

1975 WL 29810 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 14, 1975

*1 Honorable J. P. Harrelson
State Senator
Drawer 732
Walterboro, South Carolina 29488

Dear Senator Harrelson:

You have requested my opinion on the validity of the Ethics Bill now before you.

The Bill would create a State Ethics Commission, to be composed of three members from the House of Representatives and Senate, respectively, and three additional members to be appointed by the Presidents of the South Carolina Municipal Association, the South Carolina Association of Counties and the South Carolina Employees Association. The Commission has certain ministerial functions, as well as authority to make investigations with respect to violations of any part of the Act by any public official or employee. If probable cause is found from its investigation, the matter is referred to the Public Employee Ethics Commission, a body which is created by Part III of the Bill, or, in the case of complaints against Members of the General Assembly, and after probable cause is found, of the appropriate legislative committee of the General Assembly. With respect to public employees, the Ethics Commission may recommend a public or private reprimand or, in the case of an alleged criminal violation, refer the matter to the Attorney General for appropriate action.

I can see little basis for questioning upon constitutional grounds the provisions of the law with respect to public employees, except the inclusion in the membership of the State Ethics Commission of non-governmental bodies, such as the Municipal Association, the Association of Counties and the State Employees Association. Some question exists with respect to participation by representatives of these agencies in the governmental process but, in view of the limited authority which they have, it is my opinion that this provision is constitutional. [Gould v. Barton](#), 256 S.C. 175, 181 S.E.2d 662; and [Ashmore v. Greater Greenville Sewer District](#), 211 S.C. 77, 44 S.E.2d 88.

With respect to Section 4(f)(1), I entertain extreme doubt in that it appears to be an entrenchment, to some degree, of the constitutional authority vested in the component Houses of the Legislature to judge the qualifications of its own Members. The Ethics Commission is, in effect, a screening body which can only refer matters to the appropriate body of the General Assembly upon which it finds probable cause. No procedure is provided for review by those bodies of complaints which the State Ethics Commission has found lacks probable cause and undoubtedly the Supreme Court of this State would clearly recognize that the authority of the House and Senate to judge the qualifications of its own Members cannot be impaired. See [Myrick v. Williams, et al.](#), Order dated January 17, 1963; and [Andersen v. Blackwell](#), 168 S.C. 137, 167 S.E. 30.

I therefore am of the opinion that the portions of the Bill relating to Members of the General Assembly are subject to doubt. The Bill and other provisions and applications are, in my opinion, constitutional.

Very truly yours,

*2 Daniel R. McLeod
Attorney General

ATTACHMENT

CITATIONS

As to the power of the General Assembly to judge of the election returns and qualifications of its members:

Ex parte Scarborough, 34 S.C. 13, 12 S.E. 666

Anderson v. Blackwell, 168 S.C. 137, 167 S.E. 30

Scott v. Thornton, 234 S.C. 19, 106 S.E. 2d 446

Myrick v. Williams, Sup. Ct. Op. dated 1/17/63

As to the power of the General Assembly to delegate authority:

81 C.J.S. 960, STATES Section 43

South Carolina Highway Dept. v. Harbin, 226 S.C. 585, 86 S.E. 2d 466

Cole v. Manning, 240 S.C. 260, 125 S.E. 2d 621

Gould v. Barton, 256 S.C. 175, 181 S.E. 2d 662

Terry v. Pratt, 258 S.C. 177, 187 S.E. 2d 884

Gunter v. Blanton, 259 S.C. 436, 192 S.E. 2d 473

As to federal limits on General Assembly's power to judge the qualifications of its members:

Bond v. Floyd, 385 U.S. 116, 17 L.Ed. 2d 235, 87 S. Ct. 339

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