

State of South Carolina

State Ethics Commission

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

HERBERT R. HAYDEN, JR.
EXECUTIVE DIRECTOR

MINUTES COMMISSION MEETING OPEN SESSION

July 20, 2016

The meeting was called to order by Vice Chair Sherri Lydon at 9:30 a.m. Other members present were Francis E. Grimball, Julie J. Moose, Sandy Templeton, Thomas M. Galardi, Twana Burris-Alcide, and Regina Hollins Lewis. Absent were Chairman James I. Warren, III, and Brian M. Barnwell.

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

Staff present: Herbert R. Hayden, Jr., James T. Bagnall, Michael R. Burchstead, Dan Choate, Ami R. Franklin, Kristin S. Nabors, Katie Nilges, and Karen A. Wiggins.

Others present: Ashley B. Strom, John S. Nichols, Chris Trainor, Butch Bowers, Seanna Adcox, and Maya Prabhu.

Vice Chair Lydon welcomed everyone and presented the Amended Open Session Agenda.

MINUTES

Motion was made by Mrs. Moose, seconded by Mrs. Burris-Alcide, to accept the Minutes as approved. Vice Chair Lydon 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 18, 2016 Commission meeting.

ADVISORY OPINIONS

Reconsideration of AO2016-001 Regarding State University Lobbyist's Principal Providing Season Football Tickets and Suite Access to Governor's Office

Vice Chair Lydon called this matter. Mr. Michael Burchstead advised the Commission that, as a matter of procedure, all advisory opinions will only be issued a number once they have been approved. Mr. Burchstead then directed everyone to their yellow folder for an alternative draft of existing opinion AO2016-001 that was approved by the Commission last year and provided a history of events. Among other things, Mr. Burchstead noted that this opinion was requested by Mr. Grimbball, who had concerns about the previous opinion that was issued. Mr. Burchstead stated that because the University of South Carolina is a Lobbyist's Principal, Section 2-17-90 places restrictions on the gifts that it can give to public officials, including the Governor. In issuing AO2016-001, the Commission concluded that the football suite was not a gift to the Governor, but to the Office of the Governor. Therefore, Section 2-17-90 was inapplicable provided the tickets were used for state-related purposes as a priority. Mr. Burchstead explained that in his opinion, AO2016-001 was a reasonable interpretation of the Ethics Act, but he redrafted the opinion slightly to state that the tickets must be used only for state-related purposes. Mr. Burchstead then recognized Mr. Butch Bowers, representing the Governor's Office. Mr. Bowers stated that he has reviewed the revised opinion and has no objection to it being adopted, adding that he believes it clarifies the requirements of the statute. Responding to a concern of Mr. Grimbball's about the opinion allowing for personal use by the Governor, Mr. Bowers stated that the tickets don't follow the Governor personally, but stay with the Office of the Governor. He also stated that gifts to a state agency for state-related purposes fall outside of Section 2-17-90. Mr. Grimbball responded that the Act already has a procedure for economic development purposes, that this is very specific to entertainment, and needs to be kept from going beyond state-related purposes. Mr. Grimbball expressed concern that allowing this activity under the category of state-related purposes would broaden the way for others to take advantage of the law. Mr. Bowers responded that the draft opinion is limited to this unique situation. Vice Chair Lydon asked for any further questions or discussions. Mr. Grimbball asked to clarify that if a motion was made would it be to rescind AO2016-001 and replace it with the new one. Vice Chair Lydon stated that would be appropriate. Mrs. Lewis then made a motion, seconded by Mrs. Burris-Alcide, to accept the new revised opinion. The motion carried with a 6 - 1 vote. Mr. Grimbball opposed. Chairman Warren and Mr. Barnwell were absent.

Campaign Services Performed by Candidate's Business, a Family Business, or Family Member

Vice Chair Lydon called this matter, and then submitted her Statement of Recusal, noting that she would not be a part of the discussion or voting on this matter. Mr. Burchstead provided a history of events, and submitted a redraft of this opinion which the Commission discussed at two prior meetings. Mr. Burchstead stated that the opinion was originally requested by Mr. Grimbball; that although the request arose in response to an Attorney General's opinion, the redraft removes any reference to the Attorney General or his opinion; and clarified that this applies only to those under the Commission's jurisdiction. In summarizing the opinion, Mr. Burchstead stated that in circumstances where a candidate uses campaign funds to pay for services from a candidate's business, family business,

or family member, more documentation and scrutiny will apply. There being no further discussion or questions, Mr. Grimball made a motion, seconded by Mrs. Moose, to accept the redraft of this opinion as written. The motion carried with a 6 - 0 vote. Vice Chair Lydon not voting. Chairman Warren and Mr. Barnwell were absent.

Lobbyist's Principal Providing Dinner to Members of Workers' Compensation Commission in Connection With Annual Conference

Vice Chair Lydon called this matter. Mr. Burchstead advised that this opinion was requested by the South Carolina Association of Justice, a non-profit corporation and a registered Lobbyist Principal. He recognized Mr. John Nichols, an attorney and a member of the Association. Mr. Burchstead added that the Association has an annual conference every year, many attorneys go to the convention, the attorneys who practice workers compensation law attend this event, and all of the workers compensation commissioners are invited to speak. Mr. Burchstead stated that the question is whether the Association can take all the commissioners and their spouses offsite at the convention to a special dinner. Mr. Burchstead advised that the Workers Compensation commissioners are subject to the Ethics Act and also fall under the Canons of Judicial Conduct. Mr. Burchstead further stated his belief that under the Ethics Act a special offsite dinner would be allowed provided the Association follows Section 2-17-90, keeping the total cost per person for the special dinner under \$60.00 a day (\$480 a year). However, Mr. Burchstead also argued that the Judicial Canons appear to prohibit Workers Compensation commissioners from accepting gifts from persons who might come before them, but added that an exception is allowed for "ordinary social hospitality." Mr. Burchstead stated that the scope of the "ordinary social hospitality" exception differs between jurisdictions and more research needs to be done. He requested that this matter be deferred. Mr. Nichols then gave a history of the request for the opinion, and stated that he was no longer an officer of the Association. Mr. Nichols added that the Association was getting a lot of pressure to hold this dinner, but the Workers Compensation commissioners have now decided not to come. Mr. Grimball asked for clarification on whether the Canons are applicable to all judges and asked if the SC Bar has issued an opinion on this issue. Mr. Nichols responded yes, and that gifts are permissible with certain limitations. Mr. Grimball then wanted clarification that the opinion requested today was limited to the Workers Compensation Commission dinner. Mr. Grimball asked whether it was appropriate to consult with the S. C. Bar because this may have wider implications. Mr. Nichols requested that the Commission let him and Mr. Burchstead do further research. Vice Chair Lydon asked for further discussion. There being none, Mr. Grimball made a motion, seconded by Mrs. Lewis, to hold this request for an opinion in abeyance for further research and discussion. There being no opposition, the motion carried with a 7 - 0 vote. Chairman Warren and Mr. Barnwell were absent.

POINT OF ORDER

Vice Chair Lydon asked to take a short break at this time. All agreed. Mr. Grimball left the meeting at 10:24 a.m.

OFFICE OPERATIONS

Budget 2016/2017

Vice Chair Lydon called for the Office Operations reports. Mr. Hayden directed everyone to their yellow folder and presented the Budget reports for the ending of Fiscal Year 2016 and for the beginning of Fiscal Year 2017. Mr. Hayden noted the new increase in Appropriations which included two auditor positions. The Budget report was accepted as presented.

Compliance Reports

Mr. Hayden directed everyone to their yellow folder and presented the Compliance reports for May and June, 2016. Mr. Hayden noted an increase in the number of complaints from last year, and Mrs. Franklin responded as to the carry over to Fiscal Year 2017. The Compliance reports were accepted as presented.

EXECUTIVE SESSION

Vice Chair Lydon asked for a motion to go into Executive Session for the purpose of hearing probable cause matters and an employment issue. A motion was made by Mrs. Moose, with unanimous consent and no opposition, to go into Executive Session.

RETURN FROM EXECUTIVE SESSION

Upon return from Executive Session, a motion was made by Mrs. Burris-Alcide, seconded by Mrs. Lewis, to adopt and ratify actions taken in Executive Session. Vice Chair Lydon reminded everyone that if they recused themselves on a matter in Executive Session, they were still recused on that matter with this vote. The motion carried with a 6 - 0 vote. Chairman Warren, Mr. Barnwell and Mr. Grimball were absent.

ADJOURNMENT

Vice Chair Lydon asked for any further discussion. There being no further business, Mr. Galardi made a motion, seconded by Mrs. Lewis, to adjourn at 11:18 a.m. The motion carried with a 6 - 0 vote. Chairman Warren, Mr. Barnwell, and Mr. Grimball were absent.

Respectfully submitted,



Karen A. Wiggins
Administrative Specialist