

State of South Carolina

State Ethics Commission

BRIAN M. BARNWELL, CHAIR
VICTOR K. LI, VICE CHAIR
DONALD GIST
SAMUEL L. ERWIN



DON JACKSON
BRANDOLYN THOMAS PINKSTON
CHILDS CANTEY THRASHER
ASHLEIGH R. WILSON

201 EXECUTIVE CENTER DRIVE, SUITE 150
COLUMBIA, S.C. 29210

MEGHAN L. WALKER
EXECUTIVE DIRECTOR

MINUTES

COMMISSION MEETING

OPEN SESSION

July 19, 2018

The meeting was called to order by Chairman Brian M. Barnwell at 9:37 a.m. at the Public Service Commission's Hearing Room located at 101 Executive Center Drive, Suite 100, Columbia, South Carolina. Commission members present were Samuel L. Erwin, Donald Gist, Donald H. Jackson, Brandolyn T. Pinkston, Childs Cantey Thrasher, and Ashleigh R. Wilson. Vice Chair Victor K. Li was granted an excused absence from today's meeting.

Chairman Barnwell stated for the record that it has been over one year since the new Commission has been approved and working as a body. The Commission has moved to a new location and has a new permanent Executive Director, Meghan L. Walker. Everyone is working to improve on new policies, procedures, and technology.

The news media was duly and timely notified.

Staff present: Meghan L. Walker, Ami Franklin, Jimmy Bagnall, Ryanne Caldwell, Kristin Nabors, Kevin Hinson, Courtney Laster, Teresa Posey, Susan Bickley, Reggie Gaymon, and Richard Provencher.

Others present: Michael R. Burchstead, Esquire, and Jo Wheat.

Director Meghan Walker welcomed everyone and thanked the Public Service Commission for the use of their Hearing Room. Director Walker recognized two new staff members, Richard Provencher and Teresa Posey.

EXECUTIVE SESSION

Chairman Barnwell directed everyone to the next item on the Amended Agenda in their yellow folder and asked for a motion to go into Executive Session. A motion was made by Commissioner Gist, seconded by Commissioner Thrasher, to go into Executive Session for the purpose of discussing a legal matter. There being no discussion or opposition, the motion carried with a 7 – 0 vote. Vice Chair Li had an excused absence for this meeting.

RETURN FROM EXECUTIVE SESSION

Upon return from Executive Session, Chairman Barnwell noted no action was taken, that there was only a discussion concerning a legal matter.

FORMAL OPINION – Beaufort County

Chairman Barnwell called this matter. Courtney Laster gave a history of this request, noting that today's meeting was set forth by the Commission at its last meeting. Beaufort County has requested a formal advisory opinion concerning the use of public resources to influence the outcome of an election or ballot measure; informational materials concerning a ballot measure (Sections 8-13-1346 and 8-13-1346(C)). Miss Laster directed everyone to additional material found in their yellow folder and passed out her proposed draft. Lengthy discussion ensued concerning clarification on a council member's expression of a personal opinion on a ballot measure during a Council meeting, an intent to influence, and a decision if this constitutes use of public resources; i.e., what is "the public's time" and "express advocacy" by a person. Discussion ensued.

Chairman Barnwell recognized Attorney Michael R. Burchstead. Mr. Burchstead gave a history and presented the issues for requesting the formal opinion on behalf of Beaufort County. Discussion ensued concerning this being a constitutional issue, clarification on "influencing an election" and having a standard or guidelines by an enforcement agency to act on the laws, and other states which have prohibitions. Further discussion ensued concerning the totality of the circumstances, a need to have guidelines or standards by the enforcement agency, a free flow of conversations between elected officials, and issues affecting free speech.

Chairman Barnwell asked for a motion. Discussion ensued concerning the motion being made on Question 1(B): When is a Council Member's expression of a personal opinion during a Council meeting used "to influence the outcome of a ballot measure?" Commissioner Gist made a motion, seconded by Commissioner Jackson, to adopt Miss Laster's draft as written. Commissioner Wilson asked to remove the last sentence in the first paragraph of Question 1(B) of the draft because in the totality of circumstances you can tell which side a person is advocating on the matter. Discussion ensued. Commissioner Gist made a motion, seconded by Commissioner Jackson, to amend his motion to approve Miss Laster's draft of the advisory opinion in this matter, but reflect Commissioner Wilson's recommended changes to Question 1(B) removing the last sentence in the first paragraph beginning with "However, where reasonable minds could differ...." Chairman Barnwell asked for further discussion or opposition.

Mr. Burchstead gave closing comments and asked the Commission to hammer out an opinion with agreed-upon language; that the County—not the Council-- is asking for clarity and guidance; and requested that in order to save time, the Commission delegate to the Chairman the approval of the wording in the opinion. Commissioner Thrasher requested clarification on who would be doing the approved wording in the opinion. Discussion ensued. Chairman Barnwell reminded everyone that the motion on the floor was to accept or not accept the draft with Commissioner Wilson's recommended removal of that one sentence. There being no further discussion or opposition, the motion carried unanimously to accept the draft with Commissioner Wilson's recommended removal of certain language with a 7 - 0 vote. Vice Chair Li had an excused absence for this meeting.

MINUTES

Chairman Barnwell directed everyone to their yellow folder for approval of the Minutes. A motion was made by Commissioner Gist, seconded by Commissioner Wilson, to accept the Minutes. Chairman Barnwell asked for any discussion or opposition. There being none, the motion carried with no opposition to approve the Open Session Minutes and the Executive Session Minutes from the May 17, 2018 and May 30, 2018, Commission meetings. The motion was carried unanimously with a 7 - 0 vote. Vice Chair Li had an excused absence for this meeting.

POINT OF ORDER

Director Walker asked to present an issue Commissioner Jackson brought up at the Training Session on May 30 concerning the brochures provided by statute. Director Walker announced that staff now has completed copies of the South Carolina Public Employee Brochure.

OFFICE OPERATIONS

Review and Approve Proposed Commission's Hearing Room Plan and Budget

Chairman Barnwell called this matter. Mrs. Nabors and Investigator Hinson directed everyone to their yellow folder for material on furniture for the proposed Hearing Room and gave an update on the proposed plans, budget, furniture, sound/recording system, cameras/live streaming, and completed timeframe. Discussion ensued concerning long term involvement and detailed information on the cost of the chairs. Chairman Barnwell asked for a motion to approve this presentation. Commissioner Thrasher made a motion, seconded by Commissioner Gist, to approve the expenditures and plans as presented for the State Ethics Commission Hearing Room. Chairman Barnwell asked for further discussion or opposition. There being none, the motion carried with a 7 - 0 vote. Vice Chair Li had an excused absence for this meeting. Commissioner Thrasher stated that staff was to be commended for their efforts and time in working on this project.

2018-2019 Budget and Compliance Report

Director Walker presented for information only the 2018-2019 Budget Report found in everyone's yellow folder. Discussion ensued concerning efforts for additional personnel and an increase for salaries in the budget next year. The reports were approved as presented.

Director Walker presented the Compliance Report and commended Miss Laster on her efforts to resolve a number of the cases on backlog through consent orders and hearings. Discussion ensued concerning the need for more training. Director Walker noted that staff conducted Skype Training, CLE training credits, and receiving calls for group training sessions. Further discussion ensued concerning certain collection and penalty items on the Compliance report.

PENDING AND PAID ORDERS

Director Walker presented for a vote the new proviso in the budget that the State Ethics Commission now meets every month, and that a date needed to be scheduled for the December meeting. Discussion ensued concerning the type of meeting, how many hearings, the need for three commissioners for that hearing meeting, and who was available. Chairman Barnwell asked for a motion concerning the December meeting. Commissioner Thrasher made a motion, seconded by Commissioner Wilson, to have a December 13, 2018 Commission Hearing meeting. Those chosen as the three panelists will be announced at the next Commission meeting. Chairman Barnwell asked for further discussion or opposition. There being none, the motion carried with a 7 – 0 vote. Vice Chair Li had an excused absence for this meeting.

NEW BUSINESS

Discussion ensued concerning the updated hearing dockets. Further discussion ensued for more address information on complaints to help the commissioners decide if they needed to submit a Statement of Recusal.

Director Walker noted that information as requested on the commissioners' Statement of Economic Interests had been updated.

EXECUTIVE SESSION

Chairman Barnwell asked for a motion to go into Executive Session for the purpose of discussing complaints and probable cause matters. A motion was made by Commissioner Jackson, seconded by Commissioner Erwin, to go into Executive Session. There being no discussion or opposition, the motion carried with a 7 – 0 vote. Vice Chair Li had an excused absence for this meeting.

RETURN FROM EXECUTIVE SESSION

Upon return from Executive Session, Chairman Barnwell noted complaints and probable cause matters were discussed in Executive Session. A motion was made by Commissioner Gist, seconded by Commissioner Erwin, to adopt and ratify actions taken with regard to complaints and probable cause matters in Executive Session. The motion carried unanimously with a 7 – 0 vote. Vice Chair Li had an excused absence for this meeting.

ADJOURNMENT

Chairman Barnwell asked for further discussion. There being none, a motion was made by Commissioner Wilson, seconded by Commissioner Gist, to adjourn at 12:29 p.m. The motion carried with a 7 – 0 vote. Vice Chair Li had an excused absence for this meeting.

Respectfully Submitted,



Karen A. Wiggins
Program Assistant