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JUL 13 2021

STATE OF SOUTH CAROLINA  
STATE ETHICS COMMISSION

STATE ETHICS  
COMMISSION

COMPLAINT FORM

FOR COMMISSION USE ONLY:

CASE NUMBER

c 2021-056

COMPLAINANT: Matthew Hickey

ADDRESS: [REDACTED]

TELEPHONE NUMBER: [REDACTED]

TITLE: Citizen

RESPONDENT: Denise Lowry

ADDRESS: [REDACTED]

TELEPHONE NUMBER: [REDACTED]

TITLE: Council Member District 5

Set forth in detail specific facts upon which you based your complaint against above-named respondent (only detailed, clear factual allegations will be considered. If additional space is needed, attach supplemental sheets).

On July 6, 2021 a council meeting was held in which Ordinance 21-652 was open to public comment and passed first reading. This ordinance is intended to delay the municipal election until reapportionment of city districts can be completed. However what this ordinance also does is create an indefinite extension of the terms of those who's terms end on December 31, 2021 which includes Councilwoman Lowry.

During discussion, a motion was made to amend the ordinance to include suspension pay for those up for re-election until such time that a new election would occur and a successor was sworn into office. This motion was voted down by a council majority including Councilwoman Lowry.

In both the passage of first reading for the ordinance and the discussion of pay, members up for re-election including Councilwoman Lowry refused to recuse themselves even as they clearly stood to gain financial benefit from the outcome of both the ordinance and the motioned amendment. Both of these instances appear to be a clear violation of Article 7, Section 8-13-700(B) as Councilwoman Lowry stands to personally benefit financially for an indefinite period of time beyond her intended term and as such should have recused herself from both the vote to amend the ordinance, as well as the ordinance itself.

A second reading to adopt the aforementioned ordinance is scheduled to occur on July 27, 2021.

All investigations, inquiries, hearings, and accompanying documents must remain confidential unless respondent waives the right to confidentiality. If there is a finding of probable cause, the following documents become public record: the complaint, the response (if any) by respondent, and the notice of hearing. If a hearing is to be held, the final order and all exhibits become public record. If no hearing is held following a finding of probable cause, the final disposition of the matter becomes public record. The willful release of confidential information is a misdemeanor, and any person releasing such confidential information, upon conviction, must be fined not more than one thousand dollars (\$1,000) or imprisoned not more than one year. Section 8-13-320(10)(g).

STATE OF SOUTH CAROLINA

COUNTY OF York

Personally appeared before me Matthew Hickey who, first being duly sworn, says that he/she has read and knows the contents of the above complaint and that the allegations contained therein, are true and correct to the best of his/her own knowledge, except for those matters therein based upon information and belief, and as to those he/she believes them to be true.

Sworn to and subscribed before me this

8th day of July 2021

[REDACTED]

Notary Public for South Carolina

My Commission expires September 24, 2024

[REDACTED]

Complainant Signature

Cheryl D. Sige  
NOTARY PUBLIC  
State of South Carolina  
My Commission Expires September 24, 2029

SEC-7 (Revised 8/2019)

REPLY TO: 201 Executive Center Drive, Suite 150, Columbia, South Carolina 29210 (803)253-4192

FAXED COPIES WILL NOT BE ACCEPTED

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LOGGED

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF YORK )

CITY OF YORK

**ORDINANCE 21-652**

**AN ORDINANCE TO SUSPEND YORK CITY CODE CHAPTER 12, ELECTIONS, SECTION 10, DATE OF GENERAL ELECTION, FOR A PERIOD SUFFICIENT TO ADOPT A NEW DISTRICT BOUNDARY MAP FOLLOWING THE RELEASE OF 2020 CENSUS DATA**

**NOW, THEREFORE, THE COUNCIL OF THE CITY OF YORK HEREBY ORDAINS:**

The election for Council District 1, 5, and 6 are hereby postponed until the following conditions are met:

1. U.S. Census data from the decennial census which occurred in 2020 has been received by the City;
2. The City of York undergoes and adopts a new Council District Map based upon the 2020 Census;
3. Approved Council District Map and data is transmitted to York County Board of Voter Registration and Elections (hereafter "York County"); and
4. York County has completed redistricting voters within their system.

Upon completion of the reapportionment process, the City will request York County to conduct the election for Districts 1, 5, and 6 under the following parameters:

1. Sufficient notice will be provided to the public announcing the election date and candidate filing period. Filing will begin at 8:00 A.M. on the fourth Friday after receipt of the approved redistricting plan. Filing will close at 5:00 P.M. thirty days after the opening of filing.
2. Following the closing of the candidate filing period, York County will hold municipal elections on the eighteenth Tuesday following receipt of the approved redistricting plan.
3. The election date shall not fall on the first Tuesday before Easter Sunday, and any Tuesday following Memorial Day, Independence Day, Labor Day, or other Federal or State holidays.

Once the election is certified by the York County Board of Voter Registration and Elections and accepted by the City of York, Members-elect will be sworn-in at the next regularly scheduled City Council Meeting. The term of office will continue until the normal expiration date of the term which would have begun on January 1, 2022, and would end on December 31, 2025.

Current Members in District 1, 5, and 6 will continue to serve until their successor is named and sworn-in.

PASSED AND APPROVED by the City Council of the City of York on the \_\_\_\_ day of \_\_\_\_\_, 2021.



\_\_\_\_\_  
Michael D. Fuesser, Mayor

ATTEST:

\_\_\_\_\_  
Municipal Clerk

First Reading: \_\_\_\_\_

Public Hearing: \_\_\_\_\_

Second Reading: \_\_\_\_\_

Please refer to attached meeting recording supplied on attached portable drive:

Key Points:

- 1:08:00 – Introduction of First Reading of Ordinance 21-652  
1:08:35 – Motion made to adopt first reading of Ordinance 21-652 by Councilman Jim Bradford. District 6  
  
1:08:43 – Motion to adopt first reading of Ordinance 21-652 seconded by Councilman Steve Love, District 1  
  
1:08:49 – Discussion of motion to adopt first reading of Ordinance 21-652 begins  
  
1:18:02 – Motion made to amend Ordinance 21-652 by Councilwoman Stephanie Jarrett, District 4 to suspend pay for council districts 1, 5, and 6 which are up for re-election (in the election subject to change by this ordinance) beginning at the end of their elected term on December 31, 2021.  
  
1:19:01 – Motion made to amend Ordinance 21-652 seconded by Councilman Marion Ramsey, District 3  
  
1:19:03 – Discussion of motion made to amend Ordinance 21-652 begins  
  
1:21:24 – Council vote on amendment to Ordinance 21-652 conducted by showing of hands:

Although not recorded in audio, the vote was as follows:

**In favor of amendment:**

Marion Ramsey, District 3  
Stephanie Jarrett, District 4  
Mike Fuesser, Mayor

**Opposed to amendment:**

Ed Brown, Mayor Pro-Tem, District 2  
Jim Bradford, District 6  
Steve Love, District 1  
Denise Lowry, District 6

- 1:33:22 – Council vote on adopt first reading of Ordinance 21-652 conducted by showing of hands:

Although not recorded in audio, the vote was as follows:

**In favor of amendment:**

Marion Ramsey, District 3  
Stephanie Jarrett, District 4  
Mike Fuesser, Mayor

**Opposed to amendment:**

Ed Brown, Mayor Pro-Tem, District 2  
Jim Bradford, District 6  
Steve Love, District 1  
Denise Lowry, District 6

RECEIVED

JUL 12 2021

STATE ETHICS  
COMMISSION

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

BEFORE THE STATE ETHICS COMMISSION

IN THE MATTER OF: )

Complaint C2021-056 )

Denise Lowry )  
Respondent. )

Matthew Hickey )  
Complainant. )

**NOTICE OF HEARING**

The State Ethics Commission has determined that there is probable cause pursuant to Section 8-13-320(10)(i), Code of Laws, South Carolina, 1976, as amended, to support the allegations made in the above-captioned complaint. The State Ethics Commission will, therefore, convene a formal hearing into the matters, in accordance with Section 8-13-320(10)(i) & (j), Code of Laws, South Carolina, 1976, as amended, and State Ethics Commission Regulations, S.C. Code Ann. Regs. 52-707 (1997 Cum. Supp.) on Thursday, October 19, 2023 at 9:30 a.m. at the State Ethics Commission Hearing Room located at: 201 Executive Center Drive, Suite 150, Columbia, South Carolina 29210.

The following allegations will be heard:

**COUNT ONE**  
**USE OF OFFICIAL POSITION FOR FINANCIAL GAIN**  
**SECTION 8-13-700(A), S.C. CODE ANN., 1976, AS AMENDED**

That Denise Lowry, former York County Council Member, did in Richland County, knowingly using her official position to obtain an economic interest on first reading of Ordinance 21-652 by voting in favor of the Ordinance, in violation of Section 8-13-700(A).

**COUNT TWO**  
**FAILURE TO RECUSE FROM A GOVERNMENTAL DECISION IN WHICH  
RESPONDENT HAD AN ECONOMIC INTEREST  
SECTION 8-13-700(B), S.C. CODE ANN., 1976, AS AMENDED**

That Denise Lowry, former York County Council Member, did in Richland County, attempt to influence a governmental decision in which she had an economic interest by participating in a discussion of Ordinance 21-652, in violation of Section 8-13-700(B).

**COUNT THREE**  
**USE OF OFFICIAL POSITION FOR FINANCIAL GAIN  
SECTION 8-13-700(A), S.C. CODE ANN., 1976, AS AMENDED**

That Denise Lowry, former York County Council Member, did in Richland County, knowingly using her official position to vote against an amendment to Ordinance 21-652 to suspend compensation for councilmembers whose terms would have extended beyond expiration on December 31, 2021, which included Respondent, in violation of Section 8-13-700(A).

You have the right to be represented by counsel, the right to call and examine witnesses, the right to introduce exhibits, and the right to cross-examine opposing witnesses. This hearing will be open to the public as required by Section 8-13-320(10)(j), Code of Laws, South Carolina, 1976, as amended. The procedures to be followed are set forth in the Administrative Procedures Act, Section 1-23-10, et seq., Code of Laws, South Carolina, 1976 as amended the State Ethics Act, Section 8-13-100, et seq., Code of Laws, South Carolina, 1976, as amended, and State Ethics Commission Regulations S.C. Code Ann. Regs. 52-707 (1997 Cum. Supp.).

A pre-hearing conference may be scheduled prior to the hearing to allow exchange of witness lists and evidence, marking of exhibits, and disposition of motions or pleadings. In the event you fail to appear, judgment by default will be rendered against you. If there are any questions concerning the above notice or hearing times, please contact the State Ethics

Commission.



Meghan L. Walker, Executive Director  
State Ethics Commission

Dated this 20<sup>th</sup> day,  
of March 2023.

***Certificate of Service by Certified Mail***

I hereby certify that a copy of this **NOTICE OF HEARING** was duly served on Respondent Denise Lowry, 403 S. Pacific Avenue, York, SC 29745 by depositing said **NOTICE OF HEARING** in the United States mail, Columbia, South Carolina on this 20<sup>th</sup> day of March 2023, by **CERTIFIED MAIL, E-RETURN RECEIPT REQUESTED**, appropriate postage affixed, and a return address clearly indicated on said envelope.



**Rachael O'Bryan, Administrative Assistant**  
State Ethics Commission

Columbia, South Carolina

(803) 253-4192

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )  
)  
)  
IN THE MATTER OF: )  
)  
Complaint C2021-056 )  
)  
)  
Denise Lowry )  
Respondent. )  
)  
Matthew Hickey )  
Complainant. )  
\_\_\_\_\_ )

BEFORE THE STATE ETHICS COMMISSION

**AMENDED  
NOTICE OF HEARING**

The State Ethics Commission has determined that there is probable cause pursuant to Section 8-13-320(10)(i), Code of Laws, South Carolina, 1976, as amended, to support the allegations made in the above-captioned complaint. The State Ethics Commission will, therefore, convene a formal hearing into the matters, in accordance with Section 8-13-320(10)(i) & (j), Code of Laws, South Carolina, 1976, as amended, and State Ethics Commission Regulations, S.C. Code Ann. Regs. 52-707 (1997 Cum. Supp.) on Thursday, October 19, 2023 at 9:30 a.m. at the State Ethics Commission Hearing Room located at: 201 Executive Center Drive, Suite 150, Columbia, South Carolina 29210.

The following allegations will be heard:

**COUNT ONE**  
**USE OF OFFICIAL POSITION FOR FINANCIAL GAIN**  
**SECTION 8-13-700(A), S.C. CODE ANN., 1976, AS AMENDED**

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**COUNT TWO**  
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RESPONDENT HAD AN ECONOMIC INTEREST  
SECTION 8-13-700(B), S.C. CODE ANN., 1976, AS AMENDED**

That Denise Lowry, former York City Council Member, did in Richland County, attempt to influence a governmental decision in which she had an economic interest by participating in a discussion of Ordinance 21-652, in violation of Section 8-13-700(B).

**COUNT THREE**  
**USE OF OFFICIAL POSITION FOR FINANCIAL GAIN  
SECTION 8-13-700(A), S.C. CODE ANN., 1976, AS AMENDED**

That Denise Lowry, former York City Council Member, did in Richland County, knowingly using her official position to vote against an amendment to Ordinance 21-652 to suspend compensation for councilmembers whose terms would have extended beyond expiration on December 31, 2021, which included Respondent, in violation of Section 8-13-700(A).

You have the right to be represented by counsel, the right to call and examine witnesses, the right to introduce exhibits, and the right to cross-examine opposing witnesses. This hearing will be open to the public as required by Section 8-13-320(10)(j), Code of Laws, South Carolina, 1976, as amended. The procedures to be followed are set forth in the Administrative Procedures Act, Section 1-23-10, et seq., Code of Laws, South Carolina, 1976 as amended the State Ethics Act, Section 8-13-100, et seq., Code of Laws, South Carolina, 1976, as amended, and State Ethics Commission Regulations S.C. Code Ann. Regs. 52-707 (1997 Cum. Supp.).

A pre-hearing conference may be scheduled prior to the hearing to allow exchange of witness lists and evidence, marking of exhibits, and disposition of motions or pleadings. In the event you fail to appear, judgment by default will be rendered against you. If there are any questions concerning the above notice or hearing times, please contact the State Ethics

Commission.



Meghan Walker Dayson, Executive Director  
State Ethics Commission

Dated this 3 day,  
of April 2023.

***Certificate of Service by Certified Mail***

I hereby certify that a copy of this **AMENDED NOTICE OF HEARING** was duly served on Respondent Denise Lowry, 403 S. Pacific Avenue, York, SC 29745 by depositing said **AMENDED NOTICE OF HEARING** in the United States mail, Columbia, South Carolina on this 5<sup>th</sup> day of April 2023, by **CERTIFIED MAIL, E-RETURN RECEIPT REQUESTED**, appropriate postage affixed, and a return address clearly indicated on said envelope.



**Rachael O'Bryan, Administrative Assistant**

Columbia, South Carolina

State Ethics Commission

(803) 253-4192

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

BEFORE THE STATE ETHICS COMMISSION

IN THE MATTER OF: )

Complaint C2021-056 )

Denise Lowry )  
Respondent. )

Matthew Hickey )  
Complainant. )

**SECOND AMENDED  
NOTICE OF HEARING**

The State Ethics Commission has determined that there is probable cause pursuant to Section 8-13-320(10)(i), Code of Laws, South Carolina, 1976, as amended, in the above-captioned complaint. The State Ethics Commission will, therefore, convene a formal hearing into the matters, in accordance with Section 8-13-320(10)(i) & (j), Code of Laws, South Carolina, 1976, as amended, and State Ethics Commission Regulations, S.C. Code Ann. Regs. 52-707 (1997 Cum. Supp.) on Thursday, February 15, 2024 at 9:30 a.m. at the State Ethics Commission Hearing Room located at: 201 Executive Center Drive, Suite 150, Columbia, South Carolina 29210.

The following allegations will be heard:

**COUNT ONE**  
**USE OF OFFICIAL POSITION FOR FINANCIAL GAIN**  
**SECTION 8-13-700(A), S.C. CODE ANN., 1976, AS AMENDED**

That Denise Lowry, former York City Council Member, did in Richland County, knowingly using her official position to obtain an economic interest on first reading of Ordinance 21-652 by voting in favor of the Ordinance, in violation of Section 8-13-700(A).

**COUNT TWO**  
**FAILURE TO RECUSE FROM A GOVERNMENTAL DECISION IN WHICH  
RESPONDENT HAD AN ECONOMIC INTEREST  
SECTION 8-13-700(B), S.C. CODE ANN., 1976, AS AMENDED**

That Denise Lowry, former York City Council Member, did in Richland County, attempt to influence a governmental decision in which she had an economic interest by participating in a discussion of Ordinance 21-652, in violation of Section 8-13-700(B).

**COUNT THREE**  
**USE OF OFFICIAL POSITION FOR FINANCIAL GAIN  
SECTION 8-13-700(A), S.C. CODE ANN., 1976, AS AMENDED**

That Denise Lowry, former York City Council Member, did in Richland County, knowingly using her official position to vote against an amendment to Ordinance 21-652 to suspend compensation for councilmembers whose terms would have extended beyond expiration on December 31, 2021, which included Respondent, in violation of Section 8-13-700(A).

You have the right to be represented by counsel, the right to call and examine witnesses, the right to introduce exhibits, and the right to cross-examine opposing witnesses. This hearing will be open to the public as required by Section 8-13-320(10)(j), Code of Laws, South Carolina, 1976, as amended. The procedures to be followed are set forth in the Administrative Procedures Act, Section 1-23-10, et seq., Code of Laws, South Carolina, 1976 as amended the State Ethics Act, Section 8-13-100, et seq., Code of Laws, South Carolina, 1976, as amended, and State Ethics Commission Regulations S.C. Code Ann. Regs. 52-707 (1997 Cum. Supp.).

A pre-hearing conference may be scheduled prior to the hearing to allow exchange of witness lists and evidence, marking of exhibits, and disposition of motions or pleadings. In the event you fail to appear, judgment by default will be rendered against you. If there are any questions concerning the above notice or hearing times, please contact the State Ethics

Commission.

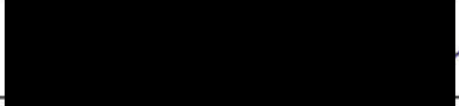
Dated this 19<sup>th</sup> day,  
of October 2023.



Meghan Walker Dayson, Executive Director  
State Ethics Commission

*Certificate of Service by Certified Mail*

I hereby certify that a copy of this **SECOND AMENDED NOTICE OF HEARING** was duly served on Respondent Denise Lowry, 403 S. Pacific Avenue, York, SC 29745 by depositing said **SECOND AMENDED NOTICE OF HEARING** in the United States mail, Columbia, South Carolina on this 27th day of October 2023, by CERTIFIED MAIL, E-RETURN RECEIPT REQUESTED, appropriate postage affixed, and a return address clearly indicated on said envelope.

  
\_\_\_\_\_  
**Rachael O'Bryan, Administrative Assistant**  
State Ethics Commission (803) 253-4192

Columbia, South Carolina

STATE OF SOUTH CAROLINA )  
 COUNTY OF RICHLAND )  
 )  
 IN THE MATTER OF: )  
 COMPLAINT C2021-056 )  
 )  
 Matthew Hickey, )  
 Complainant. )  
 )  
 Denise Lowry, )  
 Respondent. )  
 \_\_\_\_\_ )

BEFORE THE STATE ETHICS COMMISSION

**CONSENT ORDER**

This matter come before the State Ethics Commission (Commission) by way of a Complaint filed on July 13, 2021. Pursuant to Section 8-13-320(10)(i) of the South Carolina Ethics, Government Accountability, and Campaign Reform Act (Ethics Act), the Complaint against Denise Lowry (Respondent) was considered by the Commission and probable cause was found to warrant an evidentiary hearing. Prior to the call of the case, Respondent agreed to the following Statements of Fact:

**STATEMENTS OF FACT**

1. Respondent served as the District Five (5) representative on the York City (City) Council (Council) from 2009 to 2021. Respondent was compensated throughout her public service, receiving approximately \$7,000.00 for calendar year 2021.
2. In February 2021, the United States Census Bureau (Bureau) announced that data from the 2020 Census would not be available until September 30, 2021, rather than in April 2021, as previously anticipated.
3. As a result of the Bureau’s announcement, Council considered postponing its November 2, 2021 elections to allow the City time to receive the 2020 Census data and reapportion the City’s

voting districts accordingly.<sup>1</sup>

4. To that end, the following occurred during an April 20, 2021, Council meeting:

Dr. John Rouff and Jeff Shacker<sup>2</sup> discussed the different facets regarding continuing with holding the elections in November or delaying the municipal elections until after the census data is received. There are no laws that would require a delay in the election. There also are no laws that would prohibit the city from moving forward with the elections or prohibit the city from delaying the elections. Both Dr. Rouff and Jeff Shacker stated that this is a decision for the local council to decide based on what they feel is the best thing for their community.

5. During a subsequent City Council meeting held on June 1, 2021, the following occurred:

Councilmember Bradford made a motion, which was seconded by Councilmember Lowry [Respondent] to go forward with consideration of an ordinance to postpone City of York council elections currently scheduled to take place on Tuesday, November 2, 2021 for council districts one, five, and six [b]ecause the census data needed to determine the electoral representation in York's city council districts will not be available until September 30, 2021 at the earliest and therefore will not be available in time for York to reapportion such districts. The districts appear to be uneven since the last census and adjustments may be required, I [Councilmember Bradford] move that the City attorney be asked to prepare and have ready an amendment to the current city ordinance for consideration for first reading at a council meeting on July 6th with a special called meeting on July 19th for second reading . . .

The motion passed. Mayor Pro Tem Brown, and Councilmembers Bradford, Love, and Lowry [Respondent] voting in the affirmative and with Mayor Fuesser and Councilmembers Jarrett and Ramsey voting in opposition.

6. On June 16, 2021, City Manager Seth Duncan provided the following proposed ordinance to Council. According to Duncan, the proposed ordinance had been reviewed and approved by both the City attorney and the York County Election Commission:

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<sup>1</sup> Article 1, Section Two of the United States Constitution requires the Bureau to conduct a census of the entire American population every ten (10) years. The Equal Protection Clause of the United States Constitution requires, in relevant part, that representatives to an elected body be drawn from voting districts of substantially equal population. Accordingly, the census data collected by the Bureau is used, among other things, to draw constitutionally appropriate boundary lines for election districts in a process known as redistricting.

<sup>2</sup> Dr. Ruoff is, among other things, an expert on redistricting and voting rights and Mr. Shacker was, at the time, employed by the Municipal Association of South Carolina (MASC).

**ORDINANCE 21-652**

**AN ORDINANCE TO SUSPEND YORK CITY CODE CHAPTER 12, ELECTIONS, SECTION 10, DATE OF GENERAL ELECTION, FOR A PERIOD SUFFICIENT TO ADOPT A NEW DISTRICT BOUNDARY MAP FOLLOWING THE RELEASE OF 2020 CENSUS DATA**

**NOW, THEREFORE, THE COUNCIL OF THE CITY OF YORK HEREBY ORDAINS:**

The election for Council District 1, 5, and 6 are hereby postponed until the following conditions are met:

1. U.S. Census data from the decennial census which occurred in 2020 has been received by the City;
2. The City of York undergoes and adopts a new Council District Map based upon the 2020 Census;
3. Approved Council District Map and data is transmitted to York County Board of Voter Registration and Elections (hereafter "York County"); and
4. York County has completed redistricting voters within their system.

Upon completion of the reapportionment process, the City will request York County to conduct the election for Districts 1, 5, and 6 under the following parameters.

1. Sufficient notice will be provided to the public announcing the election date and candidate filing period. Filing will begin at 8:00 A.M. on the fourth Friday after receipt of the approved redistricting plan. Filing will close at 5:00 P.M. thirty days after the opening of filing.
2. Following the closing of the candidate filing period, York County will hold municipal elections on the eighteenth Tuesday following receipt of the approved redistricting plan.
3. The election date shall not fall on the first Tuesday before Easter Sunday, and any Tuesday following Memorial Day, Independence Day, Labor Day, or other Federal or State holidays.

Once the election is certified by the York County Board of Voter Registration and Elections and accepted by the City of York, Members-elect will be sworn-in at the next regularly scheduled City Council Meeting. The term of office will continue until the normal expiration date of the term which would have begun on January 1, 2022, and would end on December 31, 2025.

Current Members in District 1, 5, and 6 will continue to serve until their successor is named and sworn-in.

4. At a July 6, 2021, City Council meeting, Council considered Ordinance 21-652 as follows:

Councilmember Bradford made a motion to approve first reading of Ordinance 21-652, which was seconded by Councilmember Love. The motion passed. Mayor Pro Tem Brown, and Councilmembers Bradford, Love, and Lowry [Respondent] voted in the affirmative with Mayor Fuesser and Councilmembers Jarrett & Ramsey voting in opposition.

Councilmember Jarrett made motion to amend the previous motion so that the three members whose terms would be extended by delaying the election will continue to serve without compensation when their term expires on December 31st and until their successor is sworn in which was seconded by Councilmember Ramsey. The motion failed. Mayor Pro Tem Brown, and Councilmembers Bradford, Love, and Lowry [Respondent] voted in opposition with Mayor Fuesser and Councilmembers Jarrett & Ramsey voting in affirmative.

5. On July 9, 2021, Councilmember Bradford sought an informal opinion from Commission staff regarding Ordinance 21-652:

Our seven-member City Council voted 4 - 3 on Tuesday, July 6 of first reading in favor of the attached proposed City Ordinance which would postpone our regular City Council elections scheduled November 2, 2021 until reapportionment for all Districts can be done after receipt of the delayed Census Date on September 30, 2021. Second and final reading of the Ordinance will be on Tuesday, July [2]7.

The November elections are for District 1 (Council Member Steve Love), District 5 (Council Member Denise Lowry), and District 6 (myself - Council Member Jim Bradford). Elections for Mayor and Council Districts 2, 3 and 4 do not occur until November 2023 and they are not postponed by the Ordinance.

Voting for the Ordinance were Members Love, Lowry and Bradford joined by Ed Brown, the Council Member from District 2. Ed Brown is not up for re-election until November 2023. Voting against the Ordinance were the Mayor, Mike Fuesser, who is a member of Council elected at large, Council Member for District 3, Marion Ramsey, and the Council Member for District 4, Stephanie Jarrett.

As you can see the Ordinance provides that during the period of postponement current Members in Districts 1 (Love), Five (Lowry) and 6 (Bradford) will continue to serve until th[eir] successor is named. Once special elections are held new members would be sworn in at the next regular Council meeting and they would serve for the remainder of the term which would have begun on January 1, 2022 and would end on December 31, 2025.

At a City Council workshop on April 20, reapportionment expert Dr. John Ruoff of

Columbia told us that the rule of thumb for reapportionment was you do so if the largest district is 10% larger than the smallest. He indicated that Council could make the decision either way to postpone elections and reapportion as quickly as possible after the data was available, or to hold elections and then reapportion as quickly as possible. The decision was Council's to make.

With the Ordinance scheduled for second reading on Tuesday, July 27, those of us in Districts 1, 5, and 6 (indeed all Council members including the Mayor) want to know if State Ethics law would consider it a conflict of interest for those Members in Districts 1, 5, and 6 requiring recusal related to that vote. Each Council Member in the six Districts receives a salary of \$6,800 a year, which would continue for Council Members Love (D1), Lowry (D5) and Bradford (D6) after th[eir] term was suppose[d] to end on December 31, 2021 during the postponement period thereafter until new elections are held.

6. On July 21, 2021, Commission staff responded, in relevant part, as follows:

Based on the facts presented, voting to delay the election will result in your remaining on Council past your currently scheduled term and, in turn, receiving additional monies for your extended service. Commission staff believes this constitutes an economic interest requiring recusal from the July 27 vote. In order to comply with the Ethics Act, you should recuse yourself by following the instructions contained within Section 8-13-700(B), above.

In the alternative, the remaining unaffected members of Council (those not up for reelection in 2021) could vote to suspend the affected Council members' pay during any extended service period. If this occurred, the affected Council members would be permitted to take a subsequent vote on delaying the election because an economic interest would no longer be present. The procedures for this, and legality under laws other than the Ethics Act, should be discussed with the Council's attorney.

7. At a July 27, 2021, City Council meeting, Ordinance 21-652 came before Council for second reading. Respondent thereafter recused herself from the matter.

### **CONCLUSIONS OF LAW**

Based upon the Statements of Fact, the Commission concludes, as a matter of law:

1. At all times relevant, Respondent was a "public official" pursuant to Section 8-13-100(27).

Therefore, the Commission has personal and subject matter jurisdiction.

2. Section 8-13-700 provides, in relevant part:

(A) No [public official] may knowingly use his official [office] to obtain an economic interest for himself, a family member, an individual with whom he is associated, or a business with which he is associated . . .

(B) No [public official] may make, participate in making, or in any way attempt to use his [office] to influence a governmental decision in which he, a family member, an individual with whom he is associated, or a business with which he is associated has an economic interest. A [public official] who, in the discharge of his official responsibilities, is required to take an action or make a decision which affects an economic interest of himself, a family member, an individual with whom he is associated, or a business with which he is associated shall:

(1) prepare a written statement describing the matter requiring action or decisions and the nature of his potential conflict of interest with respect to the action or decision;

. . .

(4) if he is a public official, other than a member of the General Assembly, he shall furnish a copy of the statement to the presiding officer of the governing body of an agency, commission, board, or of a county, municipality, or a political subdivision thereof, on which he serves, who shall cause the statement to be printed in the minutes and require that the member be excused from any votes, deliberations, and other actions on the matter on which the potential conflict of interest exists and shall cause the disqualification and the reasons for it to be noted in the minutes.

3. Section 8-13-100(11) provides:

(a) "Economic interest" means an interest distinct from that of the general public in a purchase, sale, lease, contract, option, or other transaction or arrangement involving property or services in which a public official, public member, or public employee may gain an economic benefit of fifty dollars or more.

(b) This definition does not prohibit a public official, public member, or public employee from participating in, voting on, or influencing or attempting to influence an official decision if the only economic interest or reasonably foreseeable benefit that may accrue to the public official, public member, or public employee is incidental to the public official's, public member's, or public employee's position or which accrues to the public official, public member, or public employee as a member of a profession, occupation, or large class to no greater extent than the economic interest or potential benefit could reasonably be foreseen to accrue to all other members of the profession, occupation, or large class.

4. Section 8-13-320(10)(l) allows the Commission to assess a civil penalty up to \$2,000 for each

violation of the Ethics Act.

5. Section 8-13-130 allows the Commission to assess an administrative fee on a person who is in violation of the Ethics Act.

### DISCUSSION

The Commission found probable cause to charge Respondent with the following: one (1) count of Section 8-13-700(B) for participating in the discussion of Ordinance 21-652 on July 6, 2021; one (1) count of Section 8-13-700(A) for voting in favor of Ordinance 21-652 on July 6, 2021; and one (1) count of Section 8-13-700(A) for voting against the amendment to Ordinance 21-652 on July 6, 2021.

Through this Consent Order, Respondent acknowledges the determination of the Commission that she inadvertently violated the Ethics Act when she participated in the aforementioned discussions and votes. In exchange for this acknowledgment, the Commission declines to proceed on the violation of Section 8-13-700(B) contained in Count One (1) of the Notice of Hearing. As mitigation for the remaining counts, Respondent states that she engaged in the aforementioned activity with the belief that these actions were permissible under existing State law and City Council ordinances and precedent. More specifically, Respondent states that Ordinance 21-652 was approved by both the City Attorney and the City Manager, and that neither individual informed Council that any member was required to recuse themselves. Respondent further states that the City took similar action in April of 2010, seemingly without incident, and that therefore there was precedent for these actions.<sup>3</sup> Finally, Respondent asserts that a

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<sup>3</sup> Based on the Commission's investigation, Respondent is correct that the City appears to have skipped an election in 2010, resulting in the extension of some Councilmembers' terms for more than eighteen (18) months.

neighboring municipality enacted a similar ordinance in May 2021 and that there were no ethical issues raised. Finally, Respondent sets forth various opinions of the South Carolina Attorney General, all of which allow for the extension of municipal Councilmembers' terms under certain circumstances.

The Commission acknowledges that municipalities are not prohibited from extending the terms of its Councilmembers under certain circumstances. This fact is abundantly clear in both election law and the aforementioned opinions of the Attorney General. See S.C. Code Ann. § 5-15-50 (permitting date changes to municipal elections); Op. S.C. Atty. Gen., August 2, 2021 (permitting extension of municipal terms due to change in election date provided extension is reasonable, for a public purpose, and not for the personal benefit of the councilmember); Op. S.C. Atty. Gen., March 13, 2006 (same); Op. S.C. Atty. Gen., November 4, 2005 (same). However, any extension must be in compliance with the Ethics Act which, in this case, required Respondent to recuse herself from participating in discussion and votes related to Ordinance 21-652.<sup>4</sup> If Ordinance 21-652 passed, Respondent was guaranteed additional money to which she otherwise would not have been entitled. Accordingly, Respondent was prohibited from participating in matters related to Ordinance 21-652 as long as there were monetary benefits tied thereto. The Commission notes, however, that Respondent has multiple mitigating factors with regard to her participation, to include reliance on City precedent and the advice and counsel of both the City Manager and the City Attorney. As described below, the Commission takes these mitigating factors into consideration in its penalty assessment.

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<sup>4</sup> Alternatively, Respondent could have declined compensation for the duration of the extension at the outset of the discussion, thereby removing any economic interest.


**DISPOSITION**

1. The Commission hereby finds Respondent in violation of two (2) counts of 8-13-700(A).
2. The Commission hereby adopts the above Statements of Fact, Conclusions of Law, Discussion, and Disposition.

THEREFORE, the Commission hereby issues a written warning and orders the Respondent to pay the Commission, within one (1) year from receipt of this Order, an administrative fee of \$200. The Commission declines to issue a civil penalty for the votes Respondent took on July 6, 2021, in light of the complexity of this case and the numerous mitigating factors present.

AND IT IS SO ORDERED THIS 25<sup>th</sup> DAY OF February 2024.

STATE ETHICS COMMISSION

  
SCOTT E. FRICK, CHAIR

  
DENISE LOWRY  
RESPONDENT