



ALAN WILSON  
ATTORNEY GENERAL

January 4, 2019

The Honorable Marvin Pendarvis, Esquire  
S.C. House of Representatives  
328-A Blatt Building  
Columbia, SC 29201

Dear Representative Pendarvis:

This Office received your letter dated December 4, 2018 requesting a legal opinion. The following is this Office's understanding of your first question and our opinion based on that understanding.

**Issue** (as quoted from your letter, noting the second issue will be answered in a separate legal opinion):

*"I have recently been appointed chair of an ad hoc committee of the Charleston County Legislative Delegation to investigate a personnel matter within the Charleston County School District. Do I have subpoena powers that would enable me to compel persons to testify and documents to be turned over? If not, what other mechanisms do I have at my disposal to achieve the same?"*

**Law/Analysis:**

This Office recognizes that South Carolina law grants "every standing committee of the Senate and of the House of Representatives, in the discharge of its duties" authority "by majority vote of the committee" to "issue subpoenas and subpoenas duces tecum to any agency, department, board or commission of this State or of any political subdivision of this State or to any representative of any agency, department, board, or commission of this State or of any political subdivision of this State to compel the attendance of witnesses and production of documents, books, papers, correspondence, memoranda, and other relevant records to its work, investigation, or study." S.C. Code Ann. § 2-69-10 (emphasis added); see also S.C. Code Ann. § 2-2-50. Additionally, standing committees of the South Carolina Senate and of the House of Representatives are authorized to issue a subpoena and a subpoena duces tecum on behalf of any subcommittee or joint study committee. *Id.*; S.C. Code Ann. § 2-69-20, -30, -40. Every subpoena must be signed by either the President Pro Tempore of the Senate or the Speaker of the House of Representatives depending on the committee requesting the subpoena or must be approved by a majority vote of the chamber issuing the subpoena. S.C. Code Ann. § 2-69-40. In 1975 this Office was asked to opine on a similar question and stated as follows:

[T]he position of this office has been that the subpoena-contempt power must be specifically granted to the committee in question before it can be exercised. Such a view is based on the fact that certain legislative committees have been granted such powers explicitly, while others have not. Such a practice indicates tacit recognition by the legislature that the powers of subpoena-contempt should be expressly delegated to a committee where such a committee is intended to possess these powers. Also, in the cases recognizing a committee's subpoena-contempt

powers, a specific statute gave these powers explicitly to the committee. See Ex Parte Parker, *supra* [74 S.C. 466, 55 S.E. 122], and Ex Parte Johnson, 187 S. C. 1, 196 S. E. 164.

Op. S.C. Att’y Gen., 1975 WL 22456 (October 22, 1975) (emphasis added). Nevertheless, this Office recognizes that “the power of the [L]egislature to obtain information on any subject upon which it has power to legislate has long been recognized ... [as] was the holding of the South Carolina Supreme Court in Ex Parte Parker, 74 S.C. 466, 55 S.E. 122.” Op. S.C. Att’y Gen., 1975 WL 22456 (S.C.A.G. October 22, 1975). However, please note South Carolina Code Ann. § 2-69-10 was passed by Act No. 352 of 1986, which was after the October 22, 1975 opinion. See Act No. 352, 1986 S.C. Acts 2546; Op. S.C. Att’y Gen., 1975 WL 22456 (S.C.A.G. October 22, 1975). Thus, to the extent that the October 22, 1975 legal opinion to Senator James P. Harrleson, Chairman of the Senate Agriculture and Natural Resources Committee, conflicts with South Carolina Code Ann. § 2-69-10, we defer to § 2-69-10. On the other hand, in 1974 this Office issued an opinion on a similar question to yours as to whether the Charleston County Legislative Delegation could create a committee to investigate Charleston County Council, and this Office concluded that the Delegation could not create an investigative committee without a concurrent or joint resolution by the General Assembly. See Op. S.C. Att’y Gen., 1974 WL 27197 (S.C.A.G. February 19, 1974). That opinion also stated that a joint resolution would also grant a legislative committee of the Delegation the power to “investigate any subject with respect to which it may desire information in aid of the proper discharge of its function to make or unmake laws.” *Id.* Thus, to the extent the committee you describe is not a “standing committee” or a subcommittee of a “standing committee,” we believe that our February 19, 1974 opinion still applies. *Id.*; S.C. Code Ann. § 2-69-40.

This Office also previously opined that a legislative committee was not an “interested party” so as to have the ability to inspect records of the Workers Compensation Commission pursuant to South Carolina Code Ann. § 42-19-40. Op. S.C. Att’y Gen., 1984 WL 249972 (S.C.A.G. August 31, 1984) (citing Blue Cross & Blue Shield v. S.C. Industrial Commission, 274 S.C. 204, 208, 262 S.E.2d 37 (1980)). We also advised in that opinion that the General Assembly could remedy access to the records either by amending South Carolina Code Ann. § 42-19-40 or by passing a resolution granting the legislative committee subpoena power. *Id.* As stated above, in 1986 the General Assembly then passed § 2-69-10 *et seq.* authorizing subpoena power to every standing committee. Act No. 352, 1986 S.C. Acts 2546. Without *subpoena ad testificandum* or *subpoena duces tecum* power to compel information, a legislative committee formed by the County Legislative Delegation may ask for information or may ask individuals to testify voluntarily. The committee may also implement any other lawful means to obtain testimony or evidence, such as the South Carolina Freedom of Information Act (S.C. Code Ann. § 30-4-10 *et seq.*). Anyone who provides testimony, albeit voluntarily, *may* be guilty of the crime of false swearing, perjury, or other crimes. S.C. Code Ann. § 16-9-10 *et seq.*; Op. S.C. Att’y Gen., 1985 WL 259225 (S.C.A.G. October 9, 1985).

Nevertheless, there are many local laws concerning Charleston County, and we have not reviewed all of the local laws for purposes of this opinion. However, Act No. 593 of 1920 authorizes the Charleston County Legislative Delegation to:

require the auditing of the books of the various county officers for [...] Charleston count[y...] once each year, if it is so desired by such legislative delegation that the same be done, and such delegations are further vested with the power and authority to employ such expert accountants as such delegations may desire for such

purposes, and that the expenses incurred by such audits and the employment of such auditor or expert accountant shall be paid by the County Treasurers on a warrant signed by the members of the General Assembly from such counties.

Act No. 593, 1920 S.C. Acts 1061. The South Carolina Supreme Court has concluded regarding local laws passed before Home Rule that “[t]he Home Rule Act, while preventing the General Assembly from enacting ‘special legislation’ and voiding any ‘special legislation’ which contradicts the general law, does not operate retroactively to abolish all ‘special legislation’ which was in effect in South Carolina prior to the enactment of the Home Rule Act.” Graham v. Creel, 289 S.C. 165, 168, 345 S.E.2d 717, 719 (1986). Thus, unless this Act was repealed or superseded by later legislation, it would still be good law. Id. Also, we would advise speaking with the South Carolina Department of Education’s legal counsel to determine if the committee would have any additional access to information regarding the personnel matter through the Department of Education or other entity.

**Conclusion:**

This Office believes a court will find that a County Legislative Delegation must have a specific legislative resolution (joint or concurrent) authorizing subpoena power in order to use *subpoena ad testificandum* or *subpoena duces tecum* power for an investigative committee of the Legislative Delegation unless the entity is a “standing committee” of either the Senate or the House of Representatives or a joint study committee. S.C. Code Ann. § 2-69-10 *et seq.*; S.C. Code Ann. § 2-2-50; Op. S.C. Att’y Gen., 1974 WL 27197 (S.C.A.G. February 19, 1974). Any such investigations and requests for information by a legislative committee without subpoena power must be done so voluntarily or pursuant to other law such as the South Carolina Freedom of Information Act. See, e.g., S.C. Code Ann. § 30-4-10 *et seq.* A legislative committee may investigate “in aid of prospective legislation and for the purpose of securing information needed for the proper discharge of their function and powers.” 72 Am. Jur. 2d States, Etc. § 51 (citing Gibson v. Florida Legislative Investigation Committee, 372 U.S. 539, 83 S. Ct. 889, 9 L. Ed. 2d 929 (1963); In re Opinion of the Justices, 248 Ala. 590, 29 So. 2d 10 (1947); Matter of Shain, 92 N.J. 524, 457 A.2d 828 (1983); Chesek v. Jones, 406 Md. 446, 959 A.2d 795 (2008)). However, we also encourage you to speak with lawyers within the General Assembly for their interpretation and knowledge of the General Assembly’s rules, as this Office has not examined the rules for purposes of this opinion. Moreover, the General Assembly has passed numerous local laws concerning Charleston County, but any such local law would need to give specific authority for the Legislative Delegation or a committee to have subpoena power. However, Act No. 593 of 1920 was a local law passed before the Home Rule Act that authorized the Charleston County Legislative Delegation to require the auditing of the books of the various county officers of Charleston County. Act No. 593, 1920 S.C. Acts 1061; see also Graham v. Creel, 289 S.C. 165, 168, 345 S.E.2d 717, 719 (1986) (the Home Rule Act does not retroactively abolish all “special legislation”). Additionally, we advise speaking with the South Carolina Department of Education’s legal counsel to determine if the Delegation would have any additional access to information needed through the Department of Education or other entity, as it is responsible for reporting to the South Carolina General Assembly. See, e.g., S.C. Code § 59-63-330.

As you are aware, a committee should report criminal violations found in an investigation to the local Solicitor’s office, law enforcement, and/or the Attorney General, as a legislative committee may be a fact-finder and make recommendations but is not able to adjudicate criminal violations. Op. S.C. Att’y Gen., 1985 WL 259225 (S.C.A.G. October 9, 1985); 1974 WL 27197 (S.C.A.G. February 19, 1974). As

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mentioned above, anyone who provides testimony, albeit voluntarily, *may* be guilty of the crime of false swearing, perjury, or other crimes. S.C. Code Ann. § 16-9-10 *et seq.*; Op. S.C. Att’y Gen., 1985 WL 259225 (S.C.A.G. October 9, 1985). The regulation of public schools is done so pursuant to the laws and the policing power of the State. See, e.g., S.C. Const. art. XI, §§ 1, 3; Ops. S.C. Att’y Gen., 1963 WL 11898 (S.C.A.G. January 17, 1963); 1970 WL 17198 (January 20, 1970). It is the duty of law enforcement to investigate activity that could be determined to be criminal, and a school district is “without authority to limit law enforcement in the investigation of crimes on school grounds.” Ops. S.C. Att’y Gen., 2018 WL 6587187 (S.C.A.G. December 4, 2018); 2010 WL 2678697 (S.C.A.G. June 28, 2010); 2012 WL 440540 (S.C.A.G. February 6, 2012). School administrators have a mandatory obligation to immediately report to law enforcement activity “which may result or results in injury or serious threat of injury” pursuant to South Carolina Code Ann. § 59-24-60 for investigation.

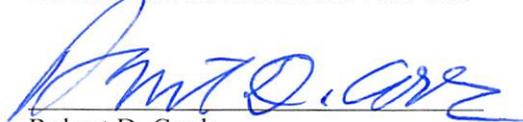
Nevertheless, this Office is only issuing a legal opinion based on the current law at this time and the information as provided to us. This opinion is not an attempt to comment on any pending litigation or criminal proceeding. Until a court or the General Assembly specifically addresses the issues presented in your letter, this is only an opinion on how this Office believes a court would interpret the law in the matter. This opinion only addresses some of the sources in the subject area, but we can address other authority or additional questions in a follow-up opinion. Additionally, you may also petition the court for a declaratory judgment, as only a court of law can interpret statutes and make such determinations. See S.C. Code Ann. § 15-53-20. If it is later determined otherwise, or if you have any additional questions or related issues, please let us know.

Sincerely,



Anita (Mardi) S. Fair  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Solicitor General