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STATE ETHICS COMMISSION

STATE OF SOUTH CAROLINA )  
 COUNTY OF RICHLAND )  
 )  
 IN THE MATTER OF: )  
 COMPLAINT C2014-021 )  
 )  
 State Ethics Commission, )  
 Complainant, )  
 )  
 vs. )  
 )  
 Thomas G. Gardner, )  
 Respondent. )  
 \_\_\_\_\_ )

BEFORE THE STATE ETHICS COMMISSION

**DECISION AND ORDER**

This matter comes before the State Ethics Commission by virtue of a complaint filed by the Commission on August 14, 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, Thomas G. Gardner, with a violation 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 present and appeared *pro se*. Complainant was represented by Cathy L. Hazelwood, General Counsel. The following charges were considered:

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

That Thomas G. Gardner, a candidate for Kershaw County Council in a November 2, 2010 election, did in Richland County, fail to timely file an January 10, 2011 quarterly Campaign Disclosure Report within ten days of the end of the calendar quarter, all in violation of Section 8-13-1308(B).

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

That Thomas G. Gardner, a candidate for Kershaw County Council in a November 2, 2010 election, did in Richland County, fail to timely file a final Campaign Disclosure Report upon final disbursement from his account, 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, Thomas G. Gardner, was a candidate for Kershaw County Council in a November 2, 2010 election.
2. Kristin Smith, administrative coordinator of the Commission's non-compliance office, testified that on June 11, 2013 Respondent was assessed a \$1000.00 late filing penalty for failure to file ten Campaign Disclosure forms (CD): January 10, 2011 through July 10, 2013. On July 8, 2013 the penalty letter was sent certified and on July 13, 2013 the certified letter was delivered. Penalties began accruing at \$10 per day on July 24, 2013 and at \$100 per day on August 2, 2013. Respondent filed the required CD on August 26, 2013. The late filing penalty of \$10,000.00 was not paid.
2. Daniel Choate, State Ethics Commission Investigator, testified that on August 21, 2013 he spoke with Respondent who advised him that he had received the correspondence from the Commission office. He stated his campaign account had been closed out. He stated he would file the required CDs and fax a copy of his closing bank statement to the investigator. On August 26, 2013 Respondent complied by filing a January

10, 2011 quarterly and a final CD based on the fact that his campaign account was closed on February 18, 2011.

3. Respondent testified that he thought he had filed the 2010 fourth quarter CD, but did not check it closely. He was told he could close his bank account and he would not need to file anything else. That was wrong advice and he didn't confirm it with the Commission. He testified that he didn't look at things closely enough. That's his only excuse. He just didn't get it as a first time candidate in 2010. He has done everything else and is up-to-date on everything.

#### **CONCLUSIONS OF LAW**

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

1. During all times relevant, the Respondent, Thomas G. Gardner, 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 Thomas G. Gardner is in violation of Section 8-13-1308; and therefore, Respondent Thomas G. Gardner is hereby assessed a reduced late-filing penalty of \$1500.00 to be paid within 90 days of receipt of the order. If the reduced late-filing penalty is not timely paid then the amount owed will revert to the original late filing penalty of \$10,000.00.

IT IS FURTHER ORDERED, pursuant to Section 8-13-320, a Judgment in the amount of \$10,000.00 is, and shall be entered against Respondent, if he fails to pay the reduced late-filing penalty within the time permitted.

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

STATE ETHICS COMMISSION

  
PHILLIP FLORENCE, JR.  
HEARING CHAIR

COLUMBIA, SOUTH CAROLINA