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STATE ETHICS COMMISSION

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	BEFORE THE STATE ETHICS COMMISSION
IN THE MATTER OF: Complaint 2013-127	)	
Xian Wu, Respondent.	)	**CONSENT ORDER**
State Ethics Commission, Complainant.	)	

This matter comes before the State Ethics Commission by virtue of a complaint filed by the Commission on May 23, 2013. The complaint against the Respondent, Xian Wu, was considered by the Commission on September 18, 2013 and probable cause found to warrant an evidentiary hearing.

Prior to the call of the case Respondent agreed to entry of the following statements of fact, conclusions of law, admission, discussion, and disposition in this matter as follows.

STATEMENT OF FACTS

1. The Respondent, Xian Wu, is currently serving as the Chairman of the Board of Trustees of East Point Academy (the Academy), a South Carolina charter school.

2. The Academy is a charter school created under Section 59-40-10. A review of Section 59-40-40 revealed that a charter school means a public, nonreligious, nonhome-based, nonprofit corporation forming a school that operates by sponsorship of a public school district, the South Carolina Public Charter School or a public or independent institution of higher learning.

3. According to Mrs. Renee Mathews, the Academy principal, on June 28, 2012 the Board of Trustees (the Board) was presented with a draft of the operating budget for the 2012 fiscal year. The draft budget included the employment of old and new teachers for the upcoming year. The draft budget presented to the Board did not include Respondent's daughter's salary.

not recuse himself from the vote. At the time the vote was taken for holiday bonus for all full-time staff, Respondent's daughter was a full-time employee at the Academy.

8. Respondent reported that the vote to provide all full-time staff a bonus for the holidays was not a vote to provide any person in his family a distinct economic interest from any other similarly situated person at the Academy. In addition, Respondent advised that he did not intentionally vote on a matter that provided his daughter with an economic interest in violation of any Ethics Reform Law.

CONCLUSIONS OF LAW

Based upon the foregoing Statement of Facts, the Commission concludes, as a matter of law:

1. During all times relevant, the Respondent, Xian Wu, was a public member, as defined by S.C. Code Ann. § 8-13-100(26)(Supp. 2012).

2. The State Ethics Commission has personal and subject matter jurisdiction.

3. Section 8-13-700(B) prohibits a public official from voting on a matter in which a family member has an economic interest.

4. Section 8-13-100(15) defines 'family member' as an individual who is a child.

DISCUSSION

At the time the East Point Academy Board of Trustees voted to give all full-time employees a $200.00 holiday bonus, it was Respondent's understanding that he could not participate in a vote on a matter directly affecting a family member as an individual, such as a decision to hire his daughter as an Academy employee or a vote to give a bonus only to his daughter. Respondent, however, believed he could ethically vote on a bonus that accrued to all school employees as a class, such as all full-time employees, consistent with S.C. Code Ann. § 8-

4. Mrs. Mathews said that staffing updates and a list of new employees that included Respondent's daughter were presented to the Board on July 19, 2012. Mrs. Mathews stated that in general session, Respondent immediately noted his potential conflict of interest in the decision to hire his daughter, and the Board, not including Respondent, expressed support in hiring Respondent's daughter. A review of the minutes revealed the introduction of staff; however, the minutes do not contain information in regard to a discussion or a vote to hire Respondent's daughter.

5. According to Respondent, he did recuse himself from the decision to hire his daughter at the July 19, 2012 meeting. Respondent provided an addendum to the meeting minutes in a memorandum in which he disclosed to the Board his potential conflict of interest in regard to hiring of his daughter. The memorandum was signed by the following Board members: Dr. Ed Davis, Dr. Ming Yin, Dr. Ling Gao, and Mrs. Analisa Queen.

6. Staff interviewed a former board member at the Academy, Mr. Rick Kest. He stated that he was present at the July 19, 2012 Board meeting. Mr. Kest said that he did not recall the Board making a decision or discussing hiring Respondent's daughter. He said that it was the responsibility of the Board to approve new positions for different grades; however, the Board should not be involved in the decision to hire a specific teacher. Mr. Kest said that if the Board approved individual teachers, the Board would be micromanaging the principal. Mr. Kest said that the principal was responsible for hiring individual teachers not the Board.

7. A review of the minutes of the November 29, 2012 Board meeting revealed that the Board discussed holiday bonus pay for employees at the Academy. Respondent reported that the Board approved an across the board holiday bonus of $200.00 for all full-time staff and he did

13-100(11)(b) and State Ethics Commission Advisory Opinion 92-134. After the Commission filed this Complaint against Respondent, Respondent learned that the Commission only considers schools with 50 full-time employees or more eligible for the large class exception described in S.C. Code Ann. § 8-13-100(11)(b) and State Ethics Commission Advisory Opinion 92-134. At the time the East Point Academy Board of Trustees voted to give all employees a bonus, East Point Academy had fewer than 50 employees.

ADMISSIONS

SEC Advisory Opinion 92-134 states that "on general salary raise issues, the [School] Board member would not be prohibited from participating in deliberations and votes since the economic interest accrues to all school employees as a class." Opinion 92-134 does not explicitly restrict this ruling to any "large class" exception. There are no facts provided in Opinion 92-134, moreover, to indicate that the school board member's vote to raise generally school employees' salaries involved 50 or more employees. In fact, until Respondent's case, the Commission never defined or applied the "large class" exception described in S.C. Code Ann. § 8-13-100(11)(b) in the context of SEC Advisory Opinion 92-134 in a published document available to the public. Because the Commission insists this previously unpublished rule applies in Respondent's case, however, and to avoid the financial burden of having to defend himself at a hearing Respondent, Xian Wu admits he inadvertently violated Section 8-13-700(B) of the Ethics Reform Act.

DISPOSITION

The State Ethics Commission hereby finds Xian Wu in violation, albeit inadvertently, of Section 8-13-700(B) of the Ethics Reform Act and hereby adopts the Statement of Facts, Conclusions of Law, Admissions, Discussion, and Disposition as agreed upon by Respondent.

THEREFORE, the State Ethics Commission hereby issues a written warning to Xian Wu for violation of Section 8-13-700(B) of the Ethics Reform Act,

AND, orders Respondent not to use his official office to obtain an economic interest for a family member,

AND IT IS SO ORDERED THIS 9th DAY OF January 2014.

STATE ETHICS COMMISSION

Phillip Florence, Jr.
Chairman

Xian Wu
Respondent

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