

**MINUTES**  
**COMMISSION MEETING**  
**OPEN SESSION**

**January 16, 2013**

The meeting was called to order by Chairman Phillip Florence, Jr., at 9:39 a.m. Other members present were Vice Chair E. Kay Biermann Brohl, Jonathan H. Burnett, Richard H. Fitzgerald, and JB Holeman. G. Carlton Manley and Priscilla L. Tanner were absent.

The news media was duly notified.

**Staff present:**

Mr. Herbert R. Hayden, Jr., Executive Director  
Ms. Cathy L. Hazelwood, Deputy Director/General Counsel  
Mr. Daniel F. Choate, Investigator  
Mrs. Ami Franklin, Assistant Director, Administration  
Miss Kristin M. Smith, Administrative Coordinator  
Mrs. Karen A. Wiggins, Administrative Specialist  
Mr. Jimmy Bagnall, Investigator

**Others present:**

David Cannon  
Gregory P. Harris, Esquire  
Peter G. Skidmore

**MINUTES**

Motion was made by Mr. Burnett and seconded by Dr. Fitzgerald, to accept the Minutes as presented, with one correction on the Executive Session Minutes on page 3 deleting Mr. Burnett's name as seconding the motion for the Smartstart of SC matter.

There being no discussion, the motion carried with no opposition to approve the Open and Executive Session Minutes from the November 28, 2012 Commission meeting.

## **OTHER BUSINESS**

Mr. Hayden presented the Amended Agenda found in the Green Folder. Mr. Hayden then gave a status report on two non-agenda items concerning former Commissioner Ed Duryea's medical status and Mr. Manley's family-related absence.

## **OFFICE OPERATIONS**

### **Budget 2012/2013**

Mr. Hayden presented for information only the budget for the fiscal year July 1, 2012 to January 14, 2013, noting nothing different than what is normally presented and that the totals do not include lobbying fees and fines which are reflected on the Compliance Report to be taken up later. Considerable discussion ensued as to ear-marked money, carry-over money, legislation affecting an increase in lobbying fees, more manpower, additional responsibilities for investigating General Assembly, status of the Attorney General's Office and the Public Integrity unit (includes dedicated investigators from SLED, State Ethics Commission, Department of Revenue, and the Office of the Inspector General, housed at the Attorney General's office, but funded by the individual agencies). Discussion ensued concerning manpower and funding for this unit.

### **Compliance Reports**

Mr. Hayden presented for information the Compliance reports for November and December, 2012, noting everything is in line where it should be. Mr. Burnett asked about the increase in Informal Advisory Opinions. Staff responded that the increased volume resulted from requests via e-mails and phone calls. Further discussion ensued. Mr. Hayden also reported that late filing penalties were up and lobbying registration fees were down.

## **POINT OF ORDER**

Mr. Hayden asked Chairman Florence for a change in the order of the Agenda, requesting to take up the two Motions since all parties were present. There was no opposition.

## **Motion to Dismiss**

### **C2013-013 State Ethics Commission vs. David Cannon**

Attorney Greg Harris, representing Mr. Cannon, gave an opening statement, arguing that no violation of S. C. Code Section 8-13-740(A)(5) occurred because (1) the Edisto Beach Town Council is not an "agency, unit or subunit of city government" and (2) Mr. Cannon had no "official responsibility" for the town council as a member of the Planning

Commission. Chairman Florence asked Ms. Hazelwood to let the Commissioners get things straight before she spoke before the Commission. Ms. Hazelwood agreed. Chairman Florence asked Attorney Harris for reasons why Mr. Cannon appeared before the Edisto Beach Town Council on behalf of the restaurant, and Attorney Harris responded that these charges were in dispute. Vice Chair Brohl asked for clarification on any contracts, payments from the client, and any recusals made in this matter. Attorney Harris responded. Mr. Holeman asked for clarification on the two-mentioned hurdles for making a decision in this matter. Attorney Harris responded. Ms. Hazelwood gave her statement, and stated that she agreed with Advisory Opinion 2007-02, but it was amended by statute later meaning a public official may not come before the Town Council and use his position to influence a decision on behalf of his client. Discussion ensued agreeing with Advisory Opinion 2007-02, but debating Mr. Cannon's actions and the creation of the Edisto Beach Planning Commission which works for the Edisto Beach Town Council. After further discussion, Chairman Florence concluded that the Commission would have to dismiss this, but in the long run it causes problems because technically the Commission is saying Mr. Cannon could appear before the Edisto Beach Planning Commission in the same capacity and make the same comments. Ms. Hazelwood responded that Mr. Cannon could not because Section 8-13-740(A)(5) says the Planning Commission is an agency, unit or subunit of the town, but the Town Council was not a governing body. Chairman Florence asked for further discussion, and there being none, Mr. Holeman made a motion to dismiss, seconded by Mr. Burnett. Vice Chair Brohl stated that she would vote for the dismissal, but it definitely had the appearance of impropriety. There being no opposition, the motion carried to dismiss.

### **Motion to Reconsider Based Upon Lack of Notice**

#### **C2011-074 State Ethics Commission vs. Peter G. Skidmore**

Ms. Hazelwood gave an opening statement, and discussion ensued as to exactly what action the Commission could take. Ms. Hazelwood responded that the Commission would just decide today on whether or not to reopen the matter and there would be no hearing. Chairman Florence then asked to have on record Mr. Skidmore's statement and then the Commission would make their decision. Mr. Skidmore gave an opening statement and presented an Affidavit from his wife taking responsibility for not sharing with him any of the State Ethics Commission's correspondence concerning this matter. Vice Chair Brohl asked why his wife did this, and Mr. Skidmore responded she was afraid he would get mad about the \$500 penalty. Dr. Fitzgerald made a motion which had three parts: (1) the Commission open the matter for reconsideration; (2) do it as soon as possible; and (3) take the information contained in the Commission meeting book and make it part of Mr. Skidmore's matter when it comes before the Commission for a hearing. Vice Chair Brohl seconded the motion. Chairman Florence asked for any opposition. There being none, the motion carried. Ms. Hazelwood stated that she would schedule the matter for the March 20, 2013 Commission meeting. Chairman

Florence asked that Ms. Hazelwood get the correct address for sending the Notice of Hearing. Mr. Skidmore responded.

### **POINT OF ORDER**

Mr. Hayden asked the Commission to go back to the matter of David Cannon's Motion to Dismiss. There was no opposition. Mr. Hayden stated that he adamantly disagreed with that Opinion and wanted the Commission to revisit it. Considerable discussion ensued as to which part, and Mr. Hayden responded the part and fact that a city council or county council is not an agency of county government. He said that based on that Opinion, the decision made today was correct, and that for 20-plus years the Commission has ruled that a public official cannot represent someone before city council or county council. Mr. Hayden added that he was not aware of that Advisory Opinion 2007-02, and the official responsibility issue it is talking about is having official responsibility over anybody--you can't represent anybody in that city before any other group in that city. The other issue is representation—be there, speak on behalf of—which is what Mr. Cannon did. Mr. Holeman asked if the next step would be to revisit the Opinion, and Vice Chair Brohl gave a personal past history experience of recusing herself when she was on a city planning commission. Mr. Burnett made a motion to put on the agenda to revisit the Opinion that city council is not an agency of the city, and discuss that specific issue with regard to that Opinion and perhaps talk about the definition of representation. Mr. Holeman asked for the process for getting a Formal Opinion from Cathy. Mr. Hayden responded that the Commission must review it, vote on it, and have an affirmative vote of a minimum of five. After considerable discussion, Mr. Hayden asked that he and Ms. Hazelwood have the opportunity to discuss what this Opinion says. Mr. Burnett again made a motion that the Commission request the staff come before them at the next Commission meeting to revisit Formal Opinion 2007-002. Vice Chair Brohl seconded the motion. Dr. Fitzgerald asked if a time restraint should be put on that motion. Mr. Hayden said staff should have no problem having their arguments ready. Chairman Florence asked for any further discussion, there being none the motion carried with no opposition.

Dr. Fitzgerald asked to present a problem he saw in this matter concerning the septic emergency issue the restaurant had vs. Mr. Cannon-- the engineer who designed and implemented the plan--being the only one really capable of talking about the problem. Discussion ensued that the restaurant was the only one in town open; access required crossing a little strip of the Edisto town property; the need for Mr. Cannon to recuse himself from his public role and speak as a private citizen; there was nothing to recuse himself from; the matter ended up being turned down; don't let one case be the box for a change for an Advisory Opinion; and Mr. Cannon's statement "I'm here on behalf of" [the restaurant].

## **POINT OF ORDER**

Dr. Fitzgerald asked for clarification on a conflict of interest matter concerning Reggie Lloyd who was with SLED and is now representing South Carolina State. Discussion ensued as to time limitations and representation of clients before the previous employer. Mr. Hayden responded that there is currently no conflict of interest in Mr. Lloyd's situation.

## **APPEALS**

Mr. Hayden reminded the Commissioners of the new policy that staff has provided copies of a summary of each individual's background, information on the penalties and staff recommendation, copies of the letters of appeals from the individuals, and then any supportive documentation and correspondence that may be applicable to the case. The appeal statement is in writing, staff recommendation is in writing, and unless there are questions, there will be no presentation or verbal recommendation.

### **Stephen R. Plyler**

Documentation was reviewed. Discussion ensued as to deadlines for filing of the different CDs. Mr. Burnett made a motion, seconded by Vice Chair Brohl, to accept staff recommendation that the appeal be denied. Chairman Florence asked for further discussion. There being none, the motion carried with no opposition.

### **Larry L. Ware**

Documentation was reviewed. Discussion ensued as to Mr. Ware's problem with filing the reports. Mr. Burnett made a motion, seconded by Vice Chair Brohl, to accept staff recommendation that the appeal be denied. Dr. Fitzgerald asked for clarification as to technical problems vs. ethical violations. Staff responded and discussion ensued. Chairman Florence reminded the Commission that a motion had been made and seconded, and then asked for further discussion. There being none, the motion carried with no opposition.

Mr. Burnett asked to bring up a matter concerning a small town in his district in which all of the officials were penalized last year for not filing their annual SEI. He asked staff for an alternative to a reoccurring issue where "institutional structuring" has the policy that administrators and town clerks file the SEI reports, and that Mr. Ware fell victim to this. Staff responded that training sessions are given, letters are sent out, e-mails are sent out, and that it is okay for administration to help with filing SEIs, but not the CDs. Staff gave examples of filers that needed help because they couldn't read or write, and reminded the Commission that less than one percent of 25,000-plus filers end up before the Commission for penalty issues. Mr. Hayden asked if a vote needed to be taken, and all agreed no vote needed to be taken, but a motion had been made, seconded, and carried without opposition to deny the appeal.

**Ruth Thomas**

Documentation was reviewed in the Green Folder concerning Ms. Thomas' matter. Discussion ensued as to Ms. Thomas' problem with lack of a computer to file the reports; ignorance to the law being used as a defense; and filers not contacting staff for help. Mr. Burnett made a motion, seconded by Vice Chair Brohl, to accept staff recommendation that the appeal be denied. Chairman Florence asked for further discussion. There being none, the motion carried with no opposition.

**Marty R. Britt**

Documentation was reviewed in the Green Folder concerning Mr. Britt's matter. Discussion ensued concerning these circumstances being identical in the previous matter for Ms. Thomas. Vice Chair Brohl made a motion, seconded by Mr. Burnett, to accept staff recommendation that the appeal be denied. Chairman Florence asked for further discussion. There being none, the motion carried with no opposition.

**DISCUSSION**

**Legislation**

Mr. Hayden presented to the Commission 6 House bills, 5 Senate bills, and 4 committee bills being presented this year. Mr. Hayden gave an update on ethics bills by the Attorney General and Governor Haley's Ethics Committee bill. Discussion ensued. Mr. Hayden gave a status report on other ethics bills and stated that copies would be available upon request. Further discussion ensued as to the current feelings concerning bills affecting the State Ethics Commission's handling investigations and given the power to adjudicate, have hearings, and recommend reform for the House and Senate Ethics Committees. Further discussion ensued.

Chairman Florence requested, with unanimous consent, to take a short break.

**EXECUTIVE SESSION**

Chairman Florence asked for a motion to go into Executive Session. A motion was made by Mr. Burnett, seconded by Dr. Fitzgerald, to go into Executive Session. The motion carried.

**RETURN FROM EXECUTIVE SESSION**

Upon return from Executive Session, a motion was made by Vice Chair Brohl, seconded by Dr. Fitzgerald, to adopt and ratify actions taken in Executive Session. The motion carried.

**ADJOURNMENT**

A motion was made, with unanimous consent, to adjourn. The motion carried.

Respectfully submitted,

Karen A. Wiggins  
Administrative Specialist