

STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)
)
 IN THE MATTER OF:)
)
 COMPLAINT C2013-099)
)
 State Ethics Commission,)
 Complainant;)
)
 vs.)
)
 James L. Pinkney,)
 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 State Ethics Commission on January 25, 2013. On March 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, James L. Pinkney, with a violation of Section 8-13-1140 and Section 8-13-1308 and probable cause was found to warrant an evidentiary hearing.

Present at the Hearing on July 17, 2013 were Commission Members E. Kay Biermann Brohl, 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 A STATEMENT OF ECONOMIC INTEREST REPORT
SECTION 8-13-1140, S.C. CODE ANN., 1976, AS AMENDED

That the Respondent, James L. Pinkney, a Council Member for Allendale County, did in Richland County, fail to timely file an annual Statement of Economic Interests form on or before April 15, 2012 in violation of Section 8-13-1140.

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, James L. Pinkney, a candidate for Council Member in Allendale County, did in Richland County, on or about October 18, 2010, fail to timely file a pre-election Campaign Disclosure Report in violation of Section of 8-13-1308(D).

STATEMENT OF FACTS

1. The Respondent, James L. Pinkney, was a candidate for Allendale County Council in a November 2, 2010 election and he was required to file quarterly campaign disclosure forms (CD) until final disposition. Respondent was elected. He was required to file an annual Statement of Economic Interests form (SEI) each year by April 15.

2. Kristin Smith, administrative coordinator of the Commission's non-compliance office, testified that on March 30, 2010 Respondent filed an SEI stating he was a candidate for Allendale County Council in the November 2, 2010 election. On July 28, 2012 Allendale County returned its 2012 SEI entity list, which showed Respondent as a person required to file an annual SEI. On August 29, 2012 a \$100.00 penalty was assessed for failure to file a pre-election CD by October 18, 2010 and a \$100.00 penalty assessed for failure to file a 2012 SEI by April 15, 2012. On September 10, 2012 Respondent paid \$100.00; however, he owed \$100 and still needed to file the forms. On October 8, 2012 a letter was sent to Respondent confirming receipt of \$100.00 and stating that he still owed \$100.00 and the forms. That letter was sent certified on November 5, 2012. On December 13, 2012 the certified letter was returned as "Return to Sender – Not Deliverable as Addressed" and was re-mailed to his PO Box on December 14, 2012. On Decem-

ber 24, 2012 penalties begin accruing at \$20 per day for the first ten days. Respondent filed his forms on February 8, 2013; however, the late-filing penalty of \$7,300.00 was not paid.

3. Commission Investigator Dan Choate testified that on February 7, 2013 he spoke with Respondent's grand-daughter and advised her regarding the complaint and accruing penalties. On February 8, 2013 Respondent contacted him and stated he was having some difficulty with on-line filing. Respondent was instructed to contact Commission staff who would assist him. Respondent filed on the same day.

3. Respondent testified that he thought he had sent in a paper form in 2010. He had done an electronic filing, but thought he sent a paper. He sent the \$100.00, but didn't understand about the need to file electronically. He testified that he realized ignorance wasn't an excuse.

CONCLUSIONS OF LAW

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

1. During all times relevant, the Respondent, James L. Pinkney, was a public official as defined by Section 8-13-100(27).

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

3. Section 8-13-1140 provides that certain public shall file a Statement of Economic Interests prior to taking the oath of office and annually by April 15.

4. 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.

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;

6. 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 James L. Pinkney is in violation of Section 8-13-1140 and Section 8-13-1308; and therefore, Respondent James L. Pinkney is hereby assessed a reduced late-filing penalty of \$100.00 to be paid within 30 days of receipt of the order. In addition a \$150.00 administrative fee is assessed and it must be paid within 30 days of receipt of the order. If the reduced late filing penalty and administrative fee are not timely paid then the amount owed will revert to the original late filing penalty of \$7,300.00.

IT IS FURTHER ORDERED, pursuant to Section 8-13-320, a Judgment in the amount of \$7,300.00 is, and shall be entered against Respondent, if he fails to pay the reduced late-filing penalty and administrative fee within the time permitted.

FINALLY, Respondent James L. Pinkney has ten (10) days from receipt of this order to appeal this Decision and Order to the full Commission.

IT IS SO ORDERED THIS 15th DAY OF August, 2013.

STATE ETHICS COMMISSION


E. KAY BIERMANN BROHL
HEARING CHAIR

COLUMBIA, SOUTH CAROLINA