STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	BEFORE THE STATE ETHICS COMMISSION
IN THE MATTER OF: COMPLAINT C2013-111	)	
William J. Hoffmeyer, Complainant;	)	**DECISION AND ORDER**
vs.	)	
K.G. "Rusty" Smith, Jr., Respondent.	)	

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STATE ETHICS COMMISSION

Pursuant to S. C. Code Ann. § 8-13-320(10)(i)(Supp. 2012), the State Ethics Commission reviewed the above captioned complaint on May 15, 2013 charging the Respondent, K.G. "Rusty" Smith, Jr., with a violation of Section 8-13-700(A). Present at the meeting were Commission Members Phillip Florence, Jr., Chair, Priscilla L. Turner, George Carlton Manley, Richard H. Fitzgerald, and Twana N. Burris-Alcide. The following allegation was considered:

ALLEGATIONS

On February 15, 2013 the State Ethics Commission received a complaint filed by William J. Hoffmeyer of Florence, SC against K.G. "Rusty" Smith, County Administrator, Florence County, SC. The complaint alleged that the Respondent used his office at Florence County Council Chairman to obtain the office of Florence County Administrator. The Respondent orchestrated the County Council members to appoint himself to a position of high salary and retirement at a substantial income.

FINDINGS OF FACT

Having carefully reviewed the evidence presented, the Commission finds as fact:

1. The Respondent, K.G. "Rusty" Smith, Jr., is currently the Florence County

Administrator and was formerly the Chairman of the Florence County Council (Council).

2. Respondent stated that he did not participate in any discussions, or in any way use his office to influence the Council's decision, to offer him the Florence County Administrator's position.

3. According to council members Mr. Waymon Mumford, Vice-Chairman, Mr. H. Morris Anderson, Mr. Mitchell Kirby, Mr. Russell W. Culberson, Mr. Alphonso Bradley, Mr. James T. Schofiled, and Mr. Roger M. Poston, when the former administrator resigned, Respondent did not discuss, or make a request for consideration for the administrator's position. All of the council members reported that Respondent did not in any way use his office to influence the Council's decision to offer him the Florence County Administrator's position.

4. A review of the minutes, from the regular meeting of the Council on November 15, 2012 revealed, that the Council approved a severance package for the former administrator, and authorized the county attorney and vice-chairmen of the Council to negotiate a contract with Respondent. The minutes documented that Respondent did not attend the meeting.

5. An opinion on September 12, 2011 by the Attorney General's office advised that in addition to the restrictions provided in the State Ethics Act, common law may prohibit a sitting council member from being appointed to such a position, until after the end of the elected term of office. The opinion stated that the question should be addressed by the court.

CONCLUSIONS OF LAW

1. The Respondent is a public employee, as defined by Section 8-13-100(25) and

at the time of the allegation was a public official, as defined by Section 8-13-100(27).

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

3. Section 8-13-700 provides in part:

(A) No public official, public member, or public employee may knowingly use his official office, membership, or employment to obtain an economic interest for himself, a family member, an individual with whom he is associated, or a business with which he is associated. This prohibition does not extend to the incidental use of public materials, personnel, or equipment, subject to or available for a public official's, public member's, or public employee's use that does not result in additional public expense.

DECISION

THEREFORE, based upon evidence presented, the State Ethics Commission has determined that there is not probable cause to indicate that the Respondent, K.G. "Rusty" Smith, Jr., violated Section 8-13-700(A) as none of the allegations were substantiated in interviews. The Commission has therefore dismissed the charges in accordance with Section 8-13-320(10)(i), and the rules and regulations promulgated thereunder.

IT IS SO ORDERED THIS 29th DAY OF May, 2013.

STATE ETHICS COMMISSION

PHILLIP FLORENCE, JR.
CHAIRMAN

COLUMBIA, SOUTH CAROLINA