

MINUTES
COMMISSION MEETING
OPEN SESSION

September 19, 2012

The meeting was called to order by Chairman Phillip Florence, Jr., at 9:33 a.m. Other members present were Vice Chair E. Kay Biermann Brohl, Jonathan H. Burnett, Richard H. Fitzgerald, JB Holeman, and Priscilla L. Tanner. G. Carlton Manley arrived at 9:35.

Staff present:

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

Others present:

Attorney Todd Kincannon
Dan Herren
Constance Holmes

MINUTES

Motion was made by Vice Chair Brohl to accept the Minutes as presented. Dr. Fitzgerald was absent at the July 18 meeting and questioned whether he could participate on the motion. Chairman Florence responded he could. Motion was seconded by Dr. Fitzgerald. The motion carried with no opposition to approve the Open and Executive Session Minutes from the July 18, 2012 Commission meeting.

POINT OF ORDER

Mr. Hayden asked the Commission for a change in the Agenda to present two motions to be taken up at this time since the parties were present. All agreed.

MOTIONS

C-2010-035 State Ethics Commission vs. Daniel C. Herren

Mrs. Hazelwood presented to the Commission this matter, and said that the Motion to Alter or Amend Penalty had been withdrawn. Discussion ensued. Ms. Hazelwood responded.

C-2012-033 State Ethics Commission vs. Constance J. Holmes

Mrs. Hazelwood presented to the Commission Ms. Holmes' matter. Chairman Florence stated for the record which case was being heard. Present were Ms. Holmes and her attorney, J. Todd Kincannon. Mr. Kincannon gave a statement and then asked the Commission for a Motion to Dismiss the complaint. There were considerable questions and discussions concerning the auditor's error, auditor's involvement, awarded exemptions, amended procurement policy, contracts, affidavits, and Ms. Holmes' resignation. Mr. Kincannon and staff responded. After requesting for any further questions, Chairman Florence advised Ms. Holmes and Mr. Kincannon that the Commission would get back to them with their decision. Mr. Kincannon asked if they could stay and wait for the Commission's decision. There was no opposition to this request.

POINT OF ORDER

Chairman Florence was continuing with the next item of business on the Agenda when Mr. Manley asked Chairman Florence if the Commission could go ahead and take up Mr. Holmes' Motion to Dismiss now. Chairman Florence asked for any opposition. There being none, Mr. Holeman made a motion to accept the Motion for Dismissal, seconded by Mr. Manley. Chairman Florence asked for any discussion. Considerable discussion ensued concerning conflicts of interests, process of procedures, purchase policy procedures, and events of the investigation. Mr. Hayden reminded the Commission that an investigation was done, probable cause was found, a Notice of Hearing was issued, and Mr. Kincannon has now filed a Motion to Dismiss prior to a hearing-- no charges of guilt or innocence--just dismiss the charges at this time or move to the next step. Mrs. Hazelwood then stated that based on the basis of the complaint she had no dispute with Mr. Kincannon's statement, that there should have been submitted to the Commission the procurement policy Mr. Kincannon mentioned which shows that the Respondent did not instigate the change to the procurement policy, the change did not impact her hiring to begin with, and there is no evidence from Investigator Choate that probable cause was found. Chairman Florence asked for further discussion, and there being none, he asked if all were in favor of the motion. The motion carried with no opposition to grant the Motion to Dismiss.

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.

OFFICE OPERATIONS

Budget 2012/2013

Mr. Hayden presented budget information for the new fiscal year July 1, 2012 to August 31, 2012. Mr. Hayden also updated the Commissioners on the budget passed by the Legislature for the new fiscal year, upkeep on the electronic filing system, and new computers for the office. Questions and discussions ensued concerning computer contract/services and appropriations money. Dr. Fitzgerald asked for clarification on the payment that was made in the SC Responsible Government matter to the Insurance Reserve Fund mentioned in the July Commission meeting Minutes. Staff responded.

Compliance Reports

Mr. Hayden presented the Compliance reports for July and August, 2012, noting the July 31, 2012, report Total should be a decrease—not an increase. Discussion ensued as to how the electronic system could generate penalty letters. Staff responded how this was problematic, but praised the system on flagging late or no filers after a deadline.

DISCUSSION

Legislation

Mr. Hayden updated the Commission on issues for the upcoming new two-year legislative session concerning changes in the ethics law (candidate filings, definition of committee, electronic report filing), and the Attorney General's interest to change criminal penalties in the statute and establish a Public Integrity Initiative task force made up of the AGs office, Ethics Commission, SLED, Office of Inspector General and the Department of Revenue to coordinate investigations and bring the AGs office in at an earlier point than what is done now. Considerable discussion ensued concerning House and Senate Ethics Committees' handling of probable cause cases. Staff responded. Further discussion ensued as to the handling of Judiciary ethics group cases. Staff responded. Further discussion ensued as to the maximum \$5,000 cap on fines.

Appointments

Mr. Hayden presented to the Commission for information only that the Governor removed Mr. Duryea from the State Ethics Commission because his term ended and new districting put him in another district. Discussion ensued and staff responded as to passage of the new 7th Congressional District and State Ethics Board and Commission appointments. Mr. Hayden stated that he has been in contact with the Governor's Boards and Commissions office concerning this issue. Discussion ensued as to interim appointments, who had asked for re-appointment, and a possible whole new Commission. Further discussion ensued after Mr.

Holeman requested that a letter to be written to the Governor concerning the current Commissioners' ending terms and the possibility of 9 brand new members in 2013 for the State Ethics Commission. Further discussion ensued. Dr. Fitzgerald made a motion, seconded by Mr. Manley, and unanimously agreed to, that the Executive Director would send to the Commissioners for their approval a draft letter to the Governor. The final letter would be signed by Chairman Florence, showing full support of the Commission.

POINT OF ORDER

Mr. Hayden asked to take up the matter concerning Robert Grabowski who is a member of Horry County Council. Mr. Hayden gave a brief history of Mr. Grabowski's March, 2012, hearing concerning 19 counts of various violations and the Commission's decision to give him 6 months to pay the \$11,035--a reduced amount. Mr. Grabowski's time runs out November 9, and his attorney called asking for an appeal and was told no. They then asked for an extension (amount reverts back to \$35,000). Discussion ensued. Mr. Holeman made a motion that Mr. Grabowski pay half by November 9, then pay half of the remaining amount by February 9, and then pay the remaining balance by May 9. Mr. Burnett seconded the motion. Chairman Florence asked for favor of the motion, and there being no opposition, the motion carried.

Mr. Holeman made a motion, 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 Vice Chair Brohl, seconded by Dr. Fitzgerald, to go into Executive Session. The motion carried.

RETURN FROM EXECUTIVE SESSION

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

ADJOURNMENT

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

Respectfully submitted,

Karen A. Wiggins
Administrative Specialist