

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND )  
 )  
IN THE MATTER OF: )  
COMPLAINT C2011-093 )  
 )  
State Ethics Commission, )  
Complainant; )  
 )  
vs. )  
 )  
Donald R. Emery, )  
Respondent. )  
\_\_\_\_\_ )

BEFORE THE STATE ETHICS COMMISSION

**DECISION AND ORDER**

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STATE ETHICS  
COMMISSION

This matter comes before the State Ethics Commission by virtue of a complaint filed by the State Ethics Commission on June 27, 2011. On September 21, 2011, pursuant to S.C. Code Ann. §8-13-320(10)(i)(Supp. 2010), the State Ethics Commission reviewed the above-captioned complaint charging Respondent, Donald R. Emery, with a violation of Section 8-13-1308(D), and probable cause was found to warrant an evidentiary hearing.

Present at the Hearing on March 21, 2012 were Commission Members Edward E. Duryea, Chair, George Carlton Manley and JB Holeman. Respondent was present and appeared *pro se*. Complainant was represented by Cathy L. Hazelwood, General Counsel. The following charge was 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, Donald R. Emery, a candidate for Myrtle Beach City Council in an election on November 3, 2009, on or about October 19, 2009, did fail to timely file a corrected pre-election Campaign Disclosure Report in violation of Section of 8-13-1308(D).

**STATEMENT OF FACTS**

1. The Respondent, Donald R. Emery, was a candidate for Myrtle Beach City Council in an election on November 3, 2009 and he was required to file a pre-election campaign disclosure form (CD).

2. Commission Investigator Dan Choate testified that during the course of his investigation he determined that Respondent filed a pre-election CD on October 22, 2009; however, it was returned to him for correction. Respondent was advised by Commission letters to him dated October 29, 2009, December 8, 2009, April 11, 2010 and May 4, 2010 that a corrected CD had not been returned to the Commission. Investigator Choate testified that from July 6, 2011 to August 18, 2011 he made four attempts to leave a message at Respondent's voice mail; however, each attempt failed due to the fact that the voice mailbox was full. Investigator Choate testified that on August 18, 2011 he spoke to Respondent's spouse. She reported that Respondent would comply. Investigator Choate testified that on August 18, 2011 Respondent did file the properly completed CD; however, he did not pay the accrued late filing penalty of \$5000.00.

3. Respondent testified that this was his first campaign and he hired a campaign manager and filed all the forms he thought. He didn't know there was a problem for some time. He has a new baby home and a large penalty would be crippling. He was confused by the correspondence because he thought everything had been filed.

**CONCLUSIONS OF LAW**

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

1. The Respondent, Donald R. Emery, is 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)(1) provides:

At least fifteen days before an election, a certified campaign report must be filed showing contributions of more than one hundred dollars and expenditures to or by the candidate or committee for the period ending twenty days before the election. The candidate or committee must maintain a current list during the period before the election commencing at the beginning of the calendar quarter of the election of all contributions of more than one hundred dollars. The list must be open to public inspection upon request.

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;

(2) after notice has been given by certified or registered mail that a required statement or report has not been filed, a fine of ten dollars per calendar day for the first ten days after notice has been given, and one hundred dollars for each additional calendar day in which the required statement or report is not filed, not exceeding five thousand dollars.

### **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 Donald R. Emery is in violation of Section 8-13-1308(D); and therefore, Respondent Donald R. Emery is hereby assessed a reduced late-filing penalty of \$400.00. The reduced late filing penalty of \$400.00 must be paid within six months of receipt of the signed order or it will revert to the original \$5,000.00.

IT IS FURTHER ORDERED, pursuant to Section 8-13-320, a Judgment in the amount of \$5,000.00 is, and shall be entered against Respondent, if he fails to pay the reduced late filing penalty in the time allotted.

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 \$5,000.00 upon the Commission's filing of same with the Clerk of Court's Office.

FINALLY, Respondent Donald R. Emery has ten (10) days from receipt of this order to appeal this Decision and Order to the full Commission.

IT IS SO ORDERED THIS 29<sup>th</sup> DAY OF April, 2012.

STATE ETHICS COMMISSION

  
EDWARD E. DURYLEA  
HEARING CHAIR

COLUMBIA, SOUTH CAROLINA