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BEFORE THE
STATE ETHICS COMMISSION

STATE OF SOUTH CAROLINA)
COUNTY OF COLLETON)

IN THE MATTER OF:)

Complaint C2013-013)

Tommy Mann and Pete Anderson,)

Complainant,)

vs.)

David Cannon,)

Respondent.)

DISMISSAL ORDER

INTRODUCTION

This case involves a complaint by two members of the Edisto Beach Town Council alleging that Respondent, Mr. Cannon, violated state ethics laws when he spoke at a Town Council meeting on August 9, 2012 about the use of beach access property. When Mr. Cannon addressed the Town Council, he was a member of the Edisto Beach Planning Commission, and he held an engineering job as his permanent employment. The matter Mr. Cannon raised for discussion, during the public comment time of the Town Council meeting, involved a restaurant for which he had provided engineering services.

On January 16, 2013, Mr. Cannon and his attorney appeared and asked this Commission to dismiss the Complaint # C2013-013. After hearing arguments from Mr. Cannon and the Commission, it was determined that this complaint should be dismissed because Mr. Cannon's appearance before the Town Council violated no provisions of the State Ethics Code.

Nowhere in the South Carolina State Ethics Code is a member of a town Planning Commission prohibited from speaking before the Town Council. According to State Ethics Commission Advisory Opinion 2007-002, the Commission has determined that the Town Council is not an “agency, unit or subunit” of the town government, because it is the governing body of the town. Therefore, Mr. Cannon did not violate S.C. Code Ann. § 8-13-740(A)(5) when he spoke to the Town Council.

FACTUAL BACKGROUND

Mr. Cannon is a member of the Edisto Beach Planning Commission. As a member of the Commission, Mr. Cannon is a “public official” subject to the State Ethics Code. Mr. Cannon also works as an engineer in Edisto Beach. One of his clients, the Pavilion restaurant, hired him to design plans to install a new septic system. After Mr. Cannon obtained the necessary approval from the South Carolina Department of Health and Environmental Control for the engineering plans, an issue arose concerning parking for the restaurant’s customers. Mr. Cannon raised the parking problem at the August 9, 2012 Town Council meeting because the restaurant’s customers were using beach access property to enter the restaurant parking lot. The Town Council went into executive session to discuss the problem, and when they returned, they unanimously moved to deny the restaurant the use of the beach access property.

After the August 9, 2012 meeting, two of the Town Council members filed an ethics complaint before the South Carolina State Ethics Commission, alleging that Mr. Cannon “represented the Pavilion in a for profit and benefit capacity within the Municipality of Edisto Beach while serving in elected Planning Commission capacity.” The ethics complaint also alleged, “he took this action during the Public Comment time

of the Town Council meeting thereby circumventing the normal process of either the Planning Commission or Zoning Board of Appeal for a variance.”

DISCUSSION

The complaint in this case alleges a violation of South Carolina Code § 8-13-740(A)(5), which provides:

A public official, public member, or public employee of a municipality may not knowingly represent a person before any agency, unit, or subunit of that municipality for which the public official, public member, or public employee has official responsibility except as required by law.

S.C. Code Ann. § 8-13-740(A)(5). In order for a public official to violate § 8-13-740(A)(5), it must be proven that the public official must have official responsibility for that “agency, unit or subunit.”

In this case, this requirement cannot be met. Although Mr. Cannon is indisputably a “public official” for purposes of the Ethics Code, his appearance at the Town Council meeting on August 9, 2012 was not an appearance before an “agency, unit or subunit” of the Town of Edisto Beach. The Town Council is the governing body of the Town of Edisto Beach, and it cannot be considered an “agency, unit or subunit” of the municipality.

This fact is self-evident and hardly controversial. Nonetheless, the South Carolina State Ethics Commission opined on this matter in Advisory Opinion 2007-002 (“AO 2007-002”). The question before the State Ethics Commission in AO 2007-002 was whether a county council member’s firm could represent clients before the county council. The Ethics Commission opined that the firm could represent clients before the county council, as long as the council member followed the recusal requirements of the

State Ethics code. The Ethics Commission reasoned that the county council is not an agency, unit or subunit of county government because it is the governing body. The Commission further extended its opinion to apply to § 8-13-740(A)(5), which covers municipalities. The Commission opined, "City council is not an agency, unit or subunit of city government."

CONCLUSION

Accordingly, Mr. Cannon committed no ethical violation when he spoke before the Town Council on the matter of beach access property and this matter is hereby Dismissed.


Phillip Florence
Chairman, State Ethics Commission

Columbia, South Carolina

~~February~~ 13, 2013

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