

Chairman Wm. Weston J. Newton

*First Vice-Chair:
Laurie Slade Funderburk*

Legislative Oversight Committee



South Carolina House of Representatives

*Nathan Ballentine
Gary E. Clary
Kirkman Finlay III
Joseph H. Jefferson Jr.
Walton J. McLeod
Joshua Putnam
Samuel Rivers Jr.
Tommy M. Stringer
Bill Taylor*

*William K. (Bill) Bowers
Raye Felder
Phyllis J. Henderson
Mia S. McLeod
Ralph W. Norman
Robert L. Ridgeway III
James E. Smith Jr.
Edward R. Tallon Sr.
Robert Q. Williams*

*Jennifer L. Dobson
Research Director*

Post Office Box 11867

Columbia, South Carolina 29211

*Charles L. Appleby IV
Legal Counsel*

*Cathy A. Greer
Administration Coordinator*

Telephone: (803) 212-6810 • Fax: (803) 212-6811

*Carmen J. McCutcheon
Research Analyst/Auditor*

Room 228 Blatt Building

May 31, 2016

VIA HAND DELIVERY

The Honorable Wm Weston J. Newton
Chairman, South Carolina House of Representatives
Legislative Oversight Committee
Post Office Box 11867
Columbia, South Carolina 29211

Dear Chairman Newton:

On May 26, 2016 the Law Enforcement and Criminal Justice Subcommittee met to address an issue which arose during the May 5, 2016 Subcommittee meeting with the Department of Public Safety. Enclosed is a copy of the meeting packet which was provided to Subcommittee members prior to, and at, the May 26, 2016 meeting. Notably, Representative Eddie Tallon made the following motion during the May 26, 2016 meeting:

The Subcommittee recommends the full Committee make an inquiry as to whether Ms. Autry, who appeared before this Subcommittee on May 5, 2016, violated S.C. Code Section 2-2-100.

The motion passed with a vote of three Subcommittee members in favor and one Subcommittee member not voting. Based on this action, I am notifying you of the Subcommittee's request for an inquiry by the full Committee on this issue.

Sincerely,

Signature Redacted

Kirkman Finlay III
Subcommittee Chair

cc: The Honorable Willaim K. (Bill) Bowers
The Honorable Raye Felder
The Honorable Edward R. Tallon Sr.

South Carolina
House of Representatives



Legislative Oversight Committee

LAW ENFORCEMENT AND CRIMINAL JUSTICE SUBCOMMITTEE

Chairman Kirkman Finlay III

The Honorable William K. (Bill) Bowers

The Honorable Raye Felder

The Honorable Edward R. Tallon Sr.

Thursday, May 26, 2016

Immediately upon adjournment

Room 108 - Blatt Building

Pursuant to Committee Rule 6.8, S.C. ETV shall be allowed access for internet streaming whenever technologically feasible.

AMENDED AGENDA

- I. Approval of Minutes from the May 26, 2016 Meeting
- II. Further Discussion of the Study of the Department of Public Safety
- III. Adjournment

LEGISLATIVE OVERSIGHT COMMITTEE

**LAW ENFORCEMENT AND CRIMINAL
JUSTICE SUBCOMMITTEE**

**SC CODE SECTION APPLICABLE TO
CONTEMPT OF GENERAL ASSEMBLY**

SECTION 2-2-100. Contempt; penalty.

Any person who appears before a committee or subcommittee of either house, pursuant to this chapter, and wilfully gives false, materially misleading, or materially incomplete testimony under oath is guilty of contempt of the General Assembly. A person who is convicted of or pleads guilty to contempt of the General Assembly is guilty of a felony and, upon conviction, must be fined within the discretion of the court or imprisoned for not more than five years, or both.

HISTORY: 2014 Act No. 121 (S.22), Pt IV, Section 6.D, eff January 1, 2015.

LEGISLATIVE OVERSIGHT COMMITTEE

**LAW ENFORCEMENT AND CRIMINAL
JUSTICE SUBCOMMITTEE**

**TRANSCRIPT OF MEETING FROM WHEN
MS. AUTRY WAS CALLED FORWARD**

Transcript - Questions by Rep. Tallon and Answers by Ms. Autry

Rep. Finlay¹: M'am, you have been sworn, correct?

Ms. Autry: Yes

Rep. Finlay: Representative Tallon

Rep. Tallon: Thank you Mr. Chairman, Thank you Mrs. Felder, um, Ms. Autry, is that correct?

Ms. Autry: Yes

Rep. Tallon²: Um, I hate to have to ask you this question, but I I have to, I have to ask it because it goes to, to what we are going to be talking about, and and listening to today. Um, have you ever had a meeting in your department where you've told the members of your department that they had to be liars to be in HR?

Ms. Autry: No, I have not.

Rep. Tallon: You've never said that?

Ms. Autry: That they have to be liars to be in HR?

Rep. Tallon: Yes

Ms. Autry: No

Rep. Tallon: And that they had to tell lies, even little white lies, to be in HR, have you ever said that?

Ms. Autry: No, what I

Rep. Finlay: Mr. Tallon, hold up, m'am

Ms. Autry: Hang on, I can tell you what I told them

[Rep. Finlay: Interrupts to provide law and option to talk with counsel]

Rep. Finlay: Let me be very clear, and this is, we are, with questions like this, touching on something that I probably have not done as good a job reinforcing as I have with DJJ

Ms. Autry: Ok

¹ 10:13 in the video recording

² 10:36 in the video recording

Rep. Finlay: But, I want to make sure everyone understands that perjury, Charles could you read the statute, it, this is very important, because this is something that we are already up against and I do not want anybody to sail into these waters unnoted

Ms. Autry: Ok

Rep. Finlay: Because it is going to be a very difficult place to come back from if you don't know

Ms. Autry: Ok

Rep. Finlay: So lets just take one minute

Mr. Appleby: Section 2-2-70. All testimony given to the committee must be under oath. Section 2-2-80. Any witness testifying before the investigating committee may have counsel present to advise him. The witness or his counsel may, during the time of testimony, claim any legal privilege recognized by the laws of this State in response to any question and is entitled to have a ruling by the chairman on any objection. In making his ruling, the chairman of the investigating committee shall follow as closely as possible the statutory law and the decisions of the courts of this State regarding legal privileges. The ruling of the chair may not be reviewed by the courts of this State except in a separate proceeding for contempt of the General Assembly. Section 2-2-90. A witness shall be given the benefit of any privilege at law which he may have in court as a party to a civil action. Section 2-2-100. Any person who appears before a committee or subcommittee of either house, pursuant to this chapter, and wilfully gives false, materially misleading, or materially incomplete testimony under oath is guilty of contempt of the General Assembly.

Rep. Finlay: Please, please read that last section again.

Mr. Appleby: South Carolina Code Section 2-2-100. Any person who appears before a committee or subcommittee of either house, pursuant to this chapter, and wilfully gives false, materially misleading, or materially incomplete testimony under oath is guilty of contempt of the General Assembly. A person who is convicted of or pleads guilty to contempt of the General Assembly is guilty of a felony and, upon conviction, must be fined within the discretion of the court or imprisoned for not more than five years, or both. Section 2-2-110. Whenever any person violates Section 2-2-100 it is the duty of the chair of the committee or subcommittee before which the false, misleading, or incomplete testimony was given, to notify the Attorney General of South Carolina who shall cause charges to be filed in the appropriate county.

Rep. Finlay: Let me summarize for you what I think that statute says. That statute says you do not have to incriminate yourself; you have the ability, if legal counsel is here, to avail yourself of it. It is not only if you tell us a lie, it is if things are withheld, the truth is not told, the truth, the whole truth and nothing but the truth. I find myself with a different agency already in these deep waters, I do not want to end up here again. My advice would be, listen to Mr. Tallon's question again, if you need to take a minute to gather your thoughts and avail yourself of legal representation, I am happy to move on to a different part, but please understand, that once we

cross this Rubicon, there is not going to be any ability to say I didn't understand, that I was confused, because at that point I'm in a trap.

Ms. Autry: I understand³

Rep. Finlay: Thank you. Mr. Tallon, would you repeat your question.

Sure, Mr. Chairman. Ms. Autry,

⁴Rep. Tallon: **Have you ever told** in a staff meeting or told your **employees** that they had to be liars to be in HR and they had to tell lies, even if they were little white lies, in order to keep from being brought up or sued or brought up in a deposition, have you ever told your employees that?

Ms. Autry: No, I can tell you what I have told my employees. I have told them that they are bound by confidentiality laws and that whatever they say, um, if its confidential, they could be bound by those laws, and I've told them that in HR people will come up to them and ask them questions about terminations or anything that's going on in the agencies and they can't tell them, they may know the answer to the question, but they cannot tell them because of confidentiality, and I think that statement was taken totally out of context, uh, whatever Mr. Tallon has said, I have never told anybody to lie in HR. (16:16)

Rep. Tallon: I'd like to take a short break to confer.

Rep. Finlay: Absolutely, um, would you like two minutes? We're in a public setting, there is no (inaudible)...oh, to be played (inaudible)...ok, um, take a five minute recess to setup a audio display. Thank you⁵

Recess

Rep. Tallon⁶: Mr. Chairman, Ms. Autry, I apologize for us having to wait as we have, uh, we are about to, to play a tape, it has been purported that it is you. Certainly not saying that it is you. But it has been purported that it is you, and what I would like for you to do is listen to the tape, and let us know if that is your voice and if that is in fact what you said, then we will go from there.

Ms. Autry: (Inaudible) (Appears to ask something to Mr. Tallon to the side of the microphone, and video does not pick up the audio)

³ 15:14 in the video recording

⁴ 15:22 - 15:41 in the video recording

⁵ 17:01 in the video recording

⁶ 36:46 in the video recording

Rep. Tallon: I can't tell, I can't give you the date the tape was made, but what I'm interested in, is it you, do you say whether or not it is you on the tape, would you like to listen to it and make that determination?

Ms. Autry: (Says something to Mr. Tallon to the side of the microphone, and video does not pick up the audio)

Rep. Tallon: Ok

Audio Recording plays⁷

See Transcript - DPS Human Resources Director Ms. Autry

Rep Tallon: I would like to ask you, were you able to hear that? Is that, I'd like to ask you, is that you on the tape?

Ms. Autry: (Says something to Mr. Tallon to the side of the microphone, and video does not pick up the audio, but video does pick up Ms. Autry nodding her head yes)

Rep. Tallon: It is you?

Ms. Autry: (Says something to Mr. Tallon to the side of the microphone, and video does not pick up the audio, but video does again pick up Ms. Autry nodding her head yes)

Rep. Finlay: At this point, I think it would probably be prudent for us to adjourn this meeting, um, I would ask, that staff would reach out to staff on the other side, is Mr. Smith available, is he there? (he recognizes the Mr. Smith is in the audience) Um, clearly, I'm going to need some definition around the tape, I'm going to need to understand the background, but clearly, we are at a very difficult cross roads, um, perhaps there is a logical explanation. I would ask you and your staff, to begin thinking about this, because, for example, I don't know how we deal with issues, of lack of truth, in some cases, on an ongoing basis, this is an allegation that is concerning, we're going to stop right now, and I cannot impress upon you, how important it is that we get to a resolution and understanding. I'm going to ask ya'll to do it with staff, I would imagine we are on furlough next week, I would ask that when we get back, we will schedule a meeting and attempt to address this. Thank you.

⁷ 37:35 in the video recording

LEGISLATIVE OVERSIGHT COMMITTEE

**LAW ENFORCEMENT AND CRIMINAL
JUSTICE SUBCOMMITTEE**

TRANSCRIPT OF AUDIO RECORDING

Transcript - DPS Human Resources Director Ms. Autry

If you work in HR, you will become a liar

I'm telling you that right now

It's not a bad liar, but its uh, you will tell white lies

Because you know what's going on, but you got to act like you don't know what's going on

Somebody got terminated, you knew they got terminated,

Did you know so and so got terminated, I don't know what you're talking about

You just lied because you know that they got terminated but you can't tell them that they got terminated

So, because, if not, again, you're going to find yourself in a defamation lawsuit and you're gonna, so, uh, anyway, welcome to HR

I'm telling you, you will have to do things like that because you don't want to violate confidentiality

Now, are all of ya'll liars? No, I don't want you to think that I'm calling everybody a liar, or that you have to be a liar, because you're not going to be liars, you just, you know, have to act like you don't know things because you do, people are going to try to pick you to get information, you gotta be really really strong, so that that doesn't happen, because God forbid, I'm telling ya, you don't want to be sued, it lasts a long time, you got to do depositions, all kinds of stuff, you don't want that, so, tacos and HR, so I've already got off my soapbox now that's all my expectations, of all you got to do in HR to be good employees and be successful, and all that good stuff, um, I've put it out there, I've told you, um, you know, I don't have a problem addressing the issues, that's the one thing...

LEGISLATIVE OVERSIGHT COMMITTEE

**LAW ENFORCEMENT AND CRIMINAL
JUSTICE SUBCOMMITTEE**

**UPDATE FROM THE DEPARTMENT OF
PUBLIC SAFETY**

Department of Public Safety Update

May 5, 2016

Within one hour after the hearing on May 5, 2016, Chief Kenneth D. Phelps, DPS Office of Professional Responsibility, contacted Legislative Oversight Staff to request a copy of the audio recording from the meeting. Legislative Oversight Staff emailed a copy of the recording that afternoon which Chief Phelps acknowledged receiving.

May 24, 2016

DPS Director, Leroy Smith, and DPS General Counsel, Warren Ganjehsani, met with Legislative Oversight Staff Jennifer Dobson and Charles Appleby. During the meeting DPS personnel offered some items of information:

1) They explained their Office of Professional Responsibility had completed its investigation related to the matter. They stated the investigation report was several pages long, and provided the following highlights:

- Matter investigated:
 - Had Ms. Autry instructed HR employees that they had to be liars to work in HR?
 - Finding: No
 - Had Ms. Autry used a poor choice of words and poor method of communicating the need for confidential information to remain confidential?
 - Finding: Yes
 - Result: Ms. Autry required to attend one counseling session. Director Smith conducted the counseling session.
- Investigation included:
 - OPR interviewed all HR employees, except for Ms. Autry who had retained personal counsel (Malissa Burnet).
 - All HR employees, except one, said they understood the message Ms. Autry was trying to communicate was to keep HR matters confidential.

2) They explained that prior to the Subcommittee meeting, different divisions in the agency had been required to execute confidentiality agreements either when they started work, or when the policy was instituted. This applied to the following divisions: HR; OPR (internal affairs); General Counsel; and Office of Staff Inspections (quality control). Since the OPR investigation, the confidentiality agreement has been enhanced to provide examples of how employees can respond to someone if the employee is asked about confidential information.

3) They explained this situation has prompted the agency to revisit the understanding of its employees to ensure the agency employees understand when they could and could not respond and how to respond.

After the meeting, Mr. Warren Ganjehsani, called Charles Appleby to provide the following information, which he stated he forgot to mention during the meeting.

4) Prior to this situation arising, Director Smith had asked the State HR Director, with the Department of Administration, to make a presentation to the HR staff at the agency, which the State HR Director did, to provide a refresher on subjects including, but not limited to, state employee code of conduct, confidentiality, etc.