

State of South Carolina

State Ethics Commission

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VICE CHAIR
THOMAS M. GALARDI, 2nd DISTRICT
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REGINA HOLLINS LEWIS, 6th DISTRICT
JULIE J. MOOSE, 7th DISTRICT
BRIAN M. BARNWELL, MEMBER AT LARGE

5000 THURMOND MALL, SUITE 250
COLUMBIA, S.C. 29201

HERBERT R. HAYDEN, JR.
EXECUTIVE DIRECTOR

MINUTES COMMISSION MEETING OPEN SESSION

November 18, 2015

The meeting was called to order by Chairman Warren at 9:32 a.m. Other members present were Vice Chair Sherri A. Lydon, Francis E. Grimbball, Sandy Templeton, Twana Burris-Alcide, Regina Hollins Lewis, and Julie J. Moose. Brian M. Barnwell arrived at 9:46. Thomas M. Galardi was absent.

The news media was duly notified and present at today's meeting.

Staff present:

Herbert R. Hayden, Jr., Executive Director
James T. Bagnall, Senior Investigator
Michael R. Burchstead, General Counsel
Daniel F. Choate, Investigator
Ami R. Franklin, Assistant Director, Administration
Ryenne Gillum, Investigator
Kristin S. Nabors, Administrative Coordinator
Karen A. Wiggins, Court Reporter

Others present:

Kenneth E. Darr, Jr.,
Cynthia Roldan
James Smith
Jamie Self
Seanna Adcox
Eddie Dearybury
Doug Jennings
Terry Eades
Laddie Howard

Chairman Warren welcomed everyone, and reminded the members to use their microphones when speaking for the record. Chairman Warren then directed everyone to their yellow folder for the Amended Open Session Agenda.

MINUTES

Motion was made by Mr. Grimbball, seconded by Mrs. Burris-Alcide, to accept the Minutes as approved. Chairman Warren 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 September 16, 2015 Commission meeting.

OFFICE OPERATIONS

Budget 2015/2016

Mr. Hayden presented for information only the budget. The Budget report was accepted as presented.

Compliance Reports

Mr. Hayden presented for information only the Compliance reports for September and October, 2015. The Compliance reports were accepted as presented.

Motion to Amend Previous Orders Nunc Pro Tunc

C-2014-097 through 133 – Krista Thom vs. Michael A. Wilson

Mr. Burchstead stated that this *Nunc Pro Tunc* Motion on the previously dismissed complaints against Attorney General Alan Wilson related to the present complaint matter against Mr. Wilson, Complaint C2015-068. Mr. Burchstead gave a history of events on these thirty-seven complaint matters and their relation to the present complaint. Specifically, Mr. Burchstead stated that all thirty-seven complaints were dismissed by the Commission for various reasons, but the Dismissal Orders did not accurately reflect the reasons for dismissal in all instances. At the same time as dismissing these complaints, Mr. Burchstead stated that the Commission acted to file one complaint based on the information contained in eight of the dismissed complaints. He stated that the Orders dismissing these eight complaints indicated that dismissal was due to lack of probable cause, when they were actually dismissed because of issues with Ms. Thom. Through this motion, Mr. Burchstead stated that he was asking the Commission to amend thirty-five of the thirty-seven Dismissal Orders so that the public record is accurate as to the reason for dismissal. Questions and clarification were discussed concerning the events affecting the Commission's decision to dismiss the thirty-seven complaints and file the one complaint. Mr. Burchstead responded to several questions from Commissioners. Following his initial remarks, Mr. Burchstead asked to state for the record that he knows Respondent personally, that he has worked with the Respondent and for the Respondent, but none of that affects his ability to be impartial in this case.

Mr. James Smith, attorney for the Respondent, stated his concerns about amending the previously dismissed complaints. Mr. Smith questioned the availability of evidence of the previous Commission action. In response, Mr. Grimbball provided a procedural history of these matters that recounted the decision of the Commission to dismiss the earlier complaints and file the one complaint. Mr. Smith stated his belief that the Commission should generally not pursue enforcement matters

against people, such as Mr. Wilson, who make corrections and return contributions prior to the filing of a complaint. He also asked the commission to consider a referral of Krista Thom's conduct to law enforcement.

In closing, Mr. Burchstead stated that action does need to be taken to amend the orders to have an accurate public record. Chairman Warren asked for further discussion. There being none, a motion was made by Mr. Grimbball, seconded by Mrs. Burris-Alcide, to grant the *Nunc Pro Tunc* motion consistent with Mr. Burchstead's recommendation. There being no further discussion, the motion carried with a 7 – 0 vote. Mr. Barnwell abstained from voting since he was not part of the earlier decision.

Motion to Reconsider Probable Cause Determination

Mr. Smith thanked the Commission for their action on the previous matter, and then gave a brief history of events leading up to this motion. Because the *Nunc Pro Tunc* motion was granted as to the Krista Thom complaints, Mr. Smith stated that he was not making *res judicata* arguments as previously planned. Instead, his argument would focus on his view that Mr. Wilson's errors should be viewed as technical violations under Section 8-13-1372. Mr. Smith reiterated that these were inadvertent errors that were corrected when brought to Respondent's attention, and all excessive contributions have been returned. Discussion ensued concerning how inadvertent errors are handled, the validity of the complaint, and what the Commission should treat as a technical violation. If the Commission does not dismiss this complaint as containing technical violations, Mr. Smith added that he is also asking the Commission to consider the option of finding probable cause and waiving further proceedings. As waiver of further proceedings was not included in Mr. Smith's brief, Mr. Grimbball asked if he wanted to add this option for relief. Mr. Smith responded yes, and Chairman Warren accepted this for the record.

Mr. Burchstead argued that the violations in the complaint should not be treated as technical violations under Section 8-13-1372, but substantive violations of the Ethics Act. He stated the inadvertent and unintentional nature of the violations would be mitigating factors at a hearing or in negotiating a Consent Order, but dismissal was not appropriate on this basis. Section 8-13-1372 was appropriate for reporting errors on campaign reports, he stated, but not for acceptance of excessive contributions. Questions were asked and clarification was given concerning how to treat inadvertent and unintentional violations, and under what circumstances Section 8-13-1372 applies. Mr. Burchstead was asked if Commission staff would object if the Commission dismisses and takes no further action. Mr. Burchstead responded he would object to this being treated as a technical violation, that the acceptance of an excessive contribution is a substantive violation. However, if the Commission wished to find probable cause and waive further proceedings, Commission staff would not object, but handling the matter this way was clearly within the Commission's discretion. Further discussion ensued concerning whether it was appropriate to find a technical violation, find probable cause and waive further proceedings, or take some other action. Further discussion ensued concerning taking the time to reconsider the investigative report and then make a determination.

Mr. Smith then gave his reply, asking the Commission to consider finding probable cause and waive further proceedings, and no fine. Further discussion ensued concerning the corrective actions taken by Respondent as soon as the errors were brought to his attention. Chairman Warren then asked for further discussion. Mr. Grimbball asked about the procedural process for denying the motion, finding probable cause, and then considering whether it was appropriate to waive further proceedings. Discussion ensued. A motion was made by Mr. Grimbball, seconded by Vice Chair Lydon, to deny Mr.

Smith's motion, but reconsider taking no action at the January Commission meeting. Mr. Barnwell stated for the record that he recused himself on the previous motion because he was not on the Commission when the earlier complaints were decided, but he will be participating in the present decision. Discussion ensued concerning taking action to reconsider the investigative report in today's Executive Session. Mr. Grimbball then amended his motion, seconded by Mrs. Lewis, to deny the motion but undertake a consideration in Executive Session of the investigative report to determine whether it would be appropriate to waive further proceedings and take no action. Chairman Warren asked for further discussion or opposition. There being none, the motion carried with an 8 – 0 vote.

After return from Executive Session, Chairman Warren asked for discussion or a motion in this matter. Discussion ensued that when first considering probable cause, the Commission was provided the option of waiving further proceedings, but chose not to exercise this option. It was agreed that considerable time was spent on dealing with the thirty-seven complaints. Mr. Grimbball gave a timeline of events that the Commission made in this matter, and staff agreed. Chairman Warren reminded the Commission that because the issues in the present complaint had been fixed before being flagged by staff and/or the electronic system, this matter would not have been brought before the Commission absent a complaint. Vice Chair Lydon made a motion, seconded by Mrs. Moose, to adopt staff recommendation to find that probable cause is present to support the eight violations, but waive further proceedings due to the fact that prior to receiving the complaint, the Respondent took action to correct the alleged violations. Chairman Warren asked for further discussion. Mr. Hayden corrected the records to show that that was not a staff recommendation; it was one of the options for the Commission. Chairman Warren thanked Mr. Hayden for that correction. Chairman Warren then asked for further discussion or opposition. There being none, the motion carried with an 8 – 0 vote.

Chairman Warren asked to take a break at this time. All agreed.

APPEALS

Chairman Warren stated for the record that there would be no testimonies for a hearing on these matters, these are just arguments for an appeal, and an opportunity will be given for questions. A motion will not be entertained at the end of each appeal for a decision, but each appeal will be taken under advisement and deliberated as a body at an appropriate time, and then an order will be forthcoming based on the Commission's decision.

C2013-029 State Ethics Commission vs. Eddie Dearybury

Chairman Warren presented this matter. Mr. Kenneth E. Darr, Jr., attorney for the Respondent, gave an opening statement, noting that the Respondent did not receive the certified notice of the hearing in this matter, and asking for reconsideration of the order. Mr. Burchstead gave a history of events concerning the default judgment made by the Commission. Questions were asked and clarification was given concerning procedures for handling a hearing with a no-show from the Respondent and the administrative burden of serving documents on people. Discussion ensued, initiated by Mr. Grimbball, about the rules of legal service in this case. Chairman Warren asked for any discussion. There being none, Chairman Warren thanked everyone, and stated that this matter would be taken under advisement.

After return from Executive Session, Chairman Warren asked for discussion or a motion in this matter. Mr. Grimbball made a motion, seconded by Mrs. Lewis, to grant the appeal and set this matter for a hearing when appropriate. Mr. Barnwell asked to clarify that this was for the 2013 matter. It was confirmed. There being no further discussion or opposition, the motion carried with an 8 – 0 vote.

C2013-134 State Ethics Commission vs. Terry V. Eades

A Statement of Recusal was submitted by Chairman Warren. Acting Chair Lydon presented this matter. Doug Jennings, Jr., attorney for the Respondent, noted that the Respondent was a first-time candidate, that there was inadvertent and unintentional neglect by the Respondent; that there was communication challenges between Respondent and staff at the hearing which was without counsel; and they were here to appeal the fine amount. Mr. Burchstead then gave a history of events, noting that Respondent had his right to a hearing, and that there was no justification to overturn the decision. Mr. Jennings continued his argument by stating that the Department of Revenue issued a notice of levy against the Respondent's bank account while this matter was being appealed, and noted correspondence of the appeal between Respondent and staff during this time. Mr. Burchstead clarified on the Commission's policy of sending matters to the Department of Revenue for collection, but he stated no money was collected on this matter. Mr. Grimbball asked if the Commission has the authority to change the punishment in the amount or time period to make it something Respondent can pay. Discussion ensued that in the past the Commission has given an extension for payment. Mr. Jennings gave a closing statement concerning correspondence with staff, technical errors, possible damages to Respondent from the debt going to DOR, and asked the Commission to go back and do a reduced fine that is more equitable and fair. Acting Chair Lydon asked for further discussion. There being none, Acting Chair Lydon thanked everyone, and stated that this matter would be taken under advisement.

Later, Acting Chair Lydon asked Mr. Burchstead and Mr. Jennings to come forward and present some additional documentation in this matter. Mr. Burchstead submitted (out of order) at the request of Mr. Jennings the letter dated December 22, 2014, concerning the appeal (Exhibit B), letter from former General Counsel Cathy Hazelwood to Mr. Jennings dated December 16, 2014 (Exhibit C), and a letter from Mr. Jennings to Ms. Hazelwood dated December 16, 2014 (Exhibit A). Mr. Grimbball asked for clarification on the timing of a levy to the banks and correspondence of an appeal to the Commission. Mr. Jennings responded, and then offered to enter into a Consent Order to require Respondent to pay a total fine of \$2,000 within 30 days, and then Respondent would give up any further claims he may have against the Commission. There being no further questions or discussion, Acting Chair Lydon thanked everyone.

After return from Executive Session, Acting Chair Lydon asked for discussion or a motion in this matter. Mr. Barnwell asked for clarification on events leading up to the hearing and there being no legal presentation. Discussion ensued between Commission and staff concerning the appeal being presented after the levy was made by DOR, other court action, and the statements of events offered by Mr. Jennings and his offer for a Consent Order before being settled. Staff responded by referring to the Remedies section given to the Commissioners. Mr. Grimbball made a motion, seconded by Mr. Templeton, to take this under advisement and direct Mr. Burchstead to enter into negotiations with Mr. Jennings to resolve this matter completely. Acting Chair Lydon asked for further discussion or opposition. There being none, the motion carried with a 7 – 0 vote. Chairman Warren not voting.

C2015-004 State Ethics Commission vs. Laddie T. Howard

Statements of Recusal were submitted by Mrs. Lewis and Mr. Barnwell. Chairman Warren presented this matter. Respondent noted a long history of events in this matter, stating that he was a lobbyist for a long time, that paid penalties in the past, but had never been assessed any penalty of this magnitude. Discussion ensued concerning his hardships, the decision rendered by the Commission for judgment by default, and a request for a fair and reasonable reduction in the penalty. Mr. Burchstead then gave a history of events noting that the Respondent did initial the green card and was duly notified, that noted

that seventeen previous penalties had been assessed against him. Respondent agreed concerning the previous penalties, but stated that it all happened because of one issue that compounded. Questions were asked and clarification was given concerning the number of penalties and receipt of correspondence. Discussion ensued. When presented the green card for the Notice of Hearing by Investigator Bagnall, Respondent denied the signature was his. Chairman Warren thanked everyone, and stated that this matter would be taken under advisement.

After return from Executive Session and a break, Chairman Warren asked for discussion or a motion in this matter. Discussion ensued concerning the denial of the signature of the Respondent on the green card concerning the Notice of Hearing and his request to consider extenuating circumstances. Chairman Warren asked for further discussion. Mr. Grimball made a motion, seconded by Mrs. Burris-Alcide, to grant the appeal on the sole basis that Respondent denied that it was his signature on the green card, and set this matter for a hearing when appropriate. There being no opposition, the motion carried with a 6 – 0 vote. Mrs. Lewis and Mr. Barnwell not voting.

C2015-010 State Ethics Commission vs. Betty Wright-McRae

Statements of Recusal were submitted by Mrs. Lewis and Mr. Barnwell. Chairman Warren presented this matter. Mr. Burchstead gave a history of events, and stated that staff did not object to Respondent's request for a new hearing in this matter. Discussion ensued concerning Respondent not receiving the Notice of Hearing and certain medical issues. Chairman Warren asked Mr. Burchstead if he was in favor of granting the appeal. Mr. Burchstead responded he would be in favor of that. Mr. Grimball moved, seconded by Mr. Templeton, that the Commission grant the appeal and set this matter for a hearing on the merits addressed. Chairman Warren asked for further discussion or opposition. There being none, the motion carried with a 6 – 0 vote. Mrs. Lewis and Mr. Barnwell not voting.

ADVISORY OPINION

SEC AO 2016-004 Club Membership Dues Paid With Campaign Funds

Chairman Warren presented this matter. Mr. Burchstead directed everyone to their yellow folder for a draft opinion concerning a request from staff as a result of candidates using campaign funds at membership clubs. Mr. Burchstead further stated that Commission staff is of the opinion that this is not an acceptable campaign expenditure. Discussion ensued concerning the federal guidelines, previous opinions on dues, and campaign funds paying for a meal. Mr. Grimball asked for the opinion to be more detailed. Chairman Warren asked for further discussion. There being none, Chairman Warren asked to take this under advisement, and then consider it at the January 2016 meeting. All agreed.

NEW BUSINESS

Chairman Warren asked Mr. Hayden to come forward. All of the staff was present for this event. Chairman Warren gave a history of Mr. Hayden's tenure with state government--who is trusted and respected by all, and presented to him the State pen for his 30-plus years of service. Congratulatory comments were presented from the Commission and staff. Mr. Hayden thanked everyone.

EXECUTIVE SESSION

Chairman Warren then asked for a motion to go into Executive Session. A motion was made by Mr. Grimball, seconded by Vice Chair Lydon, to go into Executive Session. The motion carried with an 8 - 0 vote.

RETURN FROM EXECUTIVE SESSION

Upon return from Executive Session, a motion was made by Mrs. Lewis, seconded by Vice Chair Lydon, to adopt and ratify actions taken in Executive Session, noting for the record that with regard to Complaint C2015-068 in the matter of Michael A. Wilson, that there was no action taken on that matter during Executive Session, and that the consideration of that matter only included a presentation of some information regarding Investigator Bagnall. Chairman Warren reminded everyone that if you recused yourself on a matter in Executive Session, you are still recused on that matter with this vote. The motion carried with an 8 - 0 vote.

POINT OF ORDER

Chairman Warren asked at this time to continue with the Amended Open Agenda. There was no opposition. (See affected agenda items for further action.)

ADJOURNMENT

Chairman Warren asked for any further discussion. There being no further business, Mr. Grimball made a motion, seconded by Mrs. Moose, to adjourn. The motion carried with a 7 - 0 vote. Mrs. Lewis had left for a 3:30 appointment.

Respectfully submitted,



Karen A. Wiggins
Administrative Specialist