

STATE OF SOUTH CAROLINA)	
)	BEFORE THE STATE ETHICS COMMISSION
COUNTY OF RICHLAND)	
)	
IN THE MATTER OF:)	
COMPLAINT C2012-008)	
)	
State Ethics Commission,)	
Complainant;)	
)	
vs.)	DECISION AND ORDER
)	
Kenneth D. Smith,)	
Respondent.)	
)	



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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 July 13, 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, Kenneth D. Smith, with a violation of Section 8-13-1308(D), and probable cause was found to warrant an evidentiary hearing.

Present at the Hearing on November 16, 2011 were Commission Members Priscilla L. Tanner, George Carlton Manley, and E. Kay Biermann Brohl, Hearing Chair. 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, Kenneth D. Smith, a candidate for Due West Town Council in an election on November 3, 2009, on or about October 19, 2009, did 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, Kenneth D. Smith, was a candidate for Due West Town Council in an election held on November 3, 2009.

2. Commission Investigator Dan Choate testified that by letters dated May 26, 2011 and June 21, 2011, Respondent was advised that his pre-election campaign disclosure form (CD) had not been received and late filing penalties were being levied. By letter dated July 18, 2011, Respondent was advised that a complaint had been filed against him.

3. Investigator Choate testified that he was unable to contact Respondent at the telephone number listed on the complaint. Respondent complied by filing the pre-election CD on November 2, 2011.

4. Respondent testified that he did not dispute Investigator Choate's testimony. Respondent did not want to run for re-election, but was persuaded to. He was unable to continue as council member as he had to move for job reasons. He thought at first that it was the annual Statement of Economic Interests form that was due and since he had resigned he did not understand why he would need to file that form.

CONCLUSIONS OF LAW

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

1. During all times relevant, the Respondent, Kenneth D. Smith, 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(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;

DECISION

AKB
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 Kenneth D. Smith is in violation of Section 8-13-1308(D); and therefore, Respondent Kenneth D. Smith is hereby assessed a reduced late-filing penalty of \$150.00. The reduced late filing penalty of \$150.00 must be paid within 60 days of receipt of the signed order or it will revert to the original \$5,000.00.

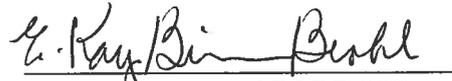
IT IS FURTHER ORDERED, pursuant to Section 8-13-320(14), a Judgment in the amount of \$5,000.00 is, and shall be entered against Respondent.

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 Kenneth D. Smith has ten (10) days from receipt of this order to appeal this Decision and Order to the full Commission.

IT IS SO ORDERED THIS 23rd DAY OF December, 2011.

STATE ETHICS COMMISSION


E. KAY BIERMANN BROHL
HEARING CHAIR

COLUMBIA, SOUTH CAROLINA