

STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)
)
 IN THE MATTER OF:)
 COMPLAINT C2013-028)
)
 State Ethics Commission,)
 Complainant,)
)
 vs.)
)
 Mitchell T. Kirby,)
 Respondent.)
 _____)

BEFORE THE STATE ETHICS COMMISSION

DECISION AND ORDER

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 STATE ETHICS
 COMMISSION

This matter comes before the State Ethics Commission by virtue of a complaint filed by the Commission on September 20, 2012. On January 16, 2013, pursuant to S.C. Code Ann. §8-13-320(10)(i)(Supp. 2013), the State Ethics Commission reviewed the above-captioned complaint charging Respondent, Mitchell Kirby, with a violation of Section 8-13-1140 and probable cause was found to warrant an evidentiary hearing.

Present at the Hearing on November 20, 2013 were Commission Members Phillip Florence, Jr., Chair, Jonathan H. Burnett and Richard H. Fitzgerald. Respondent was present and appeared *pro se*. Complainant was represented by Cathy L. Hazelwood, General Counsel. The following charge was considered:

COUNT ONE
FAILURE TO FILE A STATEMENT OF ECONOMIC INTEREST REPORT
SECTION 8-13-1140, S.C. CODE ANN., 1976, AS AMENDED

That the Respondent, Mitchell T. Kirby, a Florence County Council Member, did in Richland County, fail to timely file a 2011 annual Statement of Economic Interests form on or before April 15, 2011 in violation of Section 8-13-1140.

COUNT TWO
FAILURE TO FILE A STATEMENT OF ECONOMIC INTEREST REPORT
SECTION 8-13-1140, S.C. CODE ANN., 1976, AS AMENDED

That the Respondent, Mitchell T. Kirby, a Florence County Council Member, did in Richland County, fail to timely file a 2012 annual Statement of Economic Interests form on or before April 15, 2012 in violation of Section 8-13-1140.

FINDINGS OF FACT

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

1. The Respondent, Mitchell Kirby, was a candidate for the Florence County Council in a June 12, 2012 primary election and the November 6, 2012 general election. Respondent is currently a Florence County Council Member.

2. Kristin Smith, administrative coordinator of the Commission's non-compliance office, testified that in November 2008 Mr. Kirby was re-elected to Florence County Council and he was required to file an annual Statement of Economic Interests (SEI). On June 13, 2012 Respondent was assessed a \$100.00 penalty for failure to file a 2011 SEI. On August 1, 2012 the letter of June 13, 2012 was re-sent certified. On August 3, 2012 the certified letter was delivered at 2:07 p.m. according to the United States Postal Service website. On September 20, 2012 a complaint was filed after no response. Respondent filed his 2011 SEI on September 26, 2013; however, the late-filing penalty of \$3,400.00 has not been paid.

3. Respondent testified that he was unaware that his 2011 SEI was not filed until he received the complaint. Respondent said that a campaign consultant, Mr. Franklin Briggs, was helping him with all the related campaign reports, to include his annual SEI. Respondent said that Mr. Briggs developed health issues and the report was not submitted.

4. Franklin Briggs testified that he helped Respondent with all his races and filings. He testified that he was in and out of the hospital the entire time as he is awaiting a heart transplant. Mr. Briggs testified that it was his fault.

CONCLUSIONS OF LAW

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

1. During all times relevant, the Respondent, Mitchell Kirby, 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 8-13-1140 provides that certain public officials shall file a Statement of Economic Interests prior to taking the oath of office and annually by April 15.

4. Section 8-13-1510(1) provides as follows:

Except as otherwise specifically provided in this chapter, a person required to file a report or statement under this chapter who files a late statement or report or fails to file a required statement or report must be assessed a civil penalty as follows:

(1) a fine of one hundred dollars if not filed within five days after the established deadline provided by law in this chapter;

5. Section 8-13-130 states in part:

The State Ethics Commission may levy an enforcement or administrative fee on a person who is found in violation, or who admits to a violation, of the "Ethics, Government Accountability and Campaign Reform Act of 1991". The fee must be used to reimburse the commission for costs associated with the investigation and hearing of a violation.

DECISION

NOW, THEREFORE, based on the foregoing Findings of Fact and Conclusions of Law, the State Ethics Commission has determined based upon a preponderance of evidence that Respondent Mitchell Kirby is in violation of one count of Section 8-13-1140

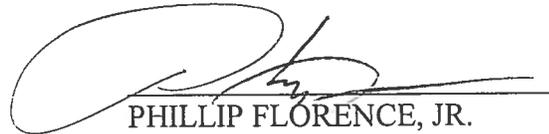
for his 2011 SEI. The second count for the 2012 SEI is dismissed. Therefore, Respondent Mitchell Kirby is hereby Publicly Reprimanded and he is hereby assessed a reduced late-filing penalty of \$300.00 to be paid within 60 days of receipt of the order. In addition a \$200.00 administrative fee is assessed and it must be paid within 60 days of receipt of the order. If the reduced late filing penalty and administrative fee are not timely paid then the amount owed will revert to the original late-filing penalty of \$3,400.00.

IT IS FURTHER ORDERED, pursuant to Section 8-13-320, a Judgment in the amount of \$3,400.00 is, and shall be entered against Respondent, if he fails to pay the late-filing penalty and administrative fee within the time permitted.

FINALLY, Respondent Mitchell Kirby has ten (10) days from receipt of this order to appeal this Decision and Order to the full Commission.

IT IS SO ORDERED THIS 9th DAY OF Dec., 2013.

STATE ETHICS COMMISSION



PHILLIP FLORENCE, JR.
HEARING CHAIR

COLUMBIA, SOUTH CAROLINA