

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
) IN THE MATTER OF:)
) COMPLAINT C2014-027)
) State Ethics Commission,)
) Complainant,)
))
) G. Kenneth Gary,)
) Respondent.)
_____)

BEFORE THE STATE ETHICS COMMISSION

DECISION AND ORDER

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COMMISSION

This matter comes before the State Ethics Commission by virtue of a complaint filed by the Commission on September 4, 2013. On November 20, 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, G. Kenneth Gary, with violations of Section 8-13-1308 and probable cause was found.

Present at the Hearing on July 16, 2014 were Commission Members, James I. Warren, III, Chair, James H. Burns, and Regina H. Lewis. 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 A PRE-ELECTION CAMPAIGN DISCLOSURE REPORT
SECTION 8-13-1308(D), S.C. CODE ANN., 1976, AS AMENDED

That the Respondent, G. Kenneth Gary, a candidate for Kershaw County 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).

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

That the Respondent, G. Kenneth Gary, a candidate for Kershaw County School Board, was 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 violation of Section 8-13-1308(B).

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

That the Respondent, G. Kenneth Gary, a candidate for Kershaw County School Board, was 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).

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

That the Respondent, G. Kenneth Gary, a candidate for Kershaw County School Board, was in a November 6, 2012 election, did in Richland County, fail to timely file a July 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, G. Kenneth Gary, was a candidate for Kershaw County School Board in a November 6, 2012 election.



2. Kristin Smith, administrative coordinator of the Commission's non-compliance office, testified that on August 2, 2012 Respondent filed a Statement of Economic Interests form stating he was a candidate for Kershaw County School Board in a November 6, 2012 election. On June 20, 2013 Respondent was assessed a \$100.00 late filing penalty for failure to file a pre-election Campaign Disclosure form (CD). On July 22, 2013 the penalty letter was sent certified and additional penalties were assessed for failure to file a January 10, 2013, April 10, 2013 and July 10, 2013 CD. The letter was delivered on July 23, 2013. Penalties began accruing at \$10 per day per form on August 3, 2013 and at \$100 per day per form on August 13, 2013. Respondent filed all forms on July 16, 2014. The late filing penalty of \$20,000.00 has not been paid.

3. Daniel Choate, State Ethics Commission Investigator, testified that on September 5, 2013 he contacted Respondent by telephone. Respondent was advised concerning the late CDs and the accruing penalties. He stated he had received the Commission office's correspondence. He stated he would contact the Commission staff to get into compliance. Respondent did converse with a Commission staff member that same day. He stated at that time that he was closing his campaign bank account and he would re-contact staff for assistance in filing the CDs. Investigator Choate testified that on September 19, 2013 he left a message at Respondent's telephone reminding him of the late CDs and penalties.

3. The Respondent, G. Kenneth Gary, testified that he closed his campaign bank account in July 2013. He testified that he was seeking a reduction in the fine. He did not understand how to file everything, but he kept every receipt. He sought help from Sandra



McClellan and that's when he filed correctly.

CONCLUSIONS OF LAW

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

1. During all times relevant, the Respondent, G. Kenneth Gary, 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 8-13-1308(D) provides that a candidate must file a pre-election Campaign Disclosure form 15 days before the election.

5. 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;

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 G. Kenneth Gary is in violation of Section 8-13-1308; and therefore, Respondent G. Kenneth Gary is hereby assessed a reduced late-filing penalty of



\$5,000.00 to be paid within six months of receipt of the order. If the reduced late-filing penalty is not timely paid then the amount owed will revert to \$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.

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 \$10,000.00 upon the Commission's filing of same with the Clerk of Court's Office.

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

IT IS SO ORDERED THIS 6 DAY OF Aug, 2014.

STATE ETHICS COMMISSION



JAMES I. WARREN, III
HEARING CHAIR

COLUMBIA, SOUTH CAROLINA