

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND )  
 )  
IN THE MATTER OF: )  
 )  
COMPLAINT C2014-074 )  
 )  
Kenneth R. Moss, )  
 Complainant; )  
 )  
 vs. )  
 )  
James A. Allen, )  
 Respondent. )  
 )  
\_\_\_\_\_ )

BEFORE THE STATE ETHICS COMMISSION

**DECISION AND ORDER**

STATE ETHICS  
COMMISSION

2014 APR -9 PM 2:55

RECEIVED

Pursuant to S. C. Code Ann. § 8-13-320(10)(i)(Supp. 2013), the State Ethics Commission reviewed the above captioned complaint on March 19, 2014 charging the Respondent, James A. Allen, with violations of Section 8-13-700. Present at the meeting were Commission Members Phillip Florence, Jr., Chair, E. Kay Biermann Brohl, George Carlton Manley, Richard H. Fitzgerald, Jonathan H. Burnett, Twana N. Burris-Alcide and James I Warren. The following allegation was considered:

**ALLEGATIONS**

On January 3, 2014 the State Ethics Commission received a complaint filed by Kenneth R. Moss against James A. Allen, Horry County Council Member. The complaint alleged that the Respondent used his position as an Horry Council member to obtain an economic interest for a business with which he is associated. In 2012 Horry County solicited bids for Aquatic Vegetation Control Services. The contract was awarded to Allen Aviation, Inc. a South Carolina corporation allegedly owned by the Respondent's spouse. In an unrelated matter, the Respondent testified under oath that he was the sole owner of Allen Aviation. The contract as put out for bid required the

successful bidder to have applicable insurance and provide a surety and performance bond. After the bid was awarded to Allen Aviation, the County waived the surety and bonding requirement.

In another matter, the Respondent voted in favor of a Flow Control Ordinance that regulates the disposal of solid waste in Horry County landfills. This Ordinance was challenged in a lawsuit filed by Sandlands C&D, LLC and Express Disposal Service, LLC. Sandlands C&D owns landfill in Marion County. The owner of Sandlands C&D, Donald Godwin, has campaigned in Horry County for a revision to the Flow Control Ordinance which would allow C&D waste to be sent to his landfill in Marion County. That campaign resulted in the introduction of a proposed ordinance. The Respondent took part in the discussion and vote on the proposed ordinance. Godwin employs the Respondent as a pilot of Allen Aviation for personal and corporate business flight. It is alleged that the Respondent voted in the ordinance in favor of Sandlands C&D due to his employment relationship with Godwin.

#### **FINDINGS OF FACT**

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

1. The Respondent, James A. Allen, is currently a member of Horry County Council.
2. According to a letter submitted on May 2, 2012 from the Chief Executive Officer of Allen Aviation Inc., Mrs. Shanda Allen, a request was made to waive a performance bond for a 2012 annual vegetation control services contract with Horry County. The aforementioned letter was received by the Director of the Horry County Storm Water Department, Mr. Tom Garrigan, and then forwarded to the Horry County

Procurement Division.

3. According to e-mail correspondence dated May 3, 2012, from the Director of Procurement, Ms. Kimberly Massie, to the Interim County Administrator, Mr. Steven Gosnell, Ms. Massie reported that she believed that Horry County could honor Allen Aviation Inc.'s request to waive the bonding requirements.

4. Staff met with the Director of Procurement, Ms. Kimberly Massie, and she stated that she did receive the request from Allen Aviation Inc. to waive the performance bond on their contract with the county. Ms. Massie said that based on the Horry County Procurement Code, she made a recommendation to the Interim County Administrator, Mr. Steven Gosnell, to honor the request made by Allen Aviation Inc. Ms. Massie said that she did not discuss the performance bond waiver request with Respondent. Ms. Massie said that her decision to honor the bond waiver request was not influenced in any way by Respondent.

5. A review of the contract documents between Allen Aviation Inc., and Horry County revealed that on May 5, 2012, the Interim County Administrator/County Engineer, Mr. Steve Gosnell, approved eliminating the performance and payment bond requirements for Allen Aviation Inc.

6. Staff met with the former Interim County Administrator/County Engineer, Mr. Steve Gosnell, and he said that the Horry County ordinance which requires that contractors maintain a performance bond was primarily used for construction projects in the county. Mr. Gosnell said that in the past, the performance bond requirement for services such as road repair have been waived by the county, because the contractor is not paid until after the work is completed and inspected by the county. Mr. Gosnell said that

Allen Aviation was contracted by the county to provide for vegetation control services, and Allen Aviation Inc. was not paid until the area that it treated was inspected. Mr. Gosnell stated that since the services that Allen Aviation Inc. provided were inspected prior to payment by the county, he did not believe a performance bond was required in the contract. Mr. Gosnell stated that he had no conversations with Respondent in regard to the vegetation control contract, and Mr. Gosnell said that he was not influenced in any way by Respondent to approve the contract modification.

7. Staff interviewed the owner of Sandlands C&D LLC, Mr. Donald Godwin. Mr. Godwin said that he has been friends with Respondent and his family for many years. Mr. Godwin said that Respondent is a pilot and he owns his own planes. Mr. Godwin stated that he also owns a plane and he has his own pilot. Mr. Godwin stated that due to the type of aircraft he purchased, his pilot needed additional flying time with a pilot that was certified to fly that type of plane. Mr. Godwin stated that Respondent was certified to fly the same type of plane that he owns, and Respondent did him a favor by flying along with his pilot until his pilot had enough flight time to become certified. Mr. Godwin stated that he has never hired Respondent, or had a contract with Respondent to pilot his personal and corporate business flights. Mr. Godwin stated that Respondent has never been an employee of any of his companies.

8. A review of Respondent's 2010 through 2013 Statement of Economic (SEI) reports revealed that Respondent did document that he was a business partner with Allen Aviation, and Allen Aviation did have government contracts with Horry County. Staff requested an account payable history report from Horry County for any and all funds paid to Allen Aviation. An audit of Respondent's SEI reports revealed that Respondent

accurately reported income Allen Aviation received from Horry County on his 2011 through 2013 SEI reports. Staff noted that on Respondent's 2010 SEI report he documented that Allen Aviation received income from Horry County in the amount of \$137,840.00, however, the accounts payable history report documented that in 2009, Allen Aviation received income in the amount of \$183,440.00. Respondent was notified in regard to the discrepancy on his 2010 disclosure report, and a request was made to amend his SEI report accordingly.

### CONCLUSIONS OF LAW

1. The Respondent is a public official, as defined by Section 8-13-100(27).
2. The State Ethics Commission has personal and subject matter jurisdiction.
3. Section 8-13-700 provides in part:

(A) No public official, public member, or public employee may knowingly use his official office, membership, or employment to obtain an economic interest for himself, a family member, an individual with whom he is associated, or a business with which he is associated. This prohibition does not extend to the incidental use of public materials, personnel, or equipment, subject to or available for a public official's, public member's, or public employee's use that does not result in additional public expense.

(B) No public official, public member, or public employee may make, participate in making, or in any way attempt to use his office, membership, or employment to influence a governmental decision in which he, a family member, an individual with whom he is associated, or a business with which he is associated has an economic interest. A public official, public member, or public employee who, in the discharge of his official responsibilities, is required to take an action or make a decision which affects

an economic interest of him, a family member, an individual with whom he is associated, or a business with which he is associated shall....

**DECISION**

THEREFORE, based upon evidence presented, the State Ethics Commission has determined that there is not probable cause to indicate that the Respondent, James A. Allen, violated Section 8-13-700 as none of the allegations were substantiated in interviews. The Commission has therefore dismissed the charges in accordance with Section 8-13-320(10)(i), and the rules and regulations promulgated thereunder.

IT IS SO ORDERED THIS 7<sup>th</sup> DAY OF April, 2014.

STATE ETHICS COMMISSION

  
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PHILLIP FLORENCE, JR.  
CHAIRMAN

COLUMBIA, SOUTH CAROLINA