

State of South Carolina State Ethics Commission

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VICE CHAIR
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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

May 18, 2016

The meeting was called to order by Acting Chair Twana Burris-Alcide at 9:13 a.m. Other members present were Vice Chair Sherri A. Lydon, Francis E. Grimbball, Julie J. Moose, Sandy Templeton, Thomas M. Galardi, Brian M. Barnwell, and Regina Hollins Lewis. Chairman Jim Warren arrived at 9:40 a.m.

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

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

Others present: Greg Harris, Jamie Self, Christian Stegmaier, Kelsey Brudvig, Seanna Adcox, Stephen A. Bedard, Gavin Jackson, John Nichols, Clay Grayson, Robert L. Gathers, Thomas Legare, Glenn Waltons, and Andrew H. Jablonecki, II.

Acting Chair Burris-Alcide welcomed everyone and presented the Amended Open Session Agenda found in the yellow folders.

POINT OF ORDER

Acting Chair Burris-Alcide asked to change the order of the Amended Agenda and take up the Loftis Motion to Dismiss at this time since the media and attorneys were present. There was no opposition. Vice Chair Lydon submitted a Statement of Recusal in this matter. Chairman Warren submitted a Statement of Recusal in this matter when he arrived at 9:40 a.m.

MOTION TO DISMISS

C2014-156 J. Samuel Griswold vs. Curtis M. Loftis, Jr.

Acting Chair Burris-Alcide presented this matter and recognized Greg Harris, attorney for the Respondent, and Christian Stegmaier, special counsel for the Commission. Mr. Harris gave an opening statement, explaining that Respondent was not present today, but would be attending a hearing on the merits should his motion be unsuccessful. Mr. Harris began discussion on the Commission's interpretation of 8-13-700(B), emphasizing that the sole goal of the non-profit organization was to benefit the needy, and that no money was received by Board Member Montgomery. Discussion ensued between Mr. Harris and Mr. Grimbball, with Mr. Grimbball stating his view that additional issues than the 8-13-700(B) charge should be investigated. Mr. Grimbball added that Summary Judgment is inappropriate without further development of facts to clarify the application of the law. Discussion ensued. Mr. Harris then requested a recess for the attorneys and staff to confer. After returning from recess, Mr. Hayden stated that based on the concerns of Mr. Grimbball, it was best to adjourn this motion hearing so the parties can have more time for further investigation. Mr. Hayden further stated that perhaps a pre-hearing conference with a panel could be set up to determine what issues and further investigation is needed. Mr. Stegmaier gave a statement and then consented to the pre-hearing conference with a hearing panel, adding that they want to be on the same page about what is actually being prosecuted by counsel and the facts being presented. Mr. Stegmaier then stated that they concur with Mr. Grimbball's efficacy request, and he would leave it up to Mr. Harris as to how to go forward on the motion prior to the merits hearing. Discussion ensued between Mr. Harris and Mr. Grimbball concerning not abandoning the issues or the motion. Mr. Grimbball then made a motion, seconded by Mr. Barnwell, that this motion hearing be adjourned for more discovery. Acting Chair Burris-Alcide asked for further discussion or opposition. There being none, the motion carried with a 7 to 0 vote. Chairman Warren and Vice Chair Lydon not voting.

POINT OF ORDER

Chairman Warren arrived at 9:40 a.m., and all agreed to take a break.

MINUTES

Chairman Warren presented the Minutes. Motion was made by Mrs. Moose, seconded by Mrs. Lewis, 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 March 16, 2016 Commission meeting. Mr. Grimbball abstained since he just received his material and had not read these minutes.

OFFICE OPERATIONS

Budget 2015/2016

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

Compliance Reports

Chairman Warren directed everyone to their yellow folder. Mr. Hayden presented the Compliance reports for March and April, 2016 for information only. Discussion ensued concerning how the office keeps track of persons who call, come to the office, or e-mail for help. Mr. Hayden responded that is hard to do during a deadline or general election year with so many candidates and filers needing help, and praised the staff for the hard work they do. The Compliance reports were accepted as presented.

Chairman Warren directed everyone to their meeting book and yellow folder for the Appeals.

POINT OF ORDER

Mr. Burchstead asked to change the order of the Amended Agenda and take up the advisory opinion at this time, since there was media interest and not all of the appellants were present. There was no opposition.

ADVISORY OPINIONS

AO2016-006 Campaign Services Performed by Candidate's or Family Member's Business

Chairman Warren presented this matter and directed everyone to their meeting book and yellow folder. Vice Chair Lydon submitted a Statement of Recusal in this matter. Mr. Burchstead gave an opening statement and reminded everyone that this originally concerned two issues: (#1) Campaign Services Performed by Candidate's or Family Member's Business; and (#2) Public Official Causing or Influencing Caucus to Hire His Own Business, but today's advisory opinion was about the first issue, and that the second issue is planned for the July Commission meeting. Mr. Burchstead presented his draft opinion found in the yellow folder. Discussion ensued concerning as to whether there is a need for the Commission to act on this matter; protecting the Commission's advisory opinions from being misconstrued by others; the need to protect the Ethics Act; and the need for guidelines on this matter for staff by correcting any "misinterpretation" in the Commission's jurisdiction. Discussion ensued on whether it is appropriate to issue an opinion in reaction to an Attorney General's opinion which it has not been formally requested. Mr. Grimboll reminded the Commission that he requested the opinion to clarify the law for those under the Commission's jurisdiction. After further discussion, Mr. Grimboll made a motion that if anybody comes before the Commission using the Attorney General's opinion, the Commission should go back and address the use of the Attorney General's opinion. Discussion ensued. Mr. Grimboll withdrew his motion and asked that staff counsel remove the references to the Attorney General's opinion and be diligent about going back to the Commission, if necessary, for an opinion concerning what the Attorney General said in his opinion, and to take this matter up at the July Commission meeting with a revised draft opinion. All agreed.

APPEALS

C2014-045 Robert Gathers

Chairman Warren presented this matter. Mr. Burchstead asked for a Point of Order, stating that Mr. Gathers was still traveling. Mr. Burchstead made a request to move this matter, and for the Commission to go forward with the amended agenda. There was no opposition.

C2014-069 Andrew H. Jablonecki, II

Acting Chair Burris-Alcide presented this matter. Chairman Warren, Mrs. Moose, and Mr. Grimball submitted Statements of Recusal in this matter. Mr. Burchstead stated that the Respondent was not present for his appeal and asked that the appeal be denied. Acting Chair Burris-Alcide asked for any discussion or opposition. There being none, Mr. Galardi made a motion, seconded by Mrs. Lewis, to deny the appeal. Mrs. Lewis asked that the records show Respondent was notified of today's hearing. Mr. Burchstead then stated that Respondent was sent a Notice of the Appellate Hearing on April 13, 2016, it went to the address of record by certified mail, and on April 18, 2016, according to the U. S. Postal Service, it was delivered. There being no further discussion, the motion carried with a 6 – 0 vote. Chairman Warren, Mrs. Moose, and Mr. Grimball not voting.

C2014-164 Thomas Legare, Jr.

Acting Chair Burris-Alcide presented this matter. Chairman Warren, Vice Chair Lydon, and Mr. Grimball submitted Statements of Recusal in this matter. Mr. Legare gave an opening statement concerning a call he received from a reporter concerning his failure to timely file campaign reports, and a visit he received from Investigator Bagnall about his hearing. Discussion ensued concerning the timeline which led to Respondent's awareness of the allegations, Respondent's receipt of Complaint, and Respondent's first contact with staff about his hearing. Mr. Burchstead stated for the record that Respondent acknowledges he was aware of the Complaint, the Commission's records show he signed for the Complaint, the Notice of Hearing was issued and sent to the address on record, and a Decision and Order was issued which included testimony by Investigator Bagnall with regard to Notice of Hearing. Mr. Burchstead further noted that a hearing was scheduled for June 17, letters to the Respondent were unclaimed, and calls were made to the Respondent which were not returned. Finally Investigator Bagnall spoke with the Respondent on the telephone, but the Respondent stated he never received the Notice of Hearing, and Respondent mentioned no issue about a problem with his address. As a result with Respondent not receiving the Notice, staff rescheduled the hearing for August 19. In anticipation of this, on August 17 and 18, Investigator Bagnall called Respondent, but these calls were never returned. Mr. Burchstead ended his statement by reminding the Commission that even though Respondent did not attend the hearing, a default judgment could have been issued, but the Hearing Panel suspended the amount of \$6,000 to \$1,500 if paid within 90 days, and asked that the appeal be denied. Mr. Legare then gave a closing statement that he did not get any notification. Questions and clarification ensued as to notifications, and Respondent stated that his voice mail has not worked in a year. Acting Chair Burris-Alcide then asked for any further questions, discussion, witnesses, or rebuttal. There being none, thanked the Respondent for coming and noted that the Commission would take this matter under advisement, deliberate, and then issue an order.

Upon deliberation, the Commission voted 6 – 0 to deny this appeal, Chairman Warren, Vice Chair Lydon, and Mr. Grimball not voting.

POINT OF ORDER

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

APPEAL S - continued

C2014-045 Robert Gathers

With all the parties now present, Acting Chair Burris-Alcide presented this matter. Statements of Recusals were submitted by Chairman Warren and Mrs. Lewis. Glenn Walters, attorney for the Respondent, gave an opening statement. Respondent then gave an opening statement, declaring that he had paid the debt and personally brought in all of his paper reports when due. Discussion ensued as to the events that led up to why the Respondent paid the debt and when use of the electronic filing system was mandatory. Respondent submitted Exhibit #1 which was his check in the amount of \$6,900.00 dated March 22, 2016 paid to SC State Ethics Commission marked "Payoff". Questions and clarification ensued concerning Respondent's relocation to another city; the Post Office holding Respondent's mail; the time line for receiving the Decision and Order; the Judgment filed by the Commission; and Respondent making the payment to clear a judgment. Mr. Burchstead then introduced Exhibit #2 which was the Second Notice to Mr. Gathers at the correct address regarding the filing fees and late penalties that would accrue, adding that Respondent wrote a letter on 8/22/14 for an appeal requesting the Commission grant the appeal, the attorney at that time for the Commission wrote to the Respondent at the correct address requesting he perfect the appeal, to which the Respondent for over a year did not reply. Staff clarified the process for sending Respondent's unpaid debt to the Department of Revenue, and the hearing offered to prove it is a proper debt. Acting Chair Burris-Alcide then asked for any further questions, discussion, or rebuttal. There being none, thanked Mr. Gathers and Mr. Walters for coming and noted that the Commission would take this matter under advisement, deliberate with the exhibits, and then issue an order.

Upon deliberation, the Commission voted 5 – 2 to deny this appeal. Mrs. Moose and Mr. Galardi opposed the reimbursement. Chairman Warren and Mrs. Lewis not voting.

C2014-069 Andrew H. Jablonecki, II

Mr. Burchstead asked at this time for a Point of Order, stating that Respondent was now present, and asked the Commission to consider re-hearing the appeal for the Respondent. Acting Chair Burris-Alcide asked for clarification, and Mr. Burchstead explained that Respondent was notified to appear at 11:00 a.m. today. Discussion ensued concerning re-hearing this matter. Acting Chair Burris-Alcide noting that it was 11:00 a.m., asked for any opposition for the Commission to re-hear this matter. There being none, Statements of Recusals were submitted by Chairman Warren, Mrs. Moose, and Mr. Grimbball. Mr. Galardi asked if the Commission needed to re-do his previous motion in this matter. Discussion ensued. Mr. Galardi then made a motion to withdraw his previous motion to deny the Respondent the appeal and allow the Respondent to present his case before the Commission. Discussion ensued. Mrs. Lewis then made a motion, seconded by Vice Chair Lydon, to rescind the Commission's previous action and now hear the Respondent's appeal at this time. The motion carried with a 6 – 0 vote. Chairman Warren, Mrs. Moose, and Mr. Grimbball not voting.

Respondent gave an opening statement, explaining his confusion of the process for an appeal, discussions with staff, and clarification on what needed to be done. Discussion ensued concerning the judgment, lack of a report that had not been filed, and fines. Respondent presented his January 25, 2016, letter of appeal which Mr. Burchstead noted was in everyone's yellow folder. Mr. Burchstead then gave a statement, noting the violations, noting that there was a hearing, and that there is a report still due. Respondent then gave a closing statement that at no time was he given actual information until his communication with Investigator Bagnall, and receiving a letter that he had been fined \$5,500.00. Mr. Burchstead then closed by stating that in October 2015, Respondent was sent a second notice of a report still due, and given the process for handling this matter. Acting Chair Burris-Alcide then asked for any further questions, discussion, or rebuttal. There being none, thanked the Respondent for coming and noted that the Commission would take this matter under advisement and deliberate, and then issue an order.

Upon deliberation, the Commission voted 6 – 0 to deny this appeal. Chairman Warren, Mrs. Moose, and Mr. Grimball not voting.

LEGISLATION

Chairman Warren recognized Mr. Hayden. Mr. Hayden gave an update on active legislation affecting the Commission, noted that there were 8 days left in this second year of the two-year session. Questions and clarification ensued concerning the makeup of the proposed new Commission, clarification of the duties of the proposed new Commission, and possible differences in defining a technical violation. Mr. Hayden recommended that if the reconstitution of the Ethics Commission passes, the State Ethics Commission, the House Ethics Committee, and the Senate Ethics Committee need to issue their own advisory opinion on technical violations so staff will know whether it is a technical violation when received by the respective ethics committees. Other discussion ensued concerning criminal violations, and clarifications on the Governor/Lt. Governor joint ticket, and increase in campaign contribution limits.

EXECUTIVE SESSION

Chairman Warren asked for a motion to go into Executive Session, advising that a recent court ruling required that a motion had to indicate the purposes for going into Executive Session. A motion was made by Mr. Grimball, seconded by Mrs. Lewis, to go into Executive Session to hear complaint matters and to discuss any legal matters. There being no discussion, the motion carried with a 9 - 0 vote.

RETURN FROM EXECUTIVE SESSION

Upon return from Executive Session, a motion was made by Mrs. Burris-Alcide, seconded by Mrs. Moose, to adopt and ratify actions taken in Executive Session. Chairman Warren 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 9 - 0 vote.

ADJOURNMENT

Chairman Warren asked for any further discussion. There being no further business, Mr. Grimball made a motion, seconded by Mrs. Burris-Alcide, to adjourn at 1:37 p.m. The motion carried with a 9 – 0 vote.

Respectfully submitted,



Karen A. Wiggins
Administrative Specialist