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OUR VIEW

Everybody Walks

It's a maxim as true for cookie jars as it is for the chambers of the South Carolina State House, because whether you're a representative or senator, the probability of facing criminal charges for ethical violations practically is zero.

Not since Operation Lost Trust in 1990 has a legislator gone to jail.

That's 25 years without a lawmaker in a jumpsuit for criminal ethics violations. Add to that the fact that the general public has led to more criminal convictions of elected officials (2) than the legislature itself (1) despite abuses of campaign money as egregious as former Lt. Governor Ken Ard's, former Sen. Robert Ford's, and former House Speaker Bobby Harrell's ... and you begin to sense the problem.

The fact is that beyond issuing mostly minor fines – the Senate currently has 26 individuals with outstanding fines totaling \$184,035; the House has 22 individuals with unsatisfied debts of \$126,800 – neither the House or Senate Ethics Committee nor the S.C. Ethics Commission has the manpower or, some contend, the will to enforce the state's already lax ethics laws, much less conduct significant internal investigations.

In Operation Lost Trust, it took the FBI to clean house using a sting operation centered around lawmakers taking bribes for votes. It was launched only when a dirty lobbyist, Greenville's Ron Cobb, was nailed trying to buy a kilo of cocaine; instead of keeping his mouth closed and going to prison, he flipped, taking 17 current and former state legislators with him.

The ethics laws on the books now were in large part a result of the reforms that followed Operation Lost Trust. And yet they have proven to be as able to bring down top legislative leaders found guilty of abusing them as the ones before were. The reasons for that aren't difficult to understand and all stem from the fact that legislators investigating other legislators is a process fraught with problems, from friendships to conflicts of interest to business partnerships to a combination of all three.

In Harrell's case, the House Ethics Committee did not find what a reporter and a few citizens discovered – that he was converting campaign money for personal use. Harrell was prosecuted as a criminal matter following a complaint made by Ashley Landess (of *The Nerve's* parent organization, the South Carolina Policy Council) to Attorney General Alan Wilson. Wilson assigned Solicitor David Pascoe prosecuted in his stead and Harrell was convicted on six counts of misconduct in office and received probation.

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In Ard's case, the S.C. Ethics Commission, which oversees the filings of all statewide candidates as well as local elected officials and senior state employees, also did not discover his crimes but instead were found by citizens and given to the media. Even then, only a formal complaint by a private citizen, Matthew Watson of the Democratic Party, resulted in the investigation that found 106 violations and led to his resignation, indictment and receiving probation all on one day, March 9, 2012.

On the Senate's side, Ford's practices were exposed by a two-year Senate investigation. One lawmaker who did not wish to be identified told *The Nerve* the Ford investigation was a case of "grabbing the low-hanging fruit." An audit of Ford's filings found 350 violations, resulting in his expulsion from the Senate and being found guilty of misconduct in office, forgery and two counts of ethics violations. He was levied a fine of \$69,000, and still owes the Senate Ethics Committee more than \$30,000.

Fines and probation, then, have been the best the system can do when presented with lawmakers blatantly using their campaign accounts as personal ATMs, and to expect current proposed legislation to accomplish anything more is folly, says John Crangle, executive director of Common Cause SC and author of an upcoming book on Operation Lost Trust.

"It's pretty clear the House and Senate are not designed for heavy lifting with ethics. They only really deal with relatively trivial matters, forms filed on time, the math on something doesn't add up, those sorts of things.

"I don't think they look hard enough," Crangle said.

If either ethics committee or the State Ethics Commission find evidence of criminal wrongdoing, they are required to hand it over to the Attorney General's Office. How often that happens is impossible to know, because records of that aren't kept by any of the three policing agencies.

"The Commission has its own staff of investigators who are certified state law enforcement officers who conduct all investigations, criminal and administrative," said

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Herb Hayden, executive director of the S.C. Ethics Commission. "We do occasionally coordinate investigations with SLED or ask for SLED's assistance if the investigation involves criminal allegations outside the ethics laws.

"SLED refers cases to us on occasion also, if it involves a violation of ethics laws. If the investigation reveals criminal violations of ethics laws, we provide the investigative report to the Attorney General for prosecution. As to how many, I can't say exactly. Most cases do not rise to the level of criminal prosecution and are handled as administrative prosecution by the Commission staff."

Hayden joined the commission in 1988 and was appointed director in 1999.

He says pinning down a specific number of cases is difficult, because besides a limited number of state-wide offices, his jurisdiction includes town and county council members across the state, public employees and sheriffs such as former Lexington County Sheriff James Metts and former Lee County Sheriff E.J. Melvin, both of whom were prosecuted and received prison sentences.

"Probably between 50 to 75 cases have been criminally prosecuted, or at least referred to the AG for review," he said.

Even so, the commission has its critics.

"I think turning the jurisdiction of lawmakers to the State Ethics

Commission would be a mistake," Crangle said. "The state commission has a far from illustrious record as a body, and they played politics with Nikki Haley, for instance, in her investigation.

"I don't think giving them jurisdiction over the House and Senate would be at all useful."

Whatever brand of ethics reform – if any – emerges this session, the chances that any lawmakers will see the inside of a jail cell any time soon remain as slim as a ginger snap cookie.

"Not a whole lot has been accomplished by legislative self-policing," Crangle said. "Citizens have caught more criminals than they have."

Courtesy of *The Nerve*.

