

**MINUTES**  
**COMMISSION MEETING**  
**OPEN SESSION**

**May 16, 2012**

The meeting was called to order by Chairman Phillip Florence, Jr. at 9:42 a.m. Other members present were Vice Chair E. Kay Biermann Brohl, Jonathan H. Burnett, Edward E. Duryea, Richard H. Fitzgerald, JB Holeman, G. Carlton Manley, and Priscilla L. Tanner.

Staff present:

Mr. Herbert R. Hayden, Jr., Executive Director  
Mrs. Cathy L. Hazelwood, Deputy Director/General Counsel  
Mrs. Ami R. Franklin, Assistant Director, Administration  
Mr. Daniel F. Choate, Investigator  
Ms. Kristin M. Smith, Administrative Coordinator  
Mrs. Karen A. Wiggins, Administrative Specialist

Others present:

Sarita Chourey  
Timothy E. Meacham  
David Rothstein  
Karen Just  
David Just  
Corey Hutchins

Chairman Florence stated that there was a change in the Agenda and the Advisory Opinion would be taken up after the Office Operations. Mr. Hayden confirmed, recognizing the media present.

## **MINUTES**

Motion was made by Vice Chair Brohl, seconded by Dr. Fitzgerald, to accept the Minutes as presented. The motion carried to approve the Open and Executive Session Minutes from the March 21, 2012 Commission meeting.

## **OFFICE OPERATIONS**

### **Compliance Reports**

Mr. Hayden presented the Compliance reports for March and April, 2012, as information only.

### **Budget 2011/2012**

Mr. Hayden presented the budget information for July 1, 2011 to May 15, 2012. Mr. Hayden then updated the Commissioners on budget legislation for the coming year. Discussions ensued concerning appropriations, future generated funds (from enforcement fines), and any new positions.

## **ADVISORY OPINION**

### **SEC AO2012-004 Conflict of Interest**

Mrs. Hazelwood presented to the Commission a statement and material of events in this matter. After review, questions were asked of staff and discussions ensued as to conflicts of interest concerning Coastal Carolina Board of Trustees funding the president's annuity from the Coastal Education Foundation's funds. Clarification statements were heard from Timothy E. Meacham of Coastal Carolina. There was further discussion concerning the president's involvement with raising funds and appearance of impropriety. Mr. Manley moved that the Commission accept the Advisory Opinion as written, seconded by Mr. Duryea. Chairman Florence asked for further discussion, and there being none, the motion carried with Mr. Burnett opposing.

## **APPEALS**

### **2011-017 State Ethics Commission vs. David A. Just**

Mr. Hayden presented this matter, stating that recusals for a decision were accepted from Vice Chair Brohl, Chairman Florence, and Mr. Holeman. Mr. Manley would be Acting Moderator.

Before all the parties were brought in, Mr. Manley had the Commissioners review their material for this matter. Attorney David E. Rothstein gave a 15 minute opening statement on

behalf of Dr. Just and Ms. Hazelwood responded. Discussion was held making sure the Commissioners had all of the correct documents for a decision. Mr. Manley then dismissed the parties, stating the Commission would let them know of their decision later.

A break was taken and upon return, Mr. Manley, still acting as Moderator, asked for a vote on discussing a decision. All agreed. A very lengthy discussion ensued as to looking at appearance of impropriety vs. language in the statute. A motion was made by Dr. Fitzgerald to reverse the decision of the original panel and withdraw the statement of a censure of public reprimand and expunge this from the record. The motion was seconded by Mr. Duryea. Mr. Manley asked for any further discussion, and Mr. Burnett stated that the motion defeated deliberation of any discussion. Mr. Manley responded that further discussions would be heard. Mr. Burnett reviewed events, emphasizing complete recusal action by Dr. Just. Dr. Fitzgerald responded that the statute does not say anything about impropriety and that's the reason for the judgment—not that he was guilty, it was an appearance of impropriety which is not a violation of the State Ethics Act. Further arguments ensued while each Commissioner presented their concerns in this matter. Mr. Manley reminded the Commission that arguments should have been made at the hearing panel, all they could do was evaluate the decision that was made—not go back and rehearse. Mr. Manley further reminded that appeals are very limited in the scope of what the Commission can look at, and stated that a different opinion should have been made at the time of the hearing. Mr. Burnett appealed to the Commission to look at what Dr. Just did and what Section 8-13-700(A) in the statute says.

Mr. Manley brought the meeting to order and reminded the Commission of Dr. Fitzgerald's motion to reverse the order, remove the statement of reprimand, and expunge the record, asking for a show of hands. Discussion ensued as to expunging the record. Staff clarified that the Commission could not strike something from a public record for probable cause. Dr. Fitzgerald asked for clarification, then removed his previous motion, and then amended his motion to reverse the findings of the first panel and withdraw the public reprimand, seconded by Mr. Duryea. Mr. Manley asked for further discussion, there being none, he asked for a show of hands in favor of the motion. Mrs. Tanner, Mr. Duryea, and Dr. Fitzgerald were in favor. Mr. Burnett opposed. Since there was no tie, Mr. Manley did not vote. The motion carried.

Mr. Manley asked about responding to the attorney's comments on due process "...the Ethics Commission's procedures do not involve any type of neutral and detached review of the evidence by an independent body." Dr. Fitzgerald asked for Ms. Hazelwood to join this discussion for legal clarification. All Commissioners were now present and agreed. Mr. Hayden asked for clarification on the decision and the vote just made. Discussion ensued. Ms. Hazelwood and Mr. Hayden responded to the Commission's questions on finding probable cause, acting like a grand jury, and handling motions to dismiss. Mr. Hayden reminded the Commission that they were doing exactly what the statute requires the Commission to do: determine facts sufficient; determine probable cause, and through a hearing panel, make a decision, adding that there is no provision in the statute for the procedure to leave the Commission until the current point where they were.

Discussion ensued as to legal procedures, opening up a can of worms, sticking to what they do, responding to Attorney Rothstein's document, and introduction of legal changes through the Legislature. Ms. Hazelwood asked for further clarification on the vote just taken. Mr. Manley responded, adding that the Commission wanted a discussion on Attorney Rothstein's comments about the Commission vs. a neutral independent body. Mrs. Hazelwood highlighted legal findings in the case, and then responded how the wording would be in the Appeal Order per the Commission's vote. It was agreed that there would be no further action other than the decision, vote taken, and an Appeal Order.

Chairman Florence took this opportunity to go on record and point out that as a result of this case, an appearance of impropriety is basically not a violation of 8-13-700(A). Mr. Hayden responded that the only time appearance of impropriety appears is in the Preamble to the Ethics Act, and that staff uses the term in dismissals; i.e., "there is no evidence that a violation occurred, however, the action created an appearance of impropriety." Mr. Hayden further stated that this is the first time the Commission has ever used this language in an order finding someone in violation of an appearance of impropriety. Chairman Florence stated that the Commission and staff should stay away from using that as a violation.

#### **APPEALS – continued**

Chairman Florence thanked Mr. Manley for serving as Acting Moderator, and continued with the Appeals on the Agenda. Mr. Hayden reminded the Commissioners of the new policy that staff has provided copies of a summary of each individual's background, information on the penalties and staff recommendation, copies of the letters of appeals from the individuals, and then any supportive documentation and correspondence that may be applicable to the case. The appeal statement is in writing, staff recommendation is in writing, and unless there are questions, there will be no presentation or verbal recommendation.

#### **Murry W. Brockman**

Documentation was reviewed. Lengthy discussions ensued about filers having problems with electronic filing and the filer's responsibility of following the guidelines and doing the required reports for serving in that position. Chairman Florence asked for a new policy that staff waive first time offenders who have an electronic filing problem in their appeal letter. All agreed. Mr. Manley made a motion, seconded by Mr. Holeman, to refund Mr. Brockman the \$100 penalty, but no further waivers would be given for this kind of break. Discussion ensued as to starting a precedent for anyone who had problems electronically filing their report.

Further discussion ensued as to letting Dr. Gilbert at Clemson look at sc.gov's electronic filing system. Staff responded as to why this could not happen. Dr. Fitzgerald asked for the

Commission to consider improvements to the system. Staff responded that improvement requests had already been processed at different levels, and sc.gov would begin making these changes by June or July to include the change of the year being filed and clear up the saved-not-filed issue. After further discussions, Mr. Hayden suggested that staff could change the policy to require a waiver be given to filers asserting in their appeal letters of having first-time electronic filing problems. This suggestion was not approved. Mr. Duryea recommended the Commission continue to look at each appeal on a case-by-case basis. Chairman Florence stated that he wants a letter sent to these people, who are filing electronically for the first time, explaining that they failed to file; however, the penalty was being waived because it was their first time to file electronically. The letter is to include language that it is their responsibility to learn to use the electronic system and no additional waivers would be granted.

Chairman Florence asked for confirmation of the motion by Mr. Manley, seconded by Mr. Holeman, to refund Mr. Brockman the \$100 penalty, but find him guilty of failing to file the required report. Chairman Florence further requested that Mr. Brockman be informed in his letter to say that the Commission encourages him to learn more about the electronic filing system so that future errors can be omitted, mentioning first time waiver of this kind, and that the Commission understands his situation, but here on out he needs to take it upon himself to learn about the system, use the Users Guide, and call staff if he needs further help. Mr. Hayden reminded the Commissioners that if the filers read the instructions, they will see all of this. Chairman Florence asked staff for a compromise, working to give the filer the responsibility of learning how to file electronically. Chairman Florence then asked for a vote in favor of the motion. The motion carried with Vice Chair Brohl and Mr. Burnett opposing.

Mr. Holeman then asked for Ms. Hazelwood to send an e-mail on what changes were being made to the electronic system by sc.gov.

### **George P. Copeland**

Documentation was reviewed. Discussion ensued as to problems Mr. Copeland had electronically filing his report, and staff submitted that he had filed electronically before. Further discussion ensued. Mr. Burnett made a motion, seconded by Mr. Manley, to accept the staff recommendation to deny the appeal. Chairman Florence asked for further discussion, there being none, the motion carried with no opposition.

### **Rufus B. Jones**

Documentation was reviewed. Mr. Manley made a motion to accept the staff recommendation to deny the appeal, seconded by Mr. Holeman. The motion carried with no discussion or opposition.

### **David M. McCall, Jr.**

Documentation was reviewed. Mr. Manley made a motion, seconded by Dr. Fitzgerald, to accept the staff recommendation to deny the appeal. The motion carried with no discussion or opposition.

**Mary S. Miller**

Documentation was reviewed. Discussions ensued. Mr. Manley asked for a procedural question concerning how the system will show that a report had been started if, say, lightning strikes the computer. Staff reported that it will show a saved-not-filed report up to the last entry before the computer was hit. Further discussion ensued as to filers showing proof of trying to file. Dr. Fitzgerald made a motion to accept the staff recommendation to deny the appeal, but asked that a letter be written stating that all records were carefully checked, and staff found that reports were filed after the deadline date for Ms. Miller. Mr. Holeman asked to add that if they could come up with proof that they did file before the deadline, let them know the Commission would be happy to reconsider their decision. Mr. Holeman then seconded the motion. Chairman Florence asked for further discussion. There being none, the motion carried with no opposition.

**Stephen Jahue Moore**

Documentation was reviewed. Discussion ensued concerning Mr. Moore's threat to resign. Staff responded that resigning instead of paying the fine comments happen a lot, but they don't realize that the violation has already happened. Mr. Burnett made a motion, seconded by Vice Chair Brohl and Mrs. Tanner, to accept the staff recommendation to deny the appeal. Chairman Florence asked for further discussion. There being none, the motion carried with no opposition.

**James L. Parks**

Documentation was reviewed. Discussion ensued concerning Mr. Parks' attempt at filing his report electronically. Mr. Burnett made a motion, seconded by Vice Chair Brohl, to accept staff recommendation to deny the appeal. Further discussion ensued. The Commission made the same request in the Brockman appeal for staff to let the Commissioners know if the filer had been given a previous waiver for a previous violation because of electronic filing problems. All agreed. Mr. Hayden asked for clarification on the decision made in this case vs. Mr. McCall's case. Further discussion ensued. Chairman Florence reminded the Commission of the motion made and seconded to accept staff recommendation. Mr. Holeman then amended the motion to accept staff recommendation to deny the appeal, to refund the \$100, and to use the exact language in the Brockman response letter. Further discussion ensued. Mr. Duryea and Mrs. Tanner seconded the motion. Chairman Florence asked for further discussion. There being none, the motion carried with Vice Chair Brohl and Mr. Burnett opposing.

**OTHER BUSINESS**

Dr. Fitzgerald asked at this time for clarification on isolated probable causes and waiving any previous violations during this period of time while changes or improvements were being made concerning the SEIs. Mr. Hayden responded that there is a different policy for handling complaint matters vs. handling administrative late filing appeal matters. After considerable

discussion, Dr. Fitzgerald then modified his request to make a motion that staff provide the Commissioners a history of the filer's past reports and note any waivers or grace period given for electronic filing problems. All agreed. Mr. Hayden stated that this history is already public information, but policy will now be for Ms. Smith to note this information in the Appeal memo on each case to the Commissioners in their Commission meeting packet concerning appeals or violations with penalties levied if the filer had prior issues with the electronic system and if the Commission waived it.

### **APPEALS - continued**

#### **Michael S. Seekings**

Documentation was reviewed. Discussion ensued concerning filing early and the timeframe Mr. Seekings had for filing his reports. Mr. Manley made a motion, seconded by Mr. Burnett, to accept the staff recommendation to deny the appeal. Chairman Florence asked for further discussion. There being none, the motion carried with no opposition.

#### **Lancer D. Shull**

Documentation was reviewed. Discussion ensued concerning Mr. Shull's lack of notice for filing required reports. Mr. Manley made a motion, seconded by Mr. Holeman, to accept staff recommendation as to the violations, reduce the penalty to \$150, and make payment within 30 days or revert back to original penalty. Chairman Florence asked for further discussion. There being none, the motion carried with no opposition.

#### **Darwin Simpson**

Documentation was reviewed. Discussion ensued concerning Mr. Simpson's appointment and lack of notice for filing required reports. Mr. Duryea made a motion, seconded by Mr. Manley, to accept staff recommendation to deny the appeal. Chairman Florence asked for further discussion. There being none, the motion carried with Mr. Holeman and Dr. Fitzgerald opposing.

### **DISCUSSION**

#### **Legislation**

Mr. Hayden presented a status on legislation staff was tracking, noting the definition of committee bill did not make the crossover deadline, and none of the other legislation had made any progress. Discussion ensued. Mr. Hayden reminded the Commissioners that next year is the beginning of a new two-year session, and all bills will have to be introduced again.

#### **Newspaper Article**

Mr. Hayden presented an article from *Greenville Online.com* entitled "Confidence in elections at stake." Discussion ensued as to the current Supreme Court's decision on candidates eligible for being on the ballot pursuant to the filing of a Statement of Economic

Interests report. Mr. Hayden clarified the requirement that the candidate should have hand delivered a copy of the electronically filed Statement of Economic Interests report with the Declaration of Candidacy to the party election official while the books were opened, and stated that a lot of the candidates were now having to get petition signatures to be on the ballot for the General elections in November. Dr. Fitzgerald asked for clarification on what function the State Ethics Commission had in the Supreme Court's decision, and Mr. Hayden responded there was no involvement.

Mr. Duryea asked about any new appointments, and Mr. Hayden said there would be no new appointments until all congressional districts have been established.

There being no further discussions, these matters were approved as presented.

### **EXECUTIVE SESSION**

Chairman Florence asked for a motion to go into Executive Session. A motion was made by Mr. Manley, seconded by Mr. Duryea, to go into Executive Session. The motion carried.

### **RETURN FROM EXECUTIVE SESSION**

Upon return from Executive Session, a motion was made by Mr. Duryea, seconded by Vice Chair Brohl, to adopt and ratify actions taken in Executive Session. The motion carried.

### **ADJOURNMENT**

A motion was made by Mr. Holeman, seconded by Mr. Manley, to adjourn. There was unanimous consent. The motion carried.

Respectfully submitted,

Karen A. Wiggins  
Administrative Specialist