

**MINUTES
COMMISSION MEETING
OPEN SESSION**

November 28, 2012

The meeting was called to order by Chairman Phillip Florence, Jr., at 9:46 a.m. Other members present were Vice Chair E. Kay Biermann Brohl, Jonathan H. Burnett, Richard H. Fitzgerald, JB Holeman, and G. Carlton Manley. Priscilla L. Tanner was absent.

The news media was duly notified.

Staff present:

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

Others present:

Myers Rollins, Jr.

MINUTES

Motion was made by Dr. Fitzgerald, and seconded by Mr. Manley, to accept the Minutes as presented, with one correction of Ms. Hazelwood's name. Vice Chair Brohl asked about Mr. Robert Grabowski's first payment. Discussion ensued. There being no further discussion, the motion carried with no opposition to approve the Open and Executive Session Minutes from the September 19, 2012 Commission meeting.

POINT OF ORDER

Mr. Hayden asked the Commission for a change in the Agenda to present the matter of Myers Rollins, Jr., at this time since the parties were present. All agreed.

MOTION

Myers Rollins, Jr.

Ms. Hazelwood presented Myers Rollins, Jr.'s Motion to Reconsider Finding and Penalty to the Commission. Ms. Hazelwood and Mr. Rollins gave opening statements. Questions were asked by the Commissioners and Mr. Rollins responded. Discussion ensued as to the time of events; need to re-open the matter; and current compliance status. Chairman Florence asked for further discussion. There being none, Vice Chair Brohl made a motion, seconded by Mr. Manley, to grant the Motion to Reconsider Finding and Penalty. There being no opposition, the Motion was granted.

OFFICE OPERATIONS

Chairman Florence brought the meeting back to order and stated the Commission would now continue with Office Operations as the next item of business on the Agenda.

Budget 2012/2013

Mr. Hayden presented for information the budget information for the fiscal year July 1, 2012 to November 26, 2012, noting nothing different than what is normally presented. Mr. Hayden updated the Commissioners on appropriations and earmarked funds; budget hearings starting in January with the House Ways & Means; request to the Governor's Office for an increase in appropriations to cover salaries and related costs; and noted that staff has received new computers and an increase for upgrading the electronic filing system. Questions and discussions ensued concerning computer contract/services and appropriations money. Mr. Burnett asked about any legislative revisions, and Mr. Hayden stated that would be taken up under Discussion of Legislation later on the Agenda.

Compliance Reports

Mr. Hayden presented for information the Compliance reports for September and October, 2012, noting everything is in line where it should be. Mr. Holeman asked for clarification on the significant increase of penalty fees. Mr. Hayden stated that staff was putting forward an extra effort to catch up so staff could handle current matters. Discussion ensued as to ease and efficiency of new automatic filing system. Chairman Florence asked if there was an increase in people failing to file, and staff responded there was not. Dr. Fitzgerald noted that before it was an absence of intent, now the filers can't handle complexity of machines, and then asked if the Ethics Commission had been hacked like the Department of Revenue. Discussion ensued. Mr. Hayden and Ms. Hazelwood responded no to the hacking question, and noted that sc.gov—a

private entity—maintains the website for the State—of which we are a part—and that bank and other confidential information are behind a firewall and encrypted. Discussion ensued.

APPEALS

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.

Patrick A. Reilly

Mr. Hayden advised the Commissioners to also review additional documentation in the Green Folder on Mr. Reilly's matter. Documentation was reviewed. Discussion ensued as to Mr. Reilly's problem with filing the reports. Mr. Manley made a motion, seconded by Mr. Holeman, to waive the penalty and refund the payment, but find Mr. Reilly in violation. Vice Chair Brohl asked if he had filed on time all of his previous reports. Staff responded yes. Chairman Florence asked for further discussion. There being none, the motion carried with no opposition.

Peter Alan Smith

Documentation was reviewed. Discussion ensued as to Mr. Smith's visually-challenged problem filing any reports; Mr. Hayden's good job putting together the appeals process; and declaring a violation but waiving the penalty. Mr. Holeman made a motion, seconded by Mr. Manley, to declare there is a violation, but waive the penalty. Chairman Florence asked for further discussion. There being none, the motion carried with no opposition.

Mr. Hayden reminded the Commissioners of the process whereby the Governor's Boards and Commissions Office sends the State Ethics Commission notice of new or reappointed members. Staff then sends notice to the new or reappointed member to contact the State Ethics Commission for filing their SEI upon assuming their new duty.

Dale K. Surrett

Documentation was reviewed. Mr. Manley made a motion, seconded by Mr. Burnett, to accept staff recommendation that the appeal be denied. Chairman Florence asked for further discussion. There being none, the motion carried with no opposition.

Daniel R. Varat

Mr. Hayden advised the Commissioners to review documentation in the Green Folder on Mr. Varat's matter. Documentation was reviewed. Mr. Manley notified Chairman

Florence that he is not friends with Mr. Varat, but knows him and has had some dealings with him, but feels that there is nothing to impair his ability to make a fair judgment in this matter. There was no opposition. Mr. Holeman made a motion, seconded by Mr. Burnett, to find Mr. Varat in violation but waive the penalty. Discussion ensued as to writing a letter to Mr. Varat making him aware that future failures to file because of lack of understanding the filing system will not be waived, and he should call the State Ethics Commission staff for help. Further discussion ensued as to Mr. Varat's association with Senator Ryberg. Chairman Florence wanted to clarify with staff to also send to Patrick A. Reilly and Peter Alan Smith this additional language about no future violations of this type will be waived. Mr. Hayden confirmed. There being no further discussion, the motion carried with no opposition.

DISCUSSION

Legislation

Mr. Hayden presented to the Commission staff's 2013 legislative recommendations and changes for Senator Hayes' subcommittee, and stated that a final draft should be ready by December 5 for the full committee. Considerable discussion ensued as to an agreed definition for "committee" and its contribution to problems for the 2012 primary and general elections. Further discussion ensued concerning self-interest incumbents, SEI filings by candidates, and fuller disclosure on SEIs. Mr. Hayden further advised that there were 5 groups working on ethics reform: Governor Haley's committee, Senator Hayes' committee, Senator Courson's committee, the House Republican Committee, and the House Democratic Committee.

Dr. Fitzgerald asked about the timeframe for any updates or changes to forms via the electronic filing system. Staff responded 6 to 12 months once finalized.

Mr. Burnett asked about any discussion on severing the Commission financially from the General Assembly. Staff responded why this could not happen, the major one being that it's unconstitutional for a body such as the Commission to take any action against a member of the General Assembly. Further discussion ensued putting together an investigative committee outside the House and Senate.

Dr. Fitzgerald asked for clarification on the Commission and staff receiving any complaints or any criticism from the Legislature—other than the study which graded all state ethics commissions and the recent electoral issue. Mr. Hayden and Ms. Hazelwood responded that both the Commission and staff came through unscathed.

Mr. Hayden updated the Commission on new leadership for certain committees.

Appointments

Mr. Hayden presented to the Commission an update on State Ethics Commission appointments. Chairman Florence asked if there was any response to the Commission's recent letter to Governor Haley regarding any new appointments. Mr.

Hayden stated that there has been no response, although he and Ms. Hazelwood had been told at a meeting on another issue with the Governor's staff that they were looking at new appointments.

Mr. Hayden requested, with unanimous consent, to take a short break.

EXECUTIVE SESSION

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

RETURN FROM EXECUTIVE SESSION

Upon return from Executive Session, a motion was made by Mr. Manley, seconded by Mr. Holeman, to adopt and ratify actions taken in Executive Session. The motion carried.

ADJOURNMENT

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

Respectfully submitted,

Karen A. Wiggins
Administrative Specialist