

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
IN THE MATTER OF:)
COMPLAINT C2015-018)
David M. Banks,)
Respondent.)
State Ethics Commission,)
Complainant.)

BEFORE THE STATE ETHICS COMMISSION

CONSENT ORDER

This matter comes before the State Ethics Commission ("Commission") by virtue of a complaint filed by the Commission on August 14, 2014. The complaint against the Respondent, David M. Banks, (hereinafter, "Respondent"), was considered by the Commission on November 19, 2014, and probable cause was found to warrant an evidentiary hearing. Prior to the call of the case, Respondent agreed to entry of the following statements of fact, conclusions of law, discussion, and disposition in this matter.

STATEMENTS OF FACT

At all times relevant with regard to this Complaint, Respondent was a Commissioner serving on the South Carolina Board of Pharmacy. He is and was also employed with CVS Caremark Pharmacy ("CVS Pharmacy") as a district supervisor.

At a Board of Pharmacy hearing held on June 19, 2014, CVS Caremark Advanced Technology Pharmacy, LLC ("CVS Advanced Technology") representatives came before the Board to request a non-resident pharmacy permit for its dispensing facility located in Mount Prospect, Illinois. Previously, in March 2014, CVS Advanced Technology had been denied this permit before the Non-Resident Application Review Committee. This was a new petition for a non-resident pharmacy permit before the full Board.

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CVS Pharmacy and CVS Advanced Technology are separate entities, but both companies are subsidiaries of the company now known as CVS Health Corporation (“CVS Health”). CVS Pharmacy is the retail arm of CVS Health, whereas CVS Specialty Pharmacy is a dispensing pharmacy.

Notwithstanding Respondent’s employment with CVS Pharmacy, Respondent actively participated in the hearing for CVS Advanced Technology. He participated in the discussion at the hearing, called for a hand vote to determine the outcome, and ultimately voted in opposition to a motion to deny the permit. Despite Respondent’s vote, the Board denied CVS Advanced Technology’s permit application.

Respondent is charged with violation of S.C. Code Ann. § 8-13-700(B), which prohibits, among other things, a public member from participating in a governmental decision in which a business with which he is associated has an economic interest.

CONCLUSIONS OF LAW

Based upon the Statement of Facts, the Commission concludes, as a matter of law:

1. During all times relevant, Respondent was a public member, as defined by S.C. Code Ann. § 8-13-100(26).
2. The State Ethics Commission has personal and subject matter jurisdiction.
3. S.C. Code Ann. § 8-13-700(B) prohibits a public member from making, participating in making, or in any way attempting to use his office to influence a governmental decision in which a business with which he is associated has an economic interest.
4. CVS Health is a “business with which he is associated” within the meaning of the term defined in S.C. Code Ann. § 8-13-100(4).



DISCUSSION

Respondent admits that he inadvertently violated Section 8-13-700(B). In mitigation, Respondent states that his failure to recuse was due to a good faith misinterpretation of the Ethics Act. As someone who had been serving on the Board for more than a decade, Respondent states he has always tried to be mindful of the rules on conflicts of interest. He states that he frequently relied on the Board's Advice Counsel for interpretations on what constituted a conflict of interest. On numerous occasions, he has recused himself from matters when he believed that he could not render a fair or impartial decision. As an example, the same day of hearing that is the subject matter of this complaint, Respondent recused himself from a separate matter before the Board involving a CVS Pharmacy employee with whom he worked.

In the case regarding CVS Advanced Technology, Respondent did not immediately recognize this as a conflict of interest. He believed that the success of the permit application of CVS Advanced Technology, a company which provides mail order pharmacy services, would not economically benefit his employer, CVS Pharmacy, a separate entity which provides retail pharmacy services.

Respondent acknowledges that he should have recognized the inherent conflict of interest that was present with him working for a CVS Health affiliated company while participating in a matter regarding another CVS Health company. He acknowledges that he should have recused himself in this matter and takes full responsibility for the error in judgment that led to the filing of this Complaint.

DISPOSITION

The State Ethics Commission hereby finds Respondent David M. Banks in violation of Section 8-13-700(B), albeit inadvertent, of the Ethics Reform Act and hereby adopts the

A handwritten signature in black ink, appearing to be "J. M. Banks", is located in the bottom right corner of the page.

Statements of Fact, Conclusions of Law, Discussion, and Disposition as agreed upon by the Respondent. This Consent Order and the findings herein are not intended to have any bearing on Respondent's fitness to serve in any public capacity.

THEREFORE, the State Ethics Commission hereby issues this written warning to David M. Banks for violation of Section 8-13-700(B) of the Ethics Reform Act,

AND, orders Respondent to pay a penalty of \$500.00 and an administrative fee of \$500.00 within 30 days of receipt of the signed order.

AND IT IS SO ORDERED THIS 26th DAY OF May 2015.

STATE ETHICS COMMISSION


JAMES I. WARREN, III, CHAIR


DAVID M. BANKS
Respondent


DANIEL J. WESTBROOK
Attorney for Respondent