

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
)
IN THE MATTER OF:)
COMPLAINT C2013-116)
)
Mary Y. Springs,)
Complainant,)
)
vs.)
)
Mitchell Kirby,)
Respondent.)
_____)

BEFORE THE STATE ETHICS COMMISSION

STATE ETHICS
COMMISSION

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DECISION AND ORDER

This matter comes before the State Ethics Commission by virtue of a complaint filed by the Complainant, Mary Y. Springs, on March 4, 2013. On September 18, 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 violations of Section 8-13-1308 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 charges were considered:

COUNT ONE
FAILURE TO FILE AN INITIAL CAMPAIGN DISCLOSURE REPORT
SECTION 8-13-1308(A), S.C. CODE ANN., 1976, AS AMENDED

That Mitchell Kirby, a candidate for Florence County Council in a June 12, 2012 primary election, did in Richland County, fail to file an initial Campaign Disclosure Report within ten days of receiving or spending an accumulated aggregate of \$500 or more, all in violation of Section 8-13-1308(A).

COUNT TWO
FAILURE TO FILE A PRE-ELECTION CAMPAIGN DISCLOSURE REPORT
SECTION 8-13-1308(D), S.C. CODE ANN., 1976, AS AMENDED

That Mitchell Kirby, a candidate for Florence County Council in a June 12, 2012 primary election, did in Richland County, on or about May 28, 2012, fail to timely file a pre-election Campaign Disclosure Report in violation of Section of 8-13-1308(D).

COUNT THREE
FAILURE TO FILE QUARTERLY CAMPAIGN DISCLOSURE REPORT
SECTION 8-13-1308(B), S.C. CODE ANN., 1976, AS AMENDED

That Mitchell Kirby, a candidate for Florence County Council in a November 6, 2012 election, did in Richland County, fail to timely file a July 10, 2012 quarterly Campaign Disclosure Report within ten days of the end of the calendar quarter, all in violation of Section 8-13-1308(B).

COUNT FOUR
FAILURE TO FILE A PRE-ELECTION CAMPAIGN DISCLOSURE REPORT
SECTION 8-13-1308(D), S.C. CODE ANN., 1976, AS AMENDED

That Mitchell Kirby, a candidate for Florence County Council in a November 6, 2012 election, did in Richland County, on or about October 22, 2012, fail to timely file a pre-election Campaign Disclosure Report in violation of Section of 8-13-1308(D).

COUNT FIVE
FAILURE TO FILE QUARTERLY CAMPAIGN DISCLOSURE REPORT
SECTION 8-13-1308(B), S.C. CODE ANN., 1976, AS AMENDED

That Mitchell Kirby; a candidate for Florence County Council in a November 6, 2012 election, did in Richland County, fail to timely file a January 10, 2013 quarterly Campaign Disclosure Report within ten days of the end of the calendar quarter, all in vio-

lation of Section 8-13-1308(B).

COUNT SIX
FAILURE TO FILE QUARTERLY CAMPAIGN DISCLOSURE REPORT
SECTION 8-13-1308(B), S.C. CODE ANN., 1976, AS AMENDED

That Mitchell Kirby, a candidate for Florence County Council in a November 6, 2012 election, did in Richland County, fail to timely file an April 10, 2013 quarterly Campaign Disclosure Report within ten days of the end of the calendar quarter, all in violation of Section 8-13-1308(B).

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. Commission Investigator Jimmy Bagnall testified that Respondent stated that the information documented in the complaint was correct because he did not disclose campaign expenditures for political advertisements, and he did not file the required documents. Respondent advised that he was sorry his reports were not filed in a timely manner. Investigator Bagnall testified that Respondent's campaign consultant, Franklin Briggs, advised that he did develop serious health problems during the 2012 election cycle that required hospitalization. He said that he was working on submitting the required CDs.

3. Investigator Bagnall reviewed Respondent's file and it revealed that on November 13, 2012, Respondent submitted a pre-election CD for the June 6, 2012 primary

election. The CD disclosed that on March 30, 2012, he received a campaign contribution in the amount of \$632.40. The CD noted that the contribution was used for a filing fee, and that was the only expense related to the primary election. Respondent's pre-election report, for the primary election is the only CD, filed by Respondent during the 2012 election cycle. Investigator Bagnall testified that Respondent was required to file the following reports:

Initial campaign disclosure no later than April 10, 2012;

Primary pre-election disclosure no later than May 23, 2012;

July quarterly disclosure no later than July 10, 2012;

General pre-election disclosure no later than October 22, 2012;

January quarterly disclosure no later than January 10, 2013;

April quarterly disclosure no later than April 10, 2013.

4. Respondent testified that he was unaware that his CDs were 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. Respondent said that Mr. Briggs developed health issues and the reports were not submitted. The CDs were filed over the course of several days: November 4, 7, 9 and 13, 2013.

5. Franklin Briggs testified that he helped Respondent with all his races. 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 candidate as defined by Section 8-13-1300(4).

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

3. Section 8-13-1308(B) provides:

Following the filing of an initial certified campaign report, additional certified campaign reports must be filed within ten days following the end of each calendar quarter in which contributions are received or expenditures are made, whether before or after an election until the campaign account undergoes final disbursement pursuant to the provisions of Section 8-13-1370.

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 Section 8-13-1308; and therefore, Respondent Mitchell Kirby is hereby Publicly Reprimanded and he is hereby assessed a late-filing penalty of \$600.00 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.

IT IS FURTHER ORDERED, pursuant to Section 8-13-320, a Judgment in the amount of \$800.00 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

COLUMBIA, SOUTH CAROLINA


PHILLIP FLORENCE, JR.
HEARING CHAIR