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MAY 20 2014

THE STATE OF SOUTH CAROLINA
In The Supreme Court

S.C. Supreme Court

RULE 203(d)(1)(A)(v), SCACR APPEAL FROM THE STATE GRAND JURY
Court of General Sessions

The Honorable L. Casey Manning, Circuit Court Judge

State Grand Jury Investigation # M2014-237

In the Matter of State Grand Jury Investigation # M2014-237,

Attorney General of the State of
South Carolina,

Appellant,

v.

Robert W. Harrell, Jr,

Respondent.

NOTICE OF APPEAL

The Attorney General, in his official capacity as the Chief Prosecuting Officer of the State of South Carolina and as legal advisor to the South Carolina State Grand Jury, hereby appeals the Order in this matter issued by the Honorable L. Casey Manning on May 12, 2014, which declared the above-captioned State Grand Jury investigation void *ab initio*, and enjoined the State Grand Jury and any other investigative agency from taking any action "concerning the ethics violations discussed herein". Appellant received written notice of this Order on May 12, 2014, and is appealing directly to the Supreme Court pursuant to S.C. Code § 14-7-1630(G), S.C. Code § 14-8-200(b)(6), and RULE 203(d)(1)(A)(v), SCACR.

May 20, 2014.

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PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Robert W. Harrell, Jr., by depositing a copy of it in the United States Mail, postage prepaid, on May 19, 2014, addressed to his attorneys of record, Gedney M. Howe, III, Post Office Box 1034, Charleston, South Carolina 29402, and E. Bart Daniel, Post Office Box 856, Charleston, South Carolina 29402.

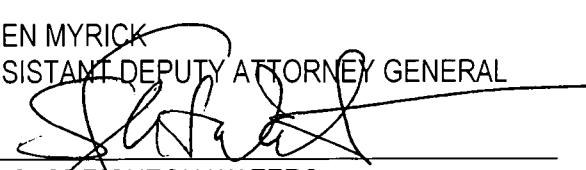
May 20, 2014

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FILED

MAY 12 2014

JAMES R. PARKS
CLERK, STATE GRAND JURY

STATE GRAND JURY OF SOUTH CAROLINA

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

ORDER

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This matter initially came before the Court by motion of Robert W. Harrell, Jr. to disqualify Attorney General Wilson from participation in any State Grand Jury investigation of Mr. Harrell upon the ground that a conflict of interest existed. Following a hearing on March 21, 2014, with regard to the motion to disqualify the Attorney General, this Court contacted the parties and *sua sponte* raised the issue of subject matter jurisdiction. After briefing by both sides, a hearing was held on May 2, 2014. Having carefully considered the positions of both sides, this Court finds it lacks subject matter jurisdiction. Because this Court finds it lacks subject matter jurisdiction, it need not reach the issue of disqualification.

- I. The General Assembly vested exclusive original subject matter jurisdiction over alleged violations of the State Ethics Code in Executive and Legislative agencies.

Determining the existence of subject matter jurisdiction is a threshold issue that must be satisfied before a court can ever address the merits of a matter. Subject matter jurisdiction is the sole source of a court's power to adjudicate an issue and is conferred by the Constitution and statutes. Hamilton v. Fulgham, 385 S.C. 632, 637, 686 S.E.2d 683, 685-86 (2009). Without subject matter jurisdiction, anything that a court does is void *ab initio*. Coon v. Coon, 364 S.C. 563 (2005). Resultantly, this Court has a duty to take notice of and rectify any overstepping of jurisdictional boundaries. Hamilton, 385 S.C. at

637, 686 S.E.2d at 686 ("The lack of subject matter jurisdiction may not be waived, even by consent of the parties, and should be taken notice of by this Court.")

Original jurisdiction in civil and criminal cases lies with the Circuit Court, except in specified instances where exclusive jurisdiction is conferred to another entity. S.C. Const. art. V, § 11. In determining whether the Legislature has vested jurisdiction in an entity other than the Circuit Court, a court must look to the relevant statute. Rainey v. Haley 404 S.C. 320, 745 S.E.2d 81 (2013). The statutes at issue here are S.C. Code Ann. §§ 8-13-510 et seq. "Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." Id. The South Carolina Supreme Court has interpreted the jurisdiction over the Ethics Code to be as follows:

The extensive and unambiguous statutory scheme contemplates the receipt, processing and resolution of ethics complaints against members of the General Assembly in the respective chambers of the Legislature. Therefore, it is clear the Legislature intended the respective Ethics Committees to have **exclusive** authority to hear alleged ethics violations of its own members and staff.

Rainey v. Haley, 404 S.C. 320, 323-25, 745 S.E.2d 81, 83 (2013) (emphasis added)

The allegations of the citizen's complaint giving rise to this investigation were conclusively within the Ethics Code. Despite multiple requests, the Attorney General has failed to offer or present to the Court any evidence or allegations which are criminal in nature. Therefore, the Court is left only with uncontroverted allegations of ethics violations propounded by a citizen's letter. *See* (Transcript March 21, 2014 Hearing at pg. 48, line 20 – pg. 49, line 4).

Rainey clearly establishes that ethics investigations concerning members and staff of the Legislature are solely within the Legislature's purview to the exclusion of the Courts¹. The State Ethics Code establishes a comprehensive, highly-technical process by which alleged violations of the Ethics Code must be resolved. Section 8-13-540(3)(d) of the Ethics Code mandates a Legislative Ethics Committee to refer alleged criminal violations to the Attorney General.

Even assuming *arguendo* that the circuit court has subject matter jurisdiction over ethics proceedings at all times, the Attorney General's initiation of this matter is premature. Any investigation by the State Grand Jury at this stage is illegitimate because the Act's administrative remedies have not been exhausted. Rainey v. Haley, 404 S.C. 320, 327-28, 745 S.E.2d 81, 85 (2013).

- II. Exercise of jurisdiction over the present complaint would not only contravene the State Ethics Act, but would also violate the separation of powers.

Article III, Section 11 of the State Constitution requires that each House of the General Assembly "shall judge ... the qualifications of its own members ..." Our Supreme Court has opined that, except where constrained by an express provision of the Constitution, no other branch of government is permitted to adjudicate questions concerning the operations or procedures of either House of the General Assembly. Culbertson v. Blatt, 194 S.C. 105, 95 S.E.2d 218 (1940).

The South Carolina Supreme Court held in Rainey that exercise of subject matter jurisdiction by the Circuit Court over a violation of the State Ethics Code "would not only

¹The only exception exists when a complaint concerning a member or candidate is lodged during the 51 day period before an election in which the member or candidate is a candidate. It is only during this limited period that the exclusivity of jurisdiction is relinquished. Rainey v. Haley 404 S.C. 320, 745 S.E.2d 81(2013).; S.C. Const. art. V, §

contravene clear language of that statute, which generally placed investigations concerning members and staff of the Legislature solely within the Legislature's purview, but would also violate separation of powers principles in state constitution". Const. Arts. 1, § 8, 3, § 12, 5, § 11; Code 1976, §§ 8-13-530, 8-13-540. Rainey v. Haley, 404 S.C. 320, 745 S.E.2d 81 (2013).

Separation of Powers issues inevitably turn on views about the appropriate powers of each branch and how they should interact. The Attorney General seeks to bring this case within the ambit of a criminal prosecution and under the State Grand Jury Act. Notwithstanding that the matter is an Ethics Act violation complaint², Attorney General Wilson contends that it also rises to the level of criminal activity under his jurisdiction³. This argument, however, is contrary to the finding in State v. Thrift, which provides that Ethics Act violations are civil in nature, not criminal. State v. Thrift 312 S.C. 282, 306. 440 S.E.2d 341, 355 (1994). Thus, until the South Carolina House of Representatives Ethics Committee has either referred the matter to Attorney General Wilson or has otherwise acted on the 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

² Attorney General continued to characterize the complaint as an ethics complaint even after the matter was referred to SLED. See Affidavit of Attorney General ("On February 14, 2013, a citizen complaint was delivered to this Office regarding possible ethics violations by Speaker Robert Harrell.") (emphasis added)

³ On February 14, 2013, the same day the Attorney General's office received the citizen's ethics complaint, it sent a letter to SLED with the subject line "Re: Preliminary Criminal Inquiry".

investigate the alleged Ethics Act violations. As a consequence any action heretofore taken by the Grand Jury is null and void as it failed to act with jurisdiction. 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.⁴

IT IS THEREFORE ORDERED AND DETERMINED that this Court lacks subject matter jurisdiction, and that the Court also lacked subject matter jurisdiction to convene a Grand Jury with regard to Mr. Robert W. Harrell, Jr.

IT IS FURTHER ORDERED that this Court's 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 ethics violations allegations discussed herein 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 pursuant to S.C. Code Ann. §§ 8-13-510 et seq.

AND IT IS SO ORDERED!

May 12 2014


The Honorable L. Casey Manning
Presiding Judge

⁴This order is not issued pursuant to S.C. Code Ann. §14-7-1630(G) because subject matter jurisdiction was lacking to convene the Grand Jury *ab initio*.