

STATE OF SOUTH CAROLINA) BEFORE THE STATE ETHICS COMMISSION
COUNTY OF RICHLAND)
))
IN THE MATTER OF:)
COMPLAINT C2013-147)
))
State Ethics Commission,)
Complainant,)
))
vs.) **DECISION AND ORDER**
))
Joe P. Whitaker,)
Respondent.)
_____)

STATE ETHICS
COMMISSION

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RECEIVED

This matter comes before the State Ethics Commission by virtue of a complaint filed by the Commission on June 21, 2013. On September 18, 2013, pursuant to S.C. Code Ann. § 8-13-320(10)(i)(Supp. 2012), the State Ethics Commission reviewed the above-captioned complaint charging Respondent, Joe P. Whitaker, with violations of Section 8-13-1308 and probable cause was found.

Present at the Hearing on March 19, 2014 were Commission Members, Phillip Florence, Jr., Chair, E. Kay Biermann Brohl, and James I. Warren. Respondent was not present, but he was duly noticed. Complainant was represented by Cathy L. Hazelwood, General Counsel. The following charges were considered:

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

That the Respondent, Joe P. Whitaker, a candidate in a November 8, 2011 election for Florence County District 4 School Board, did in Richland County, on or about October 24, 2011, fail to timely file a pre-election Campaign Disclosure Report in violation of Section of 8-13-1308(D).

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

That the Respondent, Joe P. Whitaker, a candidate in a November 8, 2011 election for Florence County District 4 School Board, did in Richland County, on or about October 24, 2011, fail to timely file a pre-election Campaign Disclosure Report in violation of Section of 8-13-1308(D).

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

That the Respondent, Joe P. Whitaker, a candidate in a November 6, 2012 election for Florence County District 4 School Board, 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).

FINDINGS OF FACT

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

1. The Respondent, Joe P. Whitaker, was a candidate in three Florence County elections in 2011 and 2012.
2. Kristin Smith, administrative coordinator of the Commission's non-compliance office, testified that on August 15, 2012, Respondent filed a Statement of Economic Interests (SEI) stating he was a candidate for Florence County School District 4 in the November 6, 2012 election. On March 12, 2013 Respondent was assessed a \$100.00 late filing penalty for failure to file a pre-election Campaign Disclosure form (CD) by October 22, 2012. On April 8, 2013 the penalty letter was sent certified. It was returned as un-

claimed on May 2, 2013. In looking at his multiple candidate accounts, it was discovered that Respondent also ran for Florence County School District 4 in the November 8, 2011 election according to an SEI filed September 15, 2011. A \$100.0 penalty was assessed for failure to file a pre-election CD by October 24, 2011 and was sent certified. The penalty letter was re-mailed certified on May 7, 2013. On June 12, 2013 Respondent paid a \$100.00 penalty. On June 13, 2013 Respondent came to the State Ethics Commission about his penalty letter. Through his conversation with staff, it was also discovered that he ran for Timmonsville City Council in the November 8, 2011 election. He paid \$100.00 toward his penalty of May 2, 2013 and he was given instructions on how to file the required CDs. The second certified letter of May 2, 2013 was unclaimed but was not returned by USPS. After no response, a complaint was filed.

2. Daniel Choate, State Ethics Commission Investigator, testified that on June 26, 2013 he contacted Respondent by telephone to discuss the late CDs. Respondent stated he would file the three CDs. On July 15, 2013 Respondent complied by filing the three pre-election CDs. The CD for the 2011 Florence School District 4 election was incomplete and was re-filed on July 30, 2013. The following penalties were assessed:

Late CD for 2011 Town of Timmonsville Council – no assessment made.

Late CD for 2011 Florence County School District 4 Trustee campaign - \$3,600.

Late CD for 2012 Florence County School District 4 Trustee campaign - \$5,000
(\$100 paid June 12, 2013, balance \$4,900).

CONCLUSIONS OF LAW

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

1. During all times relevant, the Respondent, Joe P. Whitaker, 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(D) provides that a candidate must file a pre-election Campaign Disclosure form 15 days before the election.

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.

6. Section 8-13-320(10)(l) provides:

(i) requiring the public official, public member, or public employee to pay a civil penalty of not more than two thousand dollars for each 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 Joe P. Whitaker is in violation of Section 8-13-1308; and therefore, Respondent Joe P. Whitaker is hereby Publicly Reprimanded and he is assessed a fine of \$6,000.00, in addition to the late-filing penalty of \$8,500.00 and he is assessed an

administrative fee of \$500.00.

IT IS FURTHER ORDERED, pursuant to Section 8-13-320, a Judgment in the amount of \$15,000.00 is, and shall be entered against Respondent.

IT IS FURTHER THE ORDER OF THIS COMMISSION that the Clerk of Court of the County in which Respondent was last known to reside shall enter this Order in its Judgment Rolls, without cost to the State Ethics Commission, in the amount of \$15,000.00 upon the Commission's filing of same with the Clerk of Court's Office.

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

IT IS SO ORDERED THIS 8th DAY OF May, 2014.

STATE ETHICS COMMISSION


PHILLIP FLORENCE, JR.
HEARING CHAIR

COLUMBIA, SOUTH CAROLINA