

STATE OF SOUTH CAROLINA
STATE ETHICS COMMISSION

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STATE ETHICS
COMMISSION

COMPLAINT FORM

FOR COMMISSION USE ONLY:
CASE NUMBER

C 2021-015

COMPLAINANT: State Ethics Commission
ADDRESS: 201 Executive Center Drive
Suite 150
Columbia, SC 29210
TELEPHONE NUMBER: (803) 253-4192

RESPONDENT: Harold R. Kay, III
ADDRESS: [REDACTED]
TELEPHONE NUMBER: [REDACTED]
TITLE: Trustee – Anderson County School District
Five

Section 8-13-1120, SC Code Ann., 1976, as amended, requires disclosure of the source, type, and amount of income from a governmental entity and a listing of the private source and type of any income received by the filer or a member of the filer's immediate family during the reporting period. The Respondent was notified of his failure to report income on the 2017 Statement of Economic Interests.

Section 8-13-1140, SC Code Ann., 1976, as amended, requires the filing of an updated Statement of Economic Interests for the previous calendar year annually thereafter prior to March 30. Records in the State Ethics Commission indicate that the Respondent was required to file the 2018, 2019, and 2020 Statement of Economic Interests.

Section 8-13-1308, S.C. Code Ann., 1976, as amended, requires candidates to file Campaign Disclosures within ten (10) days of receiving or expending \$500; fifteen (15) days prior to each election; within ten (10) days of the end of each quarter; and a final report when the campaign account is closed. In addition, certified campaign reports detailing campaign contributions and expenditures must contain the total of contributions accepted, the name and address of each person making a contribution, the total expenditures made by or on behalf of the candidate or committee, and the name and address of each person to whom an expenditure is made from campaign funds. Pursuant to Section 8-13-1362 and Regulation 52-504 (C), the Pre-Election and quarterly report are required even when there have been no contributions or expenditures.

Records of the State Ethics Commission indicate that a Pre-Election Campaign Disclosure was due between October 17, 2018 and October 22, 2018. Respondent was sent an email reminder thirty days before the Campaign Disclosure deadline.

Respondent was reminded of the filing requirements by letters dated September 25, 2020 as described in the attached. In addition, an email reminder was sent thirty days prior to the deadline. To date, no properly completed Pre-Election Campaign Disclosure, 2017, 2018, 2019, or 2020 Statement of Economic Interests has been received. All in violation of Section 8-13-1120, Section 8-13-1140, Section 8-13-1308(D)(1), and Section 8-13-1308 (F), SC Code Ann., 1976, as amended.

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 Richland

Personally appeared before me Meghan L. Walker who, first being duly sworn, says that 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 her own knowledge, except for those matters therein based upon information and belief, and as to those she believes them to be true.

Sworn to and subscribed before me this

17th day of February, 2021



Meghan L. Walker, Executive Director

Notary Public for South Carolina

My Commission expires 8-11-2025

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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STATE OF SOUTH CAROLINA)	
COUNTY OF RICHLAND)	BEFORE THE STATE ETHICS COMMISSION
)	
IN THE MATTER OF:)	
)	
Complaint C2021-015)	
)	
Harold Kay, II)	NOTICE OF HEARING
Respondent.)	
)	
State Ethics Commission)	
Complainant.)	
)	

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 Commission will convene a formal hearing into the matter 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 21, 2021 at 9:30 a.m. at the Commission Hearing Room located at: 201 Executive Center Drive, Suite 150, Columbia, South Carolina 29210.

The following allegations will be heard:

COUNT ONE
FAILURE TO FILE A PRE-ELECTION CAMPAIGN DISCLOSURE REPORT
SECTION 8-13-1308(D), S.C. CODE ANN., 1976, AS AMENDED

That Harold Kay, II, Anderson County School District Five Trustee, did in Richland County, fail to file a 2018 Pre-Election Campaign Disclosure Report, in violation of Section 8-13-1308(D).

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.

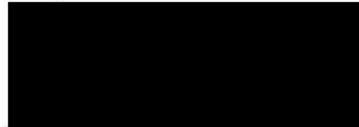


Meghan L. Walker, Executive Director
State Ethics Commission

Dated this 26th day,
of May 2021.

Certificate of Service by Certified Mail

I hereby certify that a copy of this **NOTICE OF HEARING** was duly served on the RESPONDENT J. Harold Kay, II, PO Box 2473, Anderson, SC 29622 by depositing said **NOTICE OF HEARING** in the United States mail, Columbia, South Carolina on this 27th day of May 2021, by **CERTIFIED MAIL, E-RETURN RECEIPT REQUESTED**, appropriate postage affixed, and a return address clearly indicated on said envelope.



Columbia, South Carolina

Richard A. Provencher, Administrative Assistant
State Ethics Commission (803) 253-4192

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
IN THE MATTER OF:)
COMPLAINT C2021-015)
State Ethics Commission,)
Complainant,)
Harold R. Kay, II,)
Respondent.)

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CONSENT ORDER

This matter comes before the State Ethics Commission (Commission) by way of a complaint filed on February 17, 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 Harold R. Kay, III (Respondent) was considered by the Commission and probable cause was found to warrant an evidentiary hearing on one (1) count of violating Section 8-13-1308 for failure to timely file a 2018 Pre-Election Campaign Disclosure Report. Prior to the call of the case, Respondent agreed to entry of the following:

STATEMENTS OF FACT

1. Respondent was elected to the Anderson County School District Five Board of Trustees in a November 6, 2018 election.
2. Respondent failed to file a Pre-Election CDR between October 17, 2018 and October 22, 2018.
3. In a September 25, 2020 certified letter, the Commission notified Respondent of his failure to file a 2018 Pre-Election CDR. According to the U.S. Postal Service, the certified letter was delivered on October 29, 2020 at 2:51 p.m.
4. On November 8, 2020, penalties began to accrue at \$10.00 per day. On November 18, 2020, penalties began to accrue at \$100.00 per day.

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5. The complaint was filed on February 17, 2021.¹
6. On March 8, 2021, Commission Investigator Reginald Gaymon contacted Respondent about the complaint. Respondent explained he had not received the Commission's complaint or any Commission correspondence. Respondent explained that he and his father share the same name, that they live in the same household, and that the mail was generally received and collected by someone other than Respondent.
7. Respondent came into compliance on March 16, 2021 by filing his Pre-Election CDR. Respondent disclosed no contributions or expenditures therein.

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 "candidate" pursuant to Section 8-13-1300(4). Therefore, the Commission has personal and subject matter jurisdiction.
2. Section 8-13-1308(A) provides, in relevant part:

. . . a candidate who does not receive or expend campaign contributions totaling an accumulated aggregate of five hundred dollars or more must file an initial certified campaign report fifteen days before an election.
3. Section 8-13-1510(A) provides:

Except as otherwise specifically provided in this chapter, a person required to file a report or statement under this chapter who files a late statement or report or fails to file a required statement or report must be assessed a civil penalty as follows: (1) a fine of one hundred dollars if the statement or report is not filed within five days after the established deadline provided by law in this chapter; and (2) after notice has been given by certified or registered mail that a required statement or report has not been filed, a fine of ten dollars per calendar day for the first ten days after notice has been given, and one hundred dollars for each additional calendar day in which the required statement or report is not filed, not exceeding five thousand dollars.

¹ The Complaint also alleged Respondent had failed to file numerous Statements of Economic Interests. However, Respondent came into compliance prior to being contacted by the Commission Investigator or receiving the Complaint. Accordingly, the Commission did not find probable cause related to any of Respondent's failure to file any Statements of Economic Interests.

4. Section 8-13-130 allows the Commission to “levy an enforcement or administrative fee on a person who is in violation” of the Ethics Act.

DISCUSSION

The Commission found probable cause to charge Respondent with one (1) count of violating Section 8-13-1308(A) for failing to file a Pre-Election CDR fifteen days prior to his November 2018 election. Through this Consent Order, Respondent acknowledges he violated the Ethics Act when he failed to timely file this Pre-Election CDR. In mitigation, Respondent states he did not receive the Commission’s correspondence regarding this filing and believes the letter may have inadvertently been opened by his father, also named Harold Kay. The Commission acknowledges that this scenario is unique and likely resulted in Respondent not being notified of his failure to file. Accordingly, Respondent’s late-filing penalty for his failure to file the 2018 Pre-Election CDR is limited to the automatic \$100.00 imposed by Section 8-13-1510 of the Ethics Act. The Commission finds that no late-filing penalties accrued against Respondent because he did not receive the proper notice through no fault of his own. Finally, the Commission declines to assess an administrative fee in this matter.

DISPOSITION

1. The Commission hereby finds Respondent in violation of one (1) count of Section 8-13-1308(A) for his failure to timely file a 2018 Pre-Election CDR.
2. The Commission hereby adopts the Statements of Fact, Conclusions of Law, Discussion, and Disposition as agreed upon by the Respondent.

THEREFORE, the Commission hereby issues a written warning and orders the Respondent to pay the Commission, within thirty (30) days from receipt of this Order, a late-filing penalty of \$100.00.

By executing this Consent Order, Respondent understands that he is not only admitting to violations of the Ethics Act, but also confessing to a judgment of \$100.00 (less any money paid to the

Commission) in the event he does not make full and timely payment as provided for in this Order. In that event, the Commission shall file a Judgment against Respondent in the Clerk of Court's Office in the County of Respondent's last known residence. Upon said filing, the Clerk of Court shall enter this Order in the amount of \$100.00 (less any money paid to the Commission) in its Judgment Rolls, without cost to the Commission.

AND IT IS SO ORDERED THIS 11 DAY OF October 2021.

STATE ETHICS COMMISSION


CHILDS CANTEY THRASHER, CHAIR


HAROLD KAY II
RESPONDENT