherland Statutory Construction](#), sections 46.01, 46.05;

9A [Words and Phrases](#), p. 288.

DISCUSSION:

1. Section 8–13–120(f)(2), Code of Laws of South Carolina (1976) provides in part:
Upon completion of its investigation and any hearing thereon, the commission shall, where appropriate, recommend disciplinary or administrative action or in the case of an alleged criminal violation refer the matter to the Attorney General for appropriate action. (emphasis added).

A basic tenet in statutory construction is that a statute should be given its plain meaning whenever the language in the statute is clear. 2A [Sutherland Statutory Construction](#) § 46.01. Thus it is readily apparent that the Commission cannot fine an individual but can only recommend that an individual be fined for violating the State Ethics Act. Furthermore, the language in the penalty provisions of the Ethics Act bolsters this position. (§ 8–13–1010).

Section 8–13–1010, Code of Laws of South Carolina (1976) states that ‘ . . . any person who violates any provision of the chapter shall be deemed guilty of a misdemeanor and upon conviction shall be fined not more than one thousand dollars'. (emphasis added). ‘Conviction in its legal sense means a final judgment conclusively establishing guilt in a criminal prosecution. [South Carolina State Board of Dental Examiners v. Breeland](#), 38 S.E.2d 644, 648, 208 S.C. 469, 167 A.L.R. 221. See also 9A [Words and Phrases](#), p. 288. Therefore, since the Ethics Commission cannot convict for a violation of the Ethics Act it cannot levy a fine for violations.

2. In light of the discussion in answer to your first question, the Commission cannot impose a fine when an individual files a required statement late, if the purpose of the fine is to penalize the individual. The Commission may, however, charge a late filing fee if the fee it designed to cover administrative costs incurred as a result of the delay in filing.

3. Section 8–13–120(f)(2) provides in part:

*2 . . . In the case of a public employee, the commission shall file a report to the administrative department executive responsible for the activities of such employee. If the case is against an administrative department executive, the commission shall refer the case to the Governor.

An important principle in statutory construction is that each section of a statute should be construed with every other part in order to produce a harmonious whole. 2A [Sutherland Statutory Construction](#) § 46.05. Therefore, since one of the primary duties of the Ethics Commission is to investigate ethical complaints against public employees and officials it would appear that the Ethics Commission should be the investigatory body of all complaints, whether they be against administrative department executives or not. Thus the Ethics Commission should conduct investigations involving administrative department executives and report its findings to the Governor. Since administrative department executives are under the supervision of the Governor, it is only logical that he is the proper person to be informed of the disposition of such investigations.

CONCLUSION:

Under the statute governing the State Ethics Commission, § 8–13–110, et seq., Code of Laws of South Carolina (1976), the Ethics Commission is not authorized to levy fines but can only recommend the imposition of a fine for violations of the State Ethics Act.

When the Ethics Commission receives a complaint against an administrative department executive, the Commission should conduct an investigation and report its findings and recommendations to the Governor.

George C. Beighley
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