

STATE OF SOUTH CAROLINA) BEFORE THE STATE ETHICS COMMISSION
COUNTY OF RICHLAND)
)

In the Matter of:)
COMPLAINT C2012-124)

DECISION AND ORDER

Carolyn Cole,)
Respondent,)

Jake Evans,)
Complainant.)

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STATE ETHICS
COMMISSION

This matter comes before the State Ethics Commission by virtue of a complaint filed by the Complainant, Jake Evans, on April 20, 2012. On July 18, 2012, pursuant to S.C. Code Ann. §8-13-320(10)(i)(Supp. 2010), the State Ethics Commission reviewed for probable cause the above-captioned complaint charging Respondent, Carolyn Cole, with a violation of Sections 8-13-700(A) & (B).

Present at the meeting were Commission Members Phillip Florence, Jr., Chairman, E. Kay Biermann-Brohl, Edward E. Duryea, JB Holeman, Priscilla L. Tanner, and George Carlton Manley. Also present were the Commission's Executive Director, Herbert R. Hayden, Jr., and his immediate staff.

The following allegations were considered:

On April 20, 2012 the State Ethics Commission received a complaint filed by Jake Evans of North Myrtle Beach, SC against Carolyn Cole, Council person, Atlantic Beach, SC. The complaint alleged that the Respondent voted to have Charles Boykin replace Leah Moody as the attorney representing the Town of Atlantic Beach in a case where Ms. Cole was the plaintiff in the action against Atlantic Beach. Ms. Cole also voted to have Charles Boykin replace Leah Moody as the attorney representing the Town of Atlantic Beach where Ms. Cole was the plaintiff in another lawsuit against the Town.

On August 24, 2011 the Respondent voted to ask Benny Webb to design a method for handling cases involving seated council members against the Town of Atlantic Beach. On March 16, 2012 the Respondent was the sole signatory on checks written to four members of Town Council and other Town employees and her own check in violation of Town policy.

The Respondent has unilaterally intervened in the termination of Sheila Singletary, a Town clerk who was terminated by Town Manager Benny Webb.

The Respondent has failed to pay the Town Attorney for services. Ms. Cole voted not to pay Leah Moody the money she was owed.

The Respondent has interfered with day to day operations that are the responsibility of the Town Manager.

STATEMENT OF FACTS

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

1. During all times relevant, the Respondent served as a Council person for the Town of Atlantic Beach, SC.
2. The minutes of Atlantic Beach Council meetings of August 1 and August 24, 2011 disclosed that the Respondent did discuss and vote on matters pertaining to all litigation pending against the Town of Atlantic Beach; however, no specific litigation was mentioned.
3. Leah B. Moody advised she was an attorney who represented the Town of Atlantic Beach in defense of litigation filed by the Respondent prior to the Respondent being elected to the Atlantic Beach Council. This case was resolved in August 2010.

4. Ms. Moody further advised that there is a pending lawsuit against the Town filed by Tyson Beach, LLC. The Respondent's ex-husband is the sole owner of Tyson Beach. This lawsuit has not been settled. The Respondent had no pending lawsuits against the Town in August 2011 and she had no interest in Tyson Beach LLC therefore had no standing to file a suit on its behalf.

5. The investigation revealed that the check written to Respondent was to make a payment on a loan made by the Respondent's husband to the town. The check was written in 2002.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the Commission concludes, as a matter of law:

1. During all times relevant, the Respondent, Carolyn Cole, 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(A) prohibits a public official from using their official office to obtain an economic interest for himself, a family member, a business with which he is associated or in individual with whom he is associated.
4. Section 8-13-700(B) requires that when a public official is called on to take action in a matter in which the public official has an economic interests, the public official must acknowledge the conflict, recuse themselves from all participation and have a statement entered into the meeting minutes explaining the conflict.
5. In accordance with Section 8-13-320(9)(d) no action may be taken on matters which occurred outside the four year statute of limitations.

6. The checks written on March 16, 2012 were pay checks allegedly in violation of town ordinances. The State Ethics Commission has no authority to investigate or enforce town ordinances.

7. The remaining allegations regarding failure to pay a town attorney, interfering in day to day town operations and intervening in the termination of a town employee are not matters for which the State Ethics Commission has jurisdiction.

DECISION

Based upon the evidence presented, the State Ethics Commission has determined that there is not probable cause to indicate that the Respondent, Carolyn Cole, violated Sections 8-13-700(A) or 8-13-700(B). 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 11th DAY OF Sept., 2012.

STATE ETHICS COMMISSION

COLUMBIA, SOUTH CAROLINA


PHILLIP FLORENCE, JR.
CHAIRMAN