

STATE OF SOUTH CAROLINA  
STATE ETHICS COMMISSION

RECEIVED

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STATE ETHICS  
COMMISSION

COMPLAINT FORM

FOR COMMISSION USE ONLY:

CASE NUMBER

C-2021-016

COMPLAINANT: Kim Benson RESPONDENT: Kenneth Loveless  
ADDRESS: [REDACTED] ADDRESS: [REDACTED]  
TELEPHONE NUMBER: [REDACTED] NUMBER: [REDACTED] 57  
TITLE: Parent Tax Payer TITLE: School Board Trustee

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

Address:  
1415 Beaver Dam Rd.  
Columbia SC 29212

Address:  
228 Lookout Pointes Dr  
Chapin SC 29036.

\* Please see attached document which contains various links to additional documents & media.

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 Kim Benson 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  
17th day of February, 2021

[Signature]

Notary Public for South Carolina  
My Commission expires 8-11-2025

[Signature]  
Complainant Signature

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

SCANNED

MW RC  
2-17-21  
RP

LOGGED

C102form

Respondent: Kenneth Loveless

Date Submitted: February 17, 2021

I am submitting this complaint against Kenneth Loveless, Lexington Richland School District 5 Board Trustee. Mr. Loveless received an informal opinion from the South Carolina Ethics Commission, dated September 25, 2020. This opinion was based on a hypothetical scenario that Mr. Loveless presented regarding the ethics of his business, Loveless Commercial Contracting, taking a contract with a District 5 vendor in a different school district – such as Richland District 2. It is important to note that Mr. Loveless requested this opinion while fully engaged in a \$1,000,000+ contract with Contract Construction as a subcontractor. Contract Construction was hired by the Lexington Richland School District 5 Board of Trustees in December 2018, while Ken Loveless was a School Board Trustee, to be the general contractor for the construction of District 5's new elementary school, now known as Piney Woods Elementary School. It is interesting that he did not ask the SCEC directly about that contract at that time. The timeline that follows is also remarkably interesting, because Mr. Loveless' creates a steady stream of criticism of Contract Construction's work on the Piney Woods project. He goes to great lengths to discredit their work, he demands unnecessary inspections, and causes delays. The District has spent valuable time and resources in hiring consultants and running tests that have all confirmed that Mr. Loveless' claims are without merit.

The question is, why would he manufacture lies and work so hard to discredit Contract Construction whilst working with them as a subcontractor on another project? To gain an upper hand on the PWES site, to manipulate Contract Construction into giving future contracts for Loveless Commercial Construction? To distract his fellow trustees from discovering his economic relationship with Contract Construction. In one of the videos included in this report you will hear that even the owner of Contract Construction seems quite confused by Mr. Loveless' allegations. Regardless of the reason for his chaotic behavior, Mr. Loveless' financial relationship with Contract Construction is a conflict of interest, as defined by the South Carolina Ethics Commission. And his obstructionist, hostile behavior, and dubious power-grabs are of great concern to those who care about the future of Lexington Richland School District 5.

#### **Timeline and Attachments:**

- November 2018 – Ken Loveless wins a seat on the District 5 Board of Trustees.
- December 2018 – Contract Construction is awarded the contract for Elementary School #13 (soon to be named Piney Woods Elementary School).
- February 11, 2020 – Loveless Commercial Construction signs on as a subcontractor with Contract Construction for State Project #D50-9976CB (SLED Forensic Services Laboratory). Mr. Loveless signed the document ([Doc A](#)). At this time, Mr. Loveless does NOT notify the District 5 Board of Trustees of this contract, nor does he recuse himself of any of the District's dealings with Contract Construction. If anything, this evidence will prove that he ramps up his critique of Contract Construction. As of this date, Ken Loveless is in violation of Section 8-13-700 (A) and (B).

- February 13, 2020 – Mr. Loveless sends an email ([Doc B](#)) to then Board Chairperson, Robert Gantt, copying all other board members. In this email he begins what becomes a year-long drama of claims against the contractor, the district's staff and consultants, and fellow board trustees, all while his company, Loveless Commercial Construction, quietly accepts a contract with Contract Construction. His omission of this fact, while raising cane about Contract Construction, is dubious and dishonest.
- March 24, 2020 – Ken Loveless sends an email to Dr. Melton, District 5 Superintendent, with 30 plus attachments, directing her to get answers to his questions about the quality of work being done at Piney Woods Elementary School. ([Doc C](#))
- April 20, 2020 – Mr. Loveless is defensive and often out of order during a report on the PWES project by Contract Construction. The contractors', consultants', and testing reports in response to issues raised in Mr. Loveless' email to Dr. Melton are also presented in this meeting. ([Doc D](#))  
[Video June 15](#)
- June 18, 2020 – Trustees Ken Loveless, Jan Hammond, and Chairperson Michael Cates visit the PWES site, as requested during the June 15 meeting. It is rumored that Mr. Loveless spent some time talking with Greg Hughes, the owner of Contract Construction, during the visit, saying things like "we need to work together" and indicated that he "could make more trouble for Contract Construction". This may have been said in humor, but it was not necessarily received as such.
- July 10-13, 2020 – Emails move between board trustees regarding Mr. Loveless' claims against Contract Construction. It is in this email thread that then Chairperson Michael Cates tells Mr. Loveless that he is not to visit the PWES site. ([Doc E](#))
- July 16, 2020 – Ken Loveless reports in an email to fellow board trustees that he received a package of concrete delivery tickets that arrived anonymously in the mail. (see September 14, 2020) ([Doc F](#)) Note that this document is entered into the board records on September 14, when the board receives a letter from subcontractor, Knight Construction.
- August 2, 2020 – Greg Hughes, the owner of Contract Construction, and Dan Neal, the District's construction project consultant, respond to Mr. Loveless' claims. This letter is directed to superintendent, Dr. Melton. You can clearly hear their tone of frustration in their very thorough responses. ([Doc G](#))
- September 14, 2020 – This video of the September 14 board meeting shows a great example of the devious questioning that Mr. Loveless uses to undermine Greg Hughes, the general contractor, during his report on the Piney Woods Elementary School project. He creates an air of distrust and hostility in board meetings and is known to be quite aggressive in other meetings that are not shared with the public.  
[Video September 14](#)
- September 14, 2020 - Knight Construction reports in a letter to Greg Hughes, the owner of Contract Construction, that Ken Loveless requested, on or around April 17,

2020, copies of concrete delivery tickets be mailed to his attention. This contradicts Mr. Loveless' claim that the concrete delivery tickets were sent to him anonymously. [\(Doc H\)](#)

- September 18, 2020 – The State Newspaper published a story titled, "Feud over new Midlands school leads to ethics accusations against school board member". [\(Doc I\)](#)
- September 21, 2020 – Mr. Loveless emails the SCEC to seek opinion.
- September 25, 2020 – The SCEC responded to Mr. Loveless' inquiry and refers to law Section 8-13-700 B4) directing that in such a situation, the public official must recuse himself from any votes, deliberations, and other actions on the matter on which the potential conflict of interest exists and shall cause the disqualification and reason for it to be noted in the minutes. This opinion also states that the public officer must submit a written statement describing the matter requiring this action and the nature of his potential conflict. In conclusion, the SCEC directs that "whenever you are faced with a scenario in which the general contractor has an economic interest, you must recuse yourself from that matter." Ken Loveless does NOT share this response from the SC Ethics Commission with his fellow board trustees.
- September 28, 2020 – Ken Loveless' meddling and condemnations lead to the resignation of Dan Neal, District 5's experienced and well-respected construction manager for the Piney Woods Elementary School project. [\(Doc J\)](#)  
[Video September 28](#)
- September 28, 2020 – After Mr. Neal's resignation, during the Discussion Agenda, Ken Loveless submits to the board a copy of the contract (dated February 11, 2020 [\(Doc A\)](#)) between Loveless Commercial Construction and Contract Construction for the SLED project. He also submits the opinion he received from the SC Ethics Commission.
- October 12, 2020 – After having some time to look back at events from the previous months, then Board Secretary Beth Hutchinson submits a copy of the SCEC's opinion with her own notes. [\(Doc K\)](#)
- November 16, 2020 – Ken Loveless accepts the office of Vice Chair of the Lexington Richland School District 5 Board of Trustees. Newly elected board trustees are sworn in. The new members are Cathy Huddle, Matt Hogan, and Rebecca Blackburn-Hines. FYI: Ken Loveless made a \$1000 campaign donation to each of these candidates. His wife, Jondy Loveless (also a former D5 Board Trustee) made \$500 campaign contributions to Hogan and Hines.
- January 25, 2021 – Though he has sought and reported the SC Ethic's Commission's opinion that he should recuse himself of matters involving Contract Construction,

during this board meeting, Mr. Loveless asks Clay Cannon, Director of Facilities Operations, to submit copies of all construction contracts to the board for *his* review. [Video January 25](#) (23:00 mark)

- January 28, 2021 – Ken Loveless fails to comply with SCEC's opinion and prior board instructions from then chair Mr. Cates, as he participates in a site visit at Piney Woods Elementary School. [\(Doc L\)](#)
- February 8, 2021 – At the 12:00 mark in the video segment of the superintendent's report is an example of how Ken Loveless tends to insert non sequitur construction related questions and statements into other discussions. Board members and public observers have wondered if he does this to disrupt the meeting. [Video February 8a](#)
- February 8, 2021 - Ken. Loveless finally submits the written statement [\(Doc M\)](#) prescribed in the law quoted in the September 28 opinion by SCEC. After his statement is ready by board chairperson, Jan Hammond, Mr. Loveless makes a long statement of rebuttal that sets out all the reasons why he still feels that he should NOT have to recuse himself. His rebuttal then evolves into accusations of conflict of interest by another board trustee, Ed White. Mr. White has been critical of Mr. Loveless' disruptions and refusal to recuse himself of issues regarding Piney Wood's construction. Board secretary, Nikki Gardner, then makes a motion to investigate questions of Mr. White's campaign contributions. [Video February 8b](#)
- February 9, 2021 – The State Newspaper published a story titled, "SC school board member steps away from construction project after ethics dispute". The last paragraphs show how Mr. Loveless really feels about recusing himself from construction-related board business. [\(Doc N\)](#)
- Social Media: Mr. Loveless participates on a Facebook page, "Learn About Your D5 School District," that is widely known to be critical of teachers, students, and parents who express differing opinions. The group has "taken up" for Mr. Loveless and, in turn, its administrators and members often condemn other board members along with the district superintendent, staff, and teachers. Mr. Loveless should not be sowing seeds of political strife via social media. Lately members of this group have been shaming District 5 teachers for questioning reentry plans and COVID-related teacher/staff safety. Mr. Loveless' participation in and support of this forum is equal to him being complicit in the derogatory statements and false claims made by members of the group. [\(Doc O\)](#)

In closing, I submit this complaint against Mr. Kenneth Loveless with great concern about a policy issue that he is currently trying to push through without the usual process. He is incredibly determined to put three board committees in place, despite the South Carolina School Board's advisement against committees and resistance, based on past experience, from some trustees. The chief complaint about board committees is that they can become political and undermine the superintendent. Alas, he has proposed the creation of a Construction Committee, that he intends to chair. Given his history of

lying to his fellow trustees, stepping out of line regarding board protocol, making unreasonable demands of the superintendent, and benefiting personally from a District 5 financial contract, I do not think he should be given any control over a construction committee or any construction-related dealings of the District 5 Board of Trustees. I believe that he should NOT be allowed any vehicle with which he can continue to create political strife and administrative obstruction. With this, I ask the South Carolina Ethics Commission to please act on this complaint promptly.

ATTACHMENTS:

- Documents (Docs A – O) are attached.
- Videos are on the enclosed jump drive. The password is the same as the folder name: LovelessD5

P.S. While researching facts for this complaint, I discovered (on the SCEC website) that Loveless Commercial Construction was awarded a contract for over \$3 million by Irmo Chapin Recreation Commission that spanned 2018-2019. Ken Loveless' brother, Bruce Loveless, was a Commissioner on ICRC's Board of Commissioners at that time and still is. This is not an ethics violation related to District 5, but it may point to a disturbing trend.

#3, 194 Doc A

Attachment #3, 194 Doc A included with the minutes of the 9/26/2020 meeting, at the request of Board member Ken Loveless pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

# AIA Document A401™ - 2017

## Standard Form of Agreement Between Contractor and Subcontractor

AGREEMENT made as of the Eleventh day of February in the year Two Thousand Twenty (In words, indicate day, month and year.)

**BETWEEN** the Contractor:  
(Name, legal status, address and other information)

Contract Construction, Inc.  
1125 Bickley Road  
Irmo, South Carolina 29063

*date of Subcontract which is after last vote*

and the Subcontractor:  
(Name, legal status, address and other information)

Loveless Commercial Contracting, Inc.  
1821 State Street  
Cayce, South Carolina 29033

**ADDITIONS AND DELETIONS:**  
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

The Contractor has made a contract for construction (hereinafter, the Prime Contract) dated: February 6, 2020

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

with the Owner:  
(Name, legal status, address and other information)

South Carolina Law Enforcement Division  
Department of Administration  
921 Main Street  
Columbia, South Carolina 29201

AIA Document A201™-2017, General Conditions of the Contract for Construction, is adopted in this document by reference.

for the following Project:  
(Name, location and detailed description)

SLED Forensic Services Laboratory – State Project No. D50-9976-CB)  
4700 Broad River Road  
Columbia, South Carolina 29210

The Prime Contract provides for the furnishing of labor, materials, equipment and services in connection with the construction of the Project. A copy of the Prime Contract, consisting of the Agreement Between Owner and Contractor (from which compensation amounts may be deleted) and the other Contract Documents enumerated therein, has been made available to the Subcontractor.

*Date Subcontract received back signed from Contractor*

The Architect for the Project:  
(Name, legal status, address and other information)

LS3P Associates Ltd.  
701-A Lady Street  
Columbia, South Carolina 29201

MAR 12 2020  
LOVELESS Commercial Contracting, Inc

The Contractor and the Subcontractor agree as follows.

§ 14.7 The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 14.7.1 Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™-2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

#### ARTICLE 15 ENUMERATION OF SUBCONTRACT DOCUMENTS

§ 15.1 This Agreement is comprised of the following documents:

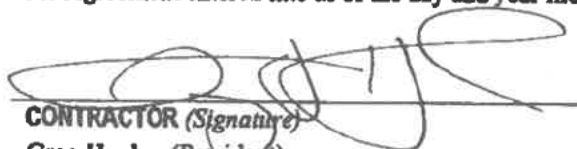
- .1 AIA Document A401™-2017, Standard Form Agreement Between Contractor and Subcontractor;
- .2 Prime Agreement between the Owner and Contractor, including all exhibits thereto
- .3 AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, if not included in the Prime Agreement, dated as indicated below:


- .4 Other Exhibits incorporated into this Agreement:  
(Clearly identify any other exhibits incorporated into this Agreement.)

Exhibit A – List of Specifications  
Exhibit B – List of Drawings  
Exhibit C – List of Addenda  
Exhibit D – Sample Certificate of Insurance  
Exhibit E – Consent of Surety Company to Partial Payment  
Exhibit F – Sample Bond Forms  
Exhibit G – W9 Form  
Exhibit H – Payment Application  
Exhibit I – Parking Permit Form

- .5 Other documents:  
(List other documents, if any, forming part of the Agreement.)

This Agreement entered into as of the day and year first written above.

  
\_\_\_\_\_  
CONTRACTOR (Signature)  
Greg Hughes (President)  
Kyle Farley (Vice President)  
\_\_\_\_\_  
(Printed name and title)

  
\_\_\_\_\_  
SUBCONTRACTOR (Signature)  
KENNETH B. LOVELESS, PRESIDENT  
\_\_\_\_\_  
(Printed name and title)

Attachment #3, pgs 5 is included with the minutes of the 1/28/2020 meeting, at the request of Board member Ken Loveless pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

Doc B

Ed White

From: Edward White <ewhite@lexrich5.org>  
Sent: Monday, June 15, 2020 12:46 PM  
To: Ed White  
Subject: Fwd: Concrete Inspection ans Testing Related matter December 6, 2019

This Issue  
Dec '19

◀ External Email ▶ - From: ewhite@lexrich5.org

Attachment #1,191 is included with the minutes of the 9/14/2020 meeting, at the request of Board member Ed White pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

Feb '20

----- Forwarded message -----

From: Kenneth Loveless <kloveless@lexrich5.org>  
Date: Thu, Feb 13, 2020 at 6:08 PM  
Subject: Concrete Inspection ans Testing Related matter December 6, 2019  
To: Robert Gantt <RGantt@lexrich5.org>, Beth Hutchison <bhutchison@lexrich5.org>, Michael Cates <michaelcates@lexrich5.org>, Jan Hammond <jhammond@lexrich5.org>, Nikki Gardner <ngardner@lexrich5.org>, Board Member Ed White <EWhite@lexrich5.org>, Dr. Christina Melton <cmelton@lexrich5.org>

June '20

Sept '20

this claim  
Feb '20

Feb 13, 2020

Mr, Gantt,

When Dr.Melton, Dan Neal and I met on December 9,2019, she asked that I call Mr.Neal directly about observations and questions. Dr. Melton requested Mr.Neal to give me his business card with contact information, which he did. Last year we were instructed to contact administrative staff members directly to ask questions and make observations in their respective areas of expertise.I have been doing that. In the email dated February 12, 2020 from you, I am now being required to submit questions directly to you and Dr. Melton.

I spoke to Mr.Neal yesterday. He stated to me that he could not give me answers to my requests.I called Mr.Neal to find the times and dates he could possibly to meet on site to review documents and review the work related to the matter. Mr.Neal said to me that he was under orders from you, the board chair and the superintendent not to meet with me or to provide documents without a directive from the two of you.I believe that neither of you has the power to do as Mr.Neal says.

First, I was elected by the public, am peer to you. Further, I am not an employee and as such, do not take orders from Dr. Melton.

Second, the requests for documents are targeted to specific items and timeframes and are not overly burdensome. They are not attorney work product and are not the product of any executive session since the causative event was brought to the entire board's attention during the public participation session of the December 9,2019 board meeting. The documents requested are all items which are required in the Project Manual or contract documents.If the documents have been submitted and maintained as the Project Manual and contract documents require, all can be sent to me with as little as two hours clerical effort.

~~Additionally, since we are paying one half million dollars for testing, I do not believe we would would be putting any imposition upon the consultants to answer the legitimate concerns of the public.~~

In as far as Mr. Neal is concerned,for December 9,2019, I was attempting to arrange a meeting with Mr.Neal to ask questions prior to the board meeting that night.I wanted to meet with Dan Neal without the architect and construction manager present because I had concerns which an owner might want to keep confidential. In a December 5,2019 email to me from you, Robert Gantt it was stated:" As you know, Mr. Neal is a Mechanical Engineer and a Professional Engineer.He is the District 5 representative looking out for our interest He is not however an architect nor the Prime Contractor for D5 on the new elementary school. He may not have the have all the detail for design and construction you may be seeking."

In your February 12,2020 email you state " Our consultant Mr. Dan Neal is a professional engineer with advanced degrees and a career with vast experiences that benefit the district in the pursuit of excellence in this construction". It appears to me that you want it both ways. I don't fathom the reversal in your opinion of him.

I, too, have experience and degrees. The longer it takes to gain the answers to my questions and obtain the documents requested, the more costs and the long term safety could be jeopardised.

And, here's the kicker, Mr. Gantt, I was elected to bring oversight so that we will not have projects such as the Chapin High School Renovations where the experts were aware that work was not per specification and it ended up costing the taxpayers millions to correct defects.

And, I am a bargain. It is not costing you anything for an extra set of eyes. My intent, regardless of Ed White's ascertains, is to have an exceptionally well built project. I believe that all of us have the same goal. I come with my own insurance so there is no liability. I will not give directives.

Please provide me the documents that I have requested.

Respectfully submitted,

Kenneth B. Loveless

All Board Members  
have the same  
rights and  
responsibilities,

Mr. Loveless  
is not  
credentialed  
to sign off  
on this  
project.

This is incorrect.

Mr. Loveless was  
not on the Board  
during the Settlements

Total deficiencies  
at Chapin High  
School less than  
\$25,000, Settlement discussion  
to be on subsequent meeting,

See and listen  
to September 14, 2020  
Board recording.

Attachment #1, pg 2 is included with  
the minutes of the 9/14/2020  
meeting, at the request of Board member  
Ed White  
pursuant to South Carolina Code  
Ann. Section 30-4-90(a)(4)  
and Board Policy BEDG. The Board majority  
did not approve, disapprove, or otherwise  
act upon the contents of this attachment.

# Questions Raised about Construction on Amicks Ferry Road

Kenneth B. Loveless

228 Lookout Pointes Drive

Chapin, SC 29036

March 24, 2020

Dr. Christina Melton

Superintendent Lexington-Richland School District 5

1020 Dutch Fork Road

Irmo, SC 29063

Attachment #1, pg. 1 is included with  
the minutes of the 2/19/2020  
meeting, at the request of Board member  
Ed White  
pursuant to South Carolina Code  
Ann. Section 30-4-90(a)(4)  
and Board Policy BEDG. The Board majority  
did not approve, disapprove, or otherwise  
act upon the contents of this attachment.

Re: Elementary School # 13 Amicks Ferry Road

Dear Dr. Melton:

First, I am aware that district administration has had its hands full with the COVID-19 Pandemic. Yet, construction at the site continues and items within the body of this report have bearing upon contractor safety and quality of construction. As such, each should have relative equal gravity as compared to the present geopolitical occurrences. I believe that I had no choice but to report the situation.

As general notes, any item marked as CONFIDENTIAL is no longer so (and should never have been because this is public project) because the construction documents after approval of the GMP are for public knowledge. Likewise, passages to which I refer marked DRAFT were unchanged during contract negotiations and are also in the public domain.

All correspondence via district email concerning this matter is included. (See attachment #1) I initially requested that the Project Representative Dan Neal investigate by providing Daily Progress reports, photos, concrete delivery tickets for each batch (truckload), Field Density test reports, cut sheets and submittals for select fill and by class of concrete used on site. We also need to review all dates of mobilizations of each contractor or subcontractor, concrete tests reports, soils test reports and electrical conduit submittals from the period interval from the inception of the project until and including progress on December 9, 2019. The initial soils information given indicated an Erosion and Sedimentation Observation Report from Terracon dated 9/25/2019. So, the inception of the project had to have occurred before that date.

At the December 9, 2019 school board meeting, Mrs. Susan Baker made know her observations (see attachment # 2) and requested explanations for actions taken by the Contractor on the night of December 6, 2019. Mrs. Baker has never received an answer to her inquiry. Under school board policy BEDH (see attachment #3) a school board trustee may request an official oral answer to the information

at the next board meeting. Since I was unaware that Mrs. Baker had not received an answer until today, I am hereby requesting such for the next board meeting.

At the January 27 board meeting, we received letters (see attachments #4, 5 and 6) from engineers and a letter from the project architect (see attachment #7) orchestrated by and presented through the district's Project Representative, Mr. Dan Neal. After reviewing the letters, I have the following to offer:

- 1) In general, the letters attempt to limit Mrs. Baker's request by filtering out potential causative effects other than concrete materials and testing. Mrs. Baker's inquiry did not exclude any other areas of concern which might have been and are: design, construction, materials utilized, inspections and safety. Mr. Neal choose to make concrete and material testing his focus since his witness, Mr. Greg Hughes, President of Contract Construction, Inc., later stated in the board meeting that electrical duct bank concrete materials did not need to be tested. I asked Mr. Neal in your office December 9, 2019, the afternoon before the meeting, about the matter. He told me that he was confident that the work had been done correctly since Contract Construction's project superintendent had personally supervised the work.
- 2) As in any construction related endeavor, it's Safety First. Many of our students in mock and real life interviews tout the fact that they have earned through study the OSHA 10 Hour Certification. Yet, we as adults, are allowing unsafe conditions on our district's work site. Think how disillusioned students will be when they become aware of this situation. Our highly regarded general contractor was supervising work performed under tractor lights. I reference you to 29 CFR OSHA 1926 Construction Industry Regulations Section 1926.56 Illumination. (See attachment #8) The Final Geotechnical Engineering Report Item 6.5 General Construction Considerations on page 20 warn bidders about Excavation Safety. OSHA Section 1926.32 deals with the Competent Person who was to have supervised excavations on site. Subpart P deals with excavations. On March 12, 2020 at 9:16 a.m. and again at March 13, 2020 at 3:25 p.m. contractor's employees were observed in open excavations over 5 feet depth without trench boxes, trench shoring, ladders or other equipment. The occurrence on March 12 was observed at the water main tie-in location in the right-of-way at the extreme northeastern corner of the property. After a period of almost continual rain for weeks, exceedingly wet soil conditions existed. Yet, a vertically walled excavation (one without sloped banks) was observed. To make matters worse, a track hoe with its surcharge loading was on the leading edge of the excavation directly above and adjacent to the employee. (See attachment #9). There is no evidence that the contractor has complied with either the OSHA illumination section or the trenching section. These minimum standards were brought into question with workers observed in open trenches at night. Please see also the thumb drive with video of a similar occurrence made from Amick's Ferry Road December 10, 2020. (see attachment #10) Contrary to statements made, the safety violations continued after the December 9, 2020 school board meeting.
- 3) Letters from RB Todd dated December 18, 2019 and Terracon dated January 8, 2020 (see attachments #4 and 5) were sent. The letters are in error by stating that concrete testing

Attachment #1, pg. 2 is included with the minutes of the 6/15/2020 meeting, at the request of Board member E. Wolfe

pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

#1, pg. 3 is included with the minutes of the 10/19/2010 meeting, at the request of Board member Ed Wicks pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

is not a requirement of Project Specification Section 321313 Concrete Walks, Curb and Pavement. In response, the specifications reference SCDOT 2007 Standard Specifications for Highway Construction (see attachment #11) page 6 101.3.14 defines The SCDOT Construction Manual as the "criteria and procedures used by engineering personnel in the administration of construction contracts". The SCDOT Construction Manual as revised 01/11/2019 (see attachment # 12) includes the Quality Assurance and Testing Guide which is an amendment to Figures 106B and 106C of the SCDOT Construction Manual. The guide is also known as SC-50-T.

As a consequence, the SCDOT further defines material classifications not by their use such as conduit encasement but by rather strengths of materials. The Project Manual for Elementary School # 13 states under Specification Section 321313 Concrete Walks and Curbs page 321313-2 paragraph 2.5 A. 1. (see attachment #13) "Concrete Walks and Curbs and Gutters: Class 3000 per SCDOT Table 701.2.12.2."

Referring to SC-50-T (attachment # 14) the concrete is defined as structural Class 3000 and requires 1 each set of concrete cylinder tests per and up to 50 CY on small pours as well as Slump, Air Content, Temperature and Thickness Verification for each batch (truckload).

4) The letter from Sims Engineering dated December 19, 2019 addressed to Barb Haller and Clay Cannon states that testing of concrete at concrete encased conduits is not required. (see attachment #6) The Project Manual for Elementary School #13 Electrical Basic Materials and Methods states under Specification Section on page 260500-15 article 3-03 Raceways Underground Feeder Conduit, Communications Conduit, and Duct Banks: "3.) Where required concrete encasement shall be either 2000psi or 3000psi." (see attachment #15) But, on December 6, 2019 Specification Section 260500 was not part of the Project Manual because the Early Site Work contract which was the only contract at the time. Specification Section 260500 was not part of the Early Site Work Bid Set. The building GMP had not yet been approved nor with it other specification sections. Further, there is no evidence that a highly non-standard 2000 psi design mix had been submitted and approved by the Engineer of Record. In all likelihood, the more standard Class 3000 mix design was used. In any case, testing was required under SC-50-T. I have asked that the district obtain from the construction manager at risk all the delivery tickets from the concrete suppliers so that we can determine the mixes actually incorporated into the work. It was stated that no concrete tests were performed and no test data has been received to date.

5) Under Specification Section 260500 page 15 3.03 Raceways Underground Feeder Conduit, Communications Conduit and Duct Banks: it states "1) Use GRC and PVC schedule 40 for underground and duct bank installations." NFPA 70 National Electric Code 2017 page 70-88 states Section 230.50 (A) (1) Service Entry Cables (3) Schedule 80 PVC conduit.' (see attachment # 16) If installed in accordance with Specification Section 260500 of the Project Manual for Elementary School # 13, the installation may not meet code.(see attachment #17)

#1, pg. 4  
Attachment #1 is included with the minutes of the 01/13/2020 meeting, at the request of Board member Ed Ward pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEOG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

6) Underground duct banks under NFPA 70 of that National Electric Code must be carefully installed by skilled workmen. Under section 230.6 (4) pages 70-84 and 85 it requires cables be "in conduit and installed with no less than 18" of earth beneath buildings and other structures". Section 230.32 on page 70-86 requires protection against damage. Section 230.53 on page 70-88 requires raceways to drain. Section 300.5 on pages 70-136 and 137 has requirements for wet locations, backfill and compaction and minimum concrete coverage over conduits and other requirements. Section 300.7 on page 70-139 has expansion and expansion deflection and deflection fittings requirements. Section 310.2 on page 70-145 has round cross sectional requirements. Section 310.15, on pages 70-146,147 and 148, shows spacing using PVC spacers and mounts between raceways as requirements. Article 352 Rigid Polyvinyl Chloride Conduit: Type PVC on pages 70-202 and 203 shows 352.3 Securing and Supporting requirements.

Clearly the intent of these requirements as shown in paragraph 110.12 page 70-44 which notes that acceptable industry practices are described in reference specification ANSI/NECA 1-2015. These references have at their cores describe the intent that all installations be carefully inspected prior to concrete placement. (see attachment #16)

7) Of 15 each Field Density Soils Reports from Terracon provided, none are noted as occurring at electrical duct bank locations. (see attachment #18) All nine performed at trench locations were at storm drain pipe locations. None of those reports indicates the existence of a required mud slab or support anchoring slabs for conduit or duct bank construction. None indicates testing of Class 1 or 2 "Select Fill" for pipe bedding as required in Specification Section 312333 Trenching, Backfilling, Compacting for Utility Systems Embedment Materials paragraph 2.6.1 and.2 on page 312333-5 for storm drain piping (see attachment #19) and NFPA 70 300.5 (F) on page 70-136 Backfill for Underground Conduit Installations. (see attachment #16) In fact, Specification Section 312333 2.6 A.4.(see attachment #20) indicates that all the trench backfill as noted in the Terracon reports is the least desirable material listed, Class IV. So, instead of select fill soils which are listed in the specifications, unsatisfactory were utilized.

8) Because the work was supervised as indicated by the general contractor in the January 27, 2020 board meeting and Mr. Neal on December 9, 2019 there are indications that the work was performed by forces not licensed to do this work. The electrical subcontractor probably had not been mobilized since to do so he would have been working without a subcontract. The work on the building contract had not yet been approved because the Guaranteed Maximum Price had not yet been submitted. Electrical specifications were not included under the Early Site Work Bid Set. To know for certain we need to know the date that the electrical subcontractor mobilized. I have requested that the district ask the construction manager at risk for this information. (see attachment #21)

9) 3 each Laboratory Services Reports, i.e., # 73191119.0023, # 73191119.0030 and # 73191119.0032 are soils classifications reports which are identified as unsatisfactory soils

for use as listed in Section 312000 1.7 C. page 312000-5 of Project Manual for Elementary School #13. These soils were used on this project anyway. (see attachment #22)

One of the soils used shown on Laboratory Services Report # 73191119.0011 dated 10/14/2020 has a maximum dry density weight less than the 95 PCF as specified in Section 312000 1.7 B Soils Materials which should have also rendered it unsatisfactory for use. (see attachment #23)

It should be noted that I brought it to the attention of Mr. Neal and attorney Michael Montgomery during contract negotiations with the construction manager at risk that unclassified excavation should have been included in the Contract for Construction. At the time, we were told that it would have been cost prohibitive to include unclassified excavation in the requirements. But, we have already agreed to pay up to an additional \$175,000.00 for the Soils Plasticity Remediation Allowance which is allowance # 2 Exhibit C Allowances in the BUILDING GMP approved December 9, 2019 even though each bidder possessed the soils reports at time of bid. Incredibly, this work is related to site paving not buildings but was approved as an allowance under the Building GMP. (see attachment # 24) It certainly appears that the Owner is taking on and paying for the contractor's risk here because all of this was known at the time of the bid.

Of the 15 each Field Density Reports nine each relate to tests in confined trenches and six each relate to general fill soils installed in large unconfined areas. The site is approximately 24 acres which is 1,045,440 square feet. If one third of it was compacted fill that would require 104 tests per 8" lift of fill soils installed. There are embankments noted where at least 48" of fill soils have been installed. That makes the approximate order of magnitude number of soils compaction tests required (35 times 6 each 8" lifts) equal to 210 tests. Yet, in the general fill areas which are not the trench areas through and including November 11, 2019, there were only 11 individual Field Density Tests made. I cannot say for certain but for a project this large where 1 test is to be done in 8" lifts of fill soils placed per 10,000 sf of surface area in pavement areas and 1 test per 2,500 sf under building footprint area is required per 8' lift (see page 18 Fill Compaction requirements of the Final Geotechnical Engineering report Lex 5/Amicks Ferry Site by ECS Southeast, LLP dated June 18, 2019,) (see attachment #25) the number of 11 each tests seems inordinately low. It appears that only approximately 5% of the required number of tests may have been performed.

The 9 each trench tests reported above were on storm drain lines. None were done on Electrical Duct Bank Construction and none were done on the day which Susan Baker observed the work being placed on the night of 12/6/2019.

- 10) There is correspondence from the previous board chair which states that access to the site and documents under the control of the construction manager at risk are somehow not obtainable by the Owner. (See attachment # 1) Please refer to the General Conditions to the Contract for Construction A 201 -2007 article 3.16 on page 18. "The Contractor shall

#1, pg. 5 is included with the minutes of the 10/19/2020 meeting, at the request of Board member [Signature] pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

provide the Owner and Architect access to the Work in preparation and progress wherever located." (see attachment #26)

Under article 13.5.2 page 37 should the "Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing inspection or approval under 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing , inspection or approval by an entity acceptable to the Owner...."(see attachment #27)

Article 13.5.4 states "Required certificates of testing, inspection and approval shall, unless otherwise required by the Contract Documents, be secured and promptly delivered to the Architect." (see attachment #27)

Further, the Project Manual under 14000 1.8 A. Contractor's Quality Control Plan states that within 10 days of the Notice to Proceed and not less than five days prior to the preconstruction conference that the Contractor is to submit a comprehensive plan of quality control to include a schedule of testing and inspection. It also requires continuous inspection of workmanship. (see attachment # 28)

Under 013300 pages 5, 6 and 7 of the Project Manual H 3. And 5. Material Test Reports and Product Test Reports are to be submitted to the Architect for review. This includes design mixes for concrete, select backfill embedment and pipe bed material and PVC electrical conduit. (see attachment # 29). By contract these are to be made available to the Owner upon request.

Under AIA Document A 201-2007 article 3.11 page 16 Documents and Samples at the Site The Contractor is to maintain for the Owner one of submittals. This includes the requested items in the paragraphs above. (see attachment #30)

Under article 3.12.7 the Contractor is to perform no portion of the work on site which require submittals until the submittals have been approved by the Architect. (see attachment # 31) This includes the requested items in the paragraphs above.

Finally, under A 133 -2009 page 8 article 2.3.8.8, it states" The construction Manager shall also keep, and make available to the Owner and Architect, a daily log containing a record each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect the progress of the work, accidents, injuries, and other information required by the Owner." (see attachment #32)

In addition to the documents requested in paragraph one of this letter, I ask that you as district superintendent also provide the answers to the following questions for the period from the inception of the project until December 9, 2019:

#1, 19.6  
Attachment is included with the minutes of the meeting, at the request of Board member [Signature]  
pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

#1, pg. 7  
Attachment is included with the minutes of the meeting, at the request of Board member SA. White pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEEG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

- A) Were safety protocols noted in # 2) above followed in regard to illumination and trench safety? If not, what is being done about it?
- B) Were concrete mix designs submitted by the general contractor and each subcontractor for each type mix used or to be used on the project? Provide a copy of each approved mix design.
- C) Were the specified mixes placed at each location as required? Provide a copy of the material delivery tickets and location of each batched placed.
- D) Was a schedule of required tests submitted and approved as in 14000 1.8 A. for concrete and earthwork provided? Provide a copy of the schedule. Which contractor or subcontractor was responsible for coordination and scheduling of the testing agency? Were the tests performed per the schedule?
- E) Were the tests performed in proper number and locations as specified? If not, what will be done about it?
- F) When was each contractor or subcontractor mobilized? Who was on the site each day? What problems were reported? Provide copies of contractor and subcontractor daily reports. Provide a listing the other information required by the owner as above under A 133-2009 page 8 article 2.3.2.7.
- G) Was schedule 80 PVC conduit with proper spacers and supports used at duct bank construction? Was select fill pipe bedding and embedment material installed at storm drain and duct bank locations. Was a concrete mud slab or anchoring slab used at duct bank locations? Was the installation inspected? If so, provide the inspection report. If not, what will be done to insure the installation was done properly?
- H) Has the district taken on and paid for the contractor's risk as in #9 above? If so, how will that be rectified?

In summary, applicable building codes and/or the Project Manual may not have been followed. As you can see, the district through its paid consultants must require the contractors follow the contract documents. We, as the board, must act accordingly by overseeing and insisting that our administrative group investigate and rework as necessary for quality assurance.

Please keep in mind that only the Architect may change project specification requirements issued after the contract has been signed. He or she may only do so a change order executed by the Owner (the board).

I hope that we are good stewards for future citizens. We teach our children the scientific method. Carl Sagan said: "Something my father dearly loved is the scientific method, and it's founded in this element of humility. The idea is that you pursue truth wherever it goes; you need to evidence, and if you can -you see if it's repeatable." Why would we teach our children this and then not want to know? Ronald Reagan said it best when he said, "Trust but verify."

I request action and a reply on these matters within the next two weeks.

Please act accordingly.

Respectfully submitted,

  
Kenneth B. Loveless, Trustee

Attachment #1, pg. 8 is included with  
the minutes of the 6/19/2020  
meeting, at the request of Board member  
Ed White

pursuant to South Carolina Code  
Ann. Section 30-4-90(a)(4)  
and Board Policy BEDG. The Board majority  
did not approve, disapprove, or otherwise  
act upon the contents of this attachment.

Doc D

Response By District Consultant

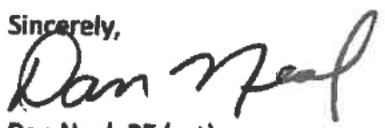
Dan Neal, PE (ret)  
165 Golf View Bend  
Elgin, SC 29045

April 20, 2020

Dr. Christina Melton, Ed. D.  
Superintendent,  
School District Five of Lexington and Richland Counties  
1020 Dutch Fork Road  
Irmo, SC 29063

Dear Dr. Melton,

Please find attached a letter, with enclosures, from Mr. Greg Hughes, President of Contract Construction, Inc. Mr. Hughes answers in detail the concerns raised by Trustee Ken Loveless in his letter dated March 24, 2020. I agree with Mr. Hughes letter in its entirety. In my opinion, Contract Construction, Inc. is one of the premiere K-12 construction firms in the state and we are fortunate to have them working on this project for District 5. Please let me know if you have any additional questions.

Sincerely,  
  
Dan Neal, PE (ret)

Attachment #2, pg. 1 is included with the minutes of the 6/19/2020 meeting, at the request of Board member Ed White pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.



4/20/20

Dan Neal, PE (ret)  
165 Golf View Bend  
Elgin, SC 29045

Responses to Questions Raised  
by Ken Loveless

Attachment #3, pg. 1 is included with  
the minutes of the 6/19/2020  
meeting, at the request of Board member  
Ed White

RE: Letter Dated 3/24/20 from Ken Loveless

Dear Dan:

pursuant to South Carolina Code  
Ann. Section 30-4-90(a)(4)  
and Board Policy BEDG. The Board majority  
did not approve, disapprove, or otherwise  
act upon the contents of this attachment.

I am writing in response to the above-referenced correspondence (which I enclose for reference purposes) and will respond to items that I feel require a response from us in the order in which issues were identified. Before I begin, I want to make it clear that I take immediate exception to Mr. Loveless' inference that we should not be currently working on the school during the "present geopolitical occurrences". Construction has been deemed essential and we are taking each day with a newly elevated level of caution to protect the workers on our project. The safety of our workers is our top priority and I am disappointed that Mr. Loveless would attempt to portray otherwise.

Regarding Mrs. Susan Baker's observation:

As you may be aware, we had record-breaking quantities of rainfall in the latter part of 2019 so we did then and still do now take advantage of every single opportunity to get work completed so our project can remain on schedule, and that includes nights and weekends. Proper illumination has been questioned based on a video taken from across the street, the illumination provided was deemed safe by our project superintendent for the task at hand and the work was completed under our direct supervision in accordance with the contract documents.

Item 2:

I would like to start by stating that Contract Construction has a 35-year impeccable safety record and enjoys a very good relationship with OSHA, who has commented on a number of occasions that we are in fact "highly regarded" in the OSHA organization. We are also an active participant in OSHA's Office of Voluntary Programs and invite them regularly to all of our jobsites. We have constructed over a billion dollars worth of educational facilities across the state of South Carolina with very few OSHA violations. Furthermore, our Experience Modification Rate (MOD) has been 0.75 for the past three years, we are a member of the National Safety Council, and have been awarded the highest safety award offered by our 180-member General Contractor's Captive Insurance Group 8 years in a row. So, with all that said, the students in LR5 have the rare opportunity to experience the process in real life, from one of the top school-builders in the state, and we would welcome the chance to go into the classrooms to enhance their learning experience.

Safety Record



#3, pg. 2  
the minutes of the meeting, at the request of Board member Ed White pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

1. As noted above, illumination for the curb and gutter pour was adequate and appropriate and no one was put at any risk during this placement. However, since illumination levels have been questioned from hundreds of yards away, we have rented light towers, which hopefully will not disturb surrounding neighbors. If documentation of illumination levels is going to be deemed necessary by LRS, please let us know and we will begin to record this information.
2. We take exception to Mr. Loveless' guesstimate on the depth of the trench. The trench was 40" deep and at no point has any worker been endangered by entering excavations over 60" without proper benching or use of trench boxes. Regarding the proximity of the excavation equipment, there was and has not been any displacement of trench walls caused by the weight of excavation equipment and any statement to the contrary is simply a supposition.

Item 3:

Please see attached letter from Bruce Todd of ADC Engineers, the civil engineer of record, explaining the strength of the concrete curb and gutter. In addition, it should be noted that the curb installed will be in place for approximately 18 months prior to turning over to the Owner and any damaged or compromised curb will be replaced accordingly.

Item 4:

Chris Patrick of the Simms Group, Electrical Engineer of record offers the following:

"The electrical specifications state that concrete encasement shall be either 2000 psi or 3000 psi. The electrical specifications do not specifically require testing of the concrete encasement. The company that provided the concrete should provide written confirmation of the compressive strength of the concrete delivered and used for concrete encasement of conduit."

Attached are the delivery tickets for the concrete placed in the electrical duct bank, substantiating that a 3000psi mix design was used. One should note that this concrete was in-fact sold to West Electric, a properly licensed electrician. This also provides substantiation to our response to item 8.

Item 5:

Chris Patrick of the Simms Group, Electrical Engineer of record, explaining the erroneous interpretation of the electrical code as it relates to the activity in question:

"NEC 230-50(A) addresses "Protection Against Physical Damage" of "Underground Service-Entrance Conductors", which is the application addressed in 260500, 3-03 where PVC Schedule 40 is permitted for this project. NEC 230-50(A) references NEC 300.5, where the use of PVC Schedule 40 is permitted for underground installations of service-entrance conductors. NEC 230-50(B)(3), the section referenced in the March 24 letter, addresses "Protection Against Physical Damage" of "All Other Service-Entrance Conductors" (i.e. not underground). 260500, 3-03 does not permit PVC Schedule 40 in these cases, and in fact, specifically states, "PVC is not permitted above grade." The electrical specifications require Galvanized Rigid Metal Conduit (RMC) or Intermediate Metal Conduit (IMC) for the condition described in



NEC 230-50(B), which is permitted in 230-50(B)(1) and 230-50(B)(2). The installation as specified in 260500 complies with the requirements of NEC-230-50."

#3, pg. 3  
Attachment: the minutes of the 6/15/2020 meeting, at the request of Board member Ed White pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

Item 6:

Terracon report number 73191119.0037 states clearly, "the installation of the schedule 40 conduits are installed in accordance with the plans."

Item 7:

I am not sure I follow this question. The electrical duct bank was excavated into virgin soils and is not a structural component of the building, so compaction testing was not required nor necessary. The duct bank being questioned is also concrete encased so I cannot fathom why there would be a concern with settlement of this utility.

Item 8:

In order to maintain the early sitework schedule, Contract Construction proceeded at risk to get the conduits installed so sitework would not be interrupted. We did so with the clear understanding that we would not be paid for this work if the GMP was not approved. West Electric, a properly licensed electrical contractor, performed this work. By Contract Construction doing this, the Owner gained the benefit of accelerating the project with no risk. To be clear, the GMP documents were complete at the time of installation and used for this construction.

Item 9:

The reason that it is fiscally irresponsible to put the risk of unclassified excavations on the CMR / Site Contractor is that the numbers will be unnecessarily padded to cover unknown quantities of unsuitable materials, and then the subcontractor will reap all the rewards of savings. It is true that we included an allowance in the GMP for soils plasticity remediation in the amount of \$170,000. However, through many discussions with our site contractor, geotechnical engineer, civil engineer, and special inspector we were able to improve the in-place soils using soil cement, were able to do so within the early sitework GMP, and have not had to use one cent of the \$170,000 allowance to date. In this scenario, all allowance savings will be returned to the Owner and not kept by a subcontractor that was asked to bid an unclassified site.

7 Firms Addressed  
Regarding the suitability of the soils, Terracon notified the project team on or about Oct. 4th that the onsite soils did not meet the project specifications for structural fill. Terracon was directed to do additional onsite soil classification in multiple areas across the project area. The project team, consisting of the Owner, Terracon, ECS Southeast (geotechnical engineer of record), Contract Construction, Coogler Construction (site contractor), Quackenbush, ADC (Civil) and Johnson and King (Structural) had multiple discussions about how to mitigate and move forward with the onsite soils, which are natural and typical for this area. These methods included a stone base for the building area and modified soil cement subgrade for the pavement subgrades. To be very clear, there are no subsurface conditions beneath in-place construction that have been deemed unsatisfactory.



Attachment #3, pg. 4 is included with the minutes of the meeting, at the request of Board member Ed White 6/13/2020

pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

Item 10:

- a. Documents and site access have been made available to our Owner Representative on site. We are not obligated to provide information or access to anyone other than those named in our contract.
- b. No additional testing has been deemed necessary by the designers of record. In addition, Contract Construction will provide warranties and guarantees as specified in the contract documents at the conclusion of the project.
- c. The testing company works for Lexington-Richland School District Five, so these reports are provided directly from Terracon to LR5.
- d. We did conduct a pre-construction conference on 9/12/19 with Terracon and Lexington County. It was at that meeting that our Quality Control Plan was reviewed, as well as, the Schedule of Special Inspections which dictates exactly what is required to be tested.
- e. All of these items have been submitted and approved by the design team and have been made available to our Owner Representative.
- f. All items are being maintained at the project site and are readily available for our Owner Representative to review.
- g. Daily reports have and continue to be maintained since the inception of this project and are readily available to our Owner Representative.

Answers to questions posed:

- a. Yes, and we continue to monitor worker safety every single day.
- b. Yes. Approved mix designs are maintained in our submittals folder on site.
- c. Yes. Terracon can confirm this as fact. If material delivery tickets are to be matched to locations placed, that would be an additional service for Terracon and should be negotiated with them.
- d. The Schedule of Special Inspections is clearly listed in section 14000 and is being strictly adhered to. Contract Construction arranges for all inspections. Terracon will confirm that inspections have been conducted in accordance with the schedule of special inspections.
- e. Terracon can confirm that tests have been performed in proper number and locations.
- f. Subcontractor mobilizations and any issues encountered are documented in our daily reports by our site superintendent.
- g. 1. Schedule 40 was specified, installed and signed off on by Terracon as being in accordance with the contract documents. 2. Where utilities were installed in fill locations, such fill was deemed appropriate for use by Terracon. Waterlines and Sanitary Sewer were bedded with 57 stone per the Town of Chapin requirements. 3. No mud slab or anchoring slab was used or deemed necessary by Terracon during the installation of the electrical duct bank. See attached report as requested.
- h. The District gained all the benefit regarding the scenario mentioned in item 9.



I conclude by stating that we are not perfect and never will be, but every single day we strive to do things better than the day before and to be more like a thermostat affecting our surroundings, instead of a thermometer that merely reacts to them. When we encounter issues, we work with the project team to resolve them. In addition to Contract Construction's very high level of daily quality control, LRS has hired trust-worthy individuals and firms that include a dedicated Owner Representative, Architect, Professional Engineers, and Special Inspectors to verify our work. I believe that everyone on this project team will confirm that this project is being managed very professionally and with very few deficiencies for this size project.

Please do not hesitate to let me know if I have not adequately responded to any of the issues presented by Ken Loveless.

Sincerely,

A handwritten signature in blue ink, appearing to read "Greg Hughes", is written over a blue circular stamp or watermark.

Greg Hughes  
President

Attachment #3, pg. 5 is included with  
the minutes of the 10/15/2020  
meeting, at the request of Board member  
Ed White  
pursuant to South Carolina Code  
Ann. Section 30-4-90(a)(4)  
and Board Policy BEDG. The Board majority  
did not approve, disapprove, or otherwise  
act upon the contents of this attachment.



March 31, 2020

Quackenbush Architects + Planners  
1217 Hampton Street  
Columbia, SC 29201

Attn: Barb Haller, AIA, LEED AP

Re: Amicks Ferry Road Elementary School – Curb and Gutter Testing

Dear Barb:

This letter is in response to item #3 of a correspondence between Ken Loveless (Trustee – LRSD5) and Dr. Christina Melton (Superintendent- LRSD5) dated March 24, 2020. The item is in reference to testing for structural strength of concrete poured for curb and gutters.

The SCDOT testing standards referenced in the letter are correct. However, it was never the intent on this project, or any project, to test the structural strength of concrete being used in a non-structural application like curb and gutter.

It is my professional opinion as the Engineer of Record, that even though the concrete strength specified for curb and gutters is 3000 psi, that they are not considered a structural element. Therefore, testing of concrete in the construction of curb and gutter sections is an unnecessary expense.

However, if it is desired to confirm the structural strength of concrete previously poured, it is suggested that the testing firm propose a plan for non-destructive testing of poured in place curb and gutter.

Sincerely,

Bruce Todd, P.E., LEED AP BD+C  
803-781-3141 x.306  
brucet@adcengineering.com

Attachment #4, pg. 1 is included with the minutes of the 10/19/2020 meeting, at the request of Board member Ed White pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.




OFFICE:  
 PO BOX 3408  
 SUMMERVILLE, SC 29484  
 PHONE: 843-821-7600  
 FAX: 843-821-7627  
 MIDLANDS DISPATCH  
 803-754-8633

No. 713598

PLANT LOCATIONS  
 PLANT 6 BLYTHEWOOD  
 PLANT 7 IRMO, SC  
 PLANT 8 LUGOFF, SC  
 PLANT 9 WINNSBORO

Attachment #419.2 is included with the minutes of the meeting, at the request of Board member [Signature]. Pursuant to South Carolina Code Ann. Section 30-1-904 (2)(a) and Board Policy REG-1, the Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

| UNLOADING   |                  |                    |              | CAUTION   |                           |             |                 |
|---|------------------|--------------------|--------------|---|---------------------------|-------------|-----------------|
| <p>Drivers are not permitted to add water to the mix to exceed the maximum slump. Drivers are prohibited from delivering concrete except under the truck's own power, and where site conditions permit the safe and proper operation of this equipment. Drivers are not permitted to go beyond the curb line, except upon the authorization of the customer and his acceptance of risk for any loss or damage to the property or our equipment. This includes any wrecker or towing charges for getting out of the location. Water added.</p> |                  |                    |              | <p>May cause eye or skin injury. Contains Portland cement. Fresh cement, mortar, concrete, or grout may cause skin injury.</p> <p>TAKE THESE PRECAUTIONS:</p> <ol style="list-style-type: none"> <li>Avoid all contact with eyes.</li> <li>Wear rubber boots and gloves, and avoid prolonged contact directly with skin or through porous materials.</li> <li>In case of contact with skin or eyes, FLUSH THOROUGHLY WITH WATER.</li> <li>If irritation persists, get medical attention promptly.</li> <li>Keep children away.</li> </ol> |                           |             |                 |
| RECEIPT AND RELEASE:  |                  |                    |              |   |                           |             |                 |
| <p>Galons  Customer's representative</p> <p>RECEIVED SUBJECT TO CONDITIONS ON REVERSE SIDE</p>  |                  |                    |              | <p>TERMS: Net 30 Days</p>   |                           |             |                 |
| CUSTOMER ID   | P.O. NUMBER      | ZONE               | ORDERED BY   | TIME  | DATE                      | TICKET      |                 |
| 001269  |                  |                    |              | 11:19 AM  | 11/14/19                  | 14667       |                 |
| SOLD TO   |                  |                    | DELIVER TO   |   |                           | Leave Plant | Arrive Job Site |
| [Faint text]  |                  |                    | [Faint text] |   |                           | 1140        | 1730            |
| [Faint text]  |                  |                    | [Faint text] |   |                           | 1245        | 105             |
| QUANTITY THIS LOAD  | QUANTITY ORDERED | QUANTITY DELIVERED | PRODUCT CODE | PRODUCT DESCRIPTION   | UNIT OF MEASURE           | UNIT PRICE  | EXTENDED PRICE  |
| 5.00  | 5.00             | 5.00               | F30M         | F30M 3000 ASH REL. MI   |                           |             |                 |
| 1.00  | 1.00             | 1.00               | ENVFEEM      | ENVIRONMENTAL FEE MIDL  |                           |             |                 |
| 1.00  | 1.00             | 1.00               | FUE M        | FUEL SURCHARGE MIDLAND  |                           |             |                 |
| TRUCK   | DRIVER           | SLUMP              | DUE AT JOB   | USE OF CONCRETE   | SUB TOTAL<br>TAX<br>TOTAL |             |                 |
| 04  | DA               | 1.00               |              | TESTING   |                           |             |                 |
| CALCIUM   | WATER REDUCER    | AIR ENTRAIN        | PHONE        | GALS/CY MAY BE ADDED NOT TO EXCEED W/C RATIO  |                           |             |                 |

DELIVERY INSTRUCTIONS: [Faint text]

10 MINUTES PER YARD ALLOWANCE FOR A PER HOUR CHARGE



**OFFICE:**  
 PO BOX 3408  
 SUMMERVILLE, SC 29484  
 PHONE: 843-821-7600  
 FAX: 843-821-7627  
**MIDLANDS DISPATCH**  
 803-754-8633

**No. 713599**

**PLANT LOCATIONS:**  
 PLANT 6 BLYTHEWOOD, SC  
 PLANT 7 IRMO, SC  
 PLANT 8 LUGOFF, SC  
 PLANT 9 WINNSBORO, SC

Pursuant to South Carolina Code Ann. Section 31-6-90(a)(4) and Board Policy 31-6-90(b), the Board majority did not approve this expense, or otherwise act upon the contents of this attachment.

Attachment #4 M-3 is included with the minutes of the 01/15/2020 meeting, at the request of Board member [Name].

| UNLOADING   |                  |                    |              | CAUTION   |                 |                 |                |
|---|------------------|--------------------|--------------|---|-----------------|-----------------|----------------|
| <p>Drivers are not permitted to add water to the mix to exceed the maximum slump. Drivers are prohibited from delivering concrete except under the truck's own power, and where site conditions permit the safe and proper operation of this equipment. Drivers are not permitted to go beyond the curb line, except upon the authorization of the customer and his acceptance of risk for any loss or damage to the property or our equipment. This includes any wrecker or towing charges for getting out of the location. Water added.</p> |                  |                    |              | <p>May cause eye or skin injury. Contains Portland cement. Freshly cement, mortar, concrete, or grout may cause skin injury.</p> <p><b>TAKE THESE PRECAUTIONS:</b></p> <ol style="list-style-type: none"> <li>Avoid all contact with eyes.</li> <li>Wear rubber boots and gloves, and avoid prolonged contact directly with skin or through porous materials.</li> <li>In case of contact with skin or eyes, <b>FLUSH THOROUGHLY WITH WATER.</b></li> <li>If irritation persists, get medical attention promptly.</li> <li>Keep children away.</li> </ol> |                 |                 |                |
| RECEIPT AND RELEASE:  |                  |                    |              | TERMS: Net 30 Days  |                 |                 |                |
| Gallons   |                  |                    |              | Customer's representative   |                 |                 |                |
| RECEIVED SUBJECT TO CONDITIONS ON REVERSE SIDE  |                  |                    |              |   |                 |                 |                |
| CUSTOMER ID   | P.O. NUMBER      | ZONE               | ORDERED BY   | TIME  | DATE            | TICKET          |                |
| 001269  |                  |                    |              | 12:45 PM  | 11/14/19        | 4668            |                |
| SOLD TO   |                  |                    | DELIVER TO   |   | Leave Plant     | Arrive Job Site |                |
|   |                  |                    |              |   | 1:00            | 1:45            |                |
|   |                  |                    |              |   | Leave Job Site  | Arrive Plant    |                |
|   |                  |                    |              |   | 1:54            |                 |                |
| QUANTITY THIS LOAD  | QUANTITY ORDERED | QUANTITY DELIVERED | PRODUCT CODE | PRODUCT DESCRIPTION   | UNIT OF MEASURE | UNIT PRICE      | EXTENDED PRICE |
| 1.00  | 1.00             | 2.00               | F30M         | F30M 3000 ASH RED M   |                 |                 |                |
| 1.00  | 1.00             | 2.00               | ENVFEEM      | ENVIRONMENTAL FEE MIDL  |                 |                 |                |
| 1.00  | 1.00             | 1.00               | FUEL         | FUEL SUPCHARGE MIDLAND  |                 |                 |                |
| 1.00  | 1.00             | 1.00               | MIN LOAD     | MINIMUM LOAD CHARGE MT  |                 |                 |                |
| TRUCK   | DRIVER           | SLUMP              | DUE AT JOB   | USE OF CONCRETE   |                 |                 |                |
|   | U1               | 4.00               | 1:00         | FOOTINGS  |                 |                 |                |
| CALCIUM   | WATER REDUCER    | AIR ENTRAIN        | PHONE        |   |                 |                 | SUB TOTAL      |
|   |                  |                    |              |   |                 |                 | TAX            |
|   |                  |                    |              |   |                 |                 | TOTAL          |

DELIVERY INSTRUCTIONS: 10 MINUTES PER YARD ALLOWANCE \$50.00 PER HOUR OVERTIME

# Proper Board Role in Construction

the South Carolina Freedom of Information Act. Please see the following link for exemptions provided for in SC FOIA: <https://www.scstatehouse.gov/code/t30c004.php>

- 3) How can some board members deny other board members access to LR5 building sites? How or why does one have that power? Shouldn't all building have oversight by all board members? Construction contracts give control of construction sites to the general contractor: Managing the construction contractor is an administrative function. The District, with Board approval, contracted for Contract Construction to serve as the District's Construction Manager at Risk for Elementary School 13. The terms of the contract give Contract Construction the responsibility to maintain a safe and secure job site. The District's administration is responsible for the day to day management of the District's operations. Board Policy BBA describes the Board's Powers and Duties, including Visits to Schools. Oversight is the responsibility of the Board collectively. Board Policy BB notes that "All powers of the board lie in its action as a body." Board members acting as individuals have no authority over personnel or school affairs. Board Policy BCA notes that board members basic function is policymaking, not administration.

The Superintendent and the administration operate and supervise the day to day functions of the District including construction projects.

The District retains a consultant to represent the District's interest and ensure the terms of the contract are being met. This professional acts as the owner's representative on the project. In addition to Contract Construction and the District's consultant, the District also engages the services of a third-party inspection company that is paid by and answers to School District Five.

Michael Cates  
School Board Chairman  
School District Five of Lexington & Richland Counties

- 4) When can we expect the redistricting information? Withholding this information (which should have been completed before deciding where to build #13) is very inconsiderate to LR5 families with school age children. No official timeline has been provided for the Milone & MacBroom report, but one will be provided publicly to the school board at the appropriate time.
- 5) And 5) When will the Amicks Ferry /#13 traffic patterns be resolved? There are no traffic pattern issues to resolve. The District is complying with all elements of a traffic study, which has been accepted and approved by SCDOT.

Your questions and comments were shared with all members of the Board of Trustees and posted publicly on the District's website.

Attachment #5, pg. 1 is included with the minutes of the 10/19/2020 meeting, at the request of Board member Ed White

pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

Doc E  
July 10-13

Ed White

**From:** Edward White <ewhite@lexrich5.org>  
**Sent:** Monday, July 13, 2020 12:49 PM  
**To:** Ed White  
**Subject:** Fwd: Attachments to my letter Dr. Melton dated 3/24/20

<External Email> - From: ewhite@lexrich5.org

Attachment #2, pg. 1 is included with the minutes of the 8/10/2020 meeting, at the request of Board member Ed White pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

----- Forwarded message -----

From: **Edward White** <ewhite@lexrich5.org>  
Date: Mon, Jul 13, 2020 at 12:47 PM  
Subject: Fwd: Attachments to my letter Dr. Melton dated 3/24/20  
To: Beth Hutchison <bhutchison@lexrich5.org>, Christina Melton <csmelton@lexrich5.org>, Janis Hammond <jhammond@lexrich5.org>, Kenneth Loveless <kloveless@lexrich5.org>, Michael Cates <michaelcates@lexrich5.org>, Nikki Gardner <ngardner@lexrich5.org>, Robert Gantt <rgantt@lexrich5.org>

Michael,

As you are aware, state law allows me to put any information on the record to be included in the minutes of our meeting.

Ken Childs assisted us in the creation of the current policy years ago, including the requirement that the information be stamped with a disclaimer by the district, and the policy was designed to comply with state law.

My submission at the last meeting is the complete submission not to be amended or supplemented by another board member.

When an item is on the agenda, I have the right, as a board member, to ask any relevant questions I chose germane to the topic. When the Superintendent requested that I wait and pursue my questioning at a later date, when the presenters could be better prepared, I acquiesced.

I have many questions yet to ask on the subject of the work product of Contract Construction and the accusations of Ken Loveless in his letter and I look forward to this topic being put on our agenda again in the near future.

To be clear, if I am interested in an exhibit or attachment to Ken's letter I will ask for it.

Finally, I take issue with Ken Loveless accusing you and Dr. Melton of conspiring or doing anything with me asking these questions. I did not consult with anyone before raising my questions or putting the documents on the record. I think it is interesting that Ken is accusing the two of you of censorship when it appears that what he really wants is to limit my ability to speak, ask questions or put information of my choosing in the minutes of our meeting.

Thank you,

Ed

----- Forwarded message -----

From: **Kenneth Loveless** <kloveless@lexrich5.org>  
Date: Mon, Jul 13, 2020 at 8:27 AM  
Subject: Re: Attachments to my letter Dr. Melton dated 3/24/20  
To: Michael Cates <michaelcates@lexrich5.org>  
CC: Christina Melton <csmelton@lexrich5.org>, Beth Hutchison <bhutchison@lexrich5.org>, Robert Gantt

<[RGantt@lexrich5.org](mailto:RGantt@lexrich5.org)>, Jan Hammond <[jhammond@lexrich5.org](mailto:jhammond@lexrich5.org)>, Nikki Gardner <[ngardner@lexrich5.org](mailto:ngardner@lexrich5.org)>, Ed White <[EWhite@lexrich5.org](mailto:EWhite@lexrich5.org)>

Mr. Cates : Mr. White and Mr. Hughes have used as part of their replies as evidence such documents as Terracon report # 37 which is not on the district's website. It has been given to neither me through request to the Superintendent nor the public through FOIA. Neither has the full complement of Terracon reports. My letter cannot be characterized as mere accusations. How could it be? It simply asks questions. I have unwittingly stumbled upon an institutional censorship scheme. You, Mr. Chairman, have just admitted to being part of it. You say below that you don't need my full letter to make your promulgation that my questions are unfounded. I expected more from you but that is OK. What is not OK is that some of the people involved received the entire letter and some did not. What is not OK is that some of the people involved were allowed to see other documents including all those I have requested and some were not. You see, Mr. Chairman, someone other than the people involved got to determine what other important people should be able to see. They were asked to formulate their opinions without all the information. Those people may be more naturally inquisitive and therefore less dogmatic than you. They might have inquiring minds. But, you participated in a scheme to keep them from having the right to make their own decisions. That, Mr. Chairman, is wrong. I reiterate my request that my full letter with attachments, all the documents that I have requested in the body of the letter and all of the Terracon reports be released to the public. Let the public make the determination. Respectfully submitted., Kenneth B. Loveless, Trustee

On Sun, Jul 12, 2020, 1:45 PM Michael Cates <[michaelcates@lexrich5.org](mailto:michaelcates@lexrich5.org)> wrote:

Mr. Loveless,

First, let me be clear, so you do not have to surmise, speculate, or assume. For the record, I did not involve an attorney in my response.

Second, I received your letter without the corresponding attachments on April 20, 2020, along with the rest of the board. I was not involved in answering your letter and did not need the attachments to understand your accusations and the written response by Dan Neal, Contract Construction, and ADC Engineering. Anyone who was involved in answering your unfounded accusations received the full document. I am sure the response to your letter was at considerable expense to the district.

Third, you attempted to obtain the floor without being recognized and interrupted another board member. It is your responsibility to understand how to obtain the floor and how to raise an objection. I interrupted Mr. White not because he was out of order, but because the presenters did not have the documents he was referencing in front of them. To be very clear, you are wrong. Mr. White's questions were germane to the agenda item. Item 9 was listed as Superintendent's Report, Update on Elementary School 13. As I stated during the meeting, I did not know that Mr. White intended to ask questions regarding the response to your letter.

Please accept this as my final response to this matter.

Michael Cates  
School Board Trustee, Board Chair  
District Five of Lexington & Richland Counties  
803 518-4567  
[michaelcates@lexrich5.org](mailto:michaelcates@lexrich5.org)

Attachment #2 pg. 2 is included with  
the minutes of the 8/10/2020  
meeting, at the request of Board member  
Ed White  
pursuant to South Carolina Code  
Ann. Section 30-4-90(a)(4)  
and Board Policy BEDG. The Board majority  
did not approve, disapprove, or otherwise  
act upon the contents of this attachment.

On Jul 12, 2020, at 10:28 AM, Kenneth Loveless <[kloveless@lexrich5.org](mailto:kloveless@lexrich5.org)> wrote:

Mr. Cates, I surmise by your response that an attorney has advised you. If so, which attorney? I have the right to know if an attorney paid by the school district for which I am a trustee was involved. Second, we know that Trustees Gardner and Hammond never received my full letter with attachments. Did you receive the full letter from Dr. Melton prior to the meeting? Did anyone including Mr. Hughes and Mr. Neal receive my full letter prior to the meeting? Third, you as board chair let Mr. White, over my attempted objections, continue his cross examination of his "expert" witness. Mr. White continued. You effectively lost control of the meeting. If we were to have had a discussion of the matter and if the Superintendent had requested such as policy states, then policy requires it to have been on the agenda. Since you and the Superintendent set the agenda, did you know that Mr. White would attempt to discuss and

characterize my work without citing and very possibly without having received my full letter prior to the meeting? Please respond. Respectfully submitted, Kenneth B. Loveless, Trustee

On Sat, Jul 11, 2020, 4:34 PM Michael Cates <michaelcates@lexrich5.org> wrote:

I have not spoken to Dr. Melton, she can respond if she wishes, at a more appropriate time. Since many of your questions are related to board members and board policy I will respond. My response to your questions is found in italics below.

Dr. Melton, in conversation with Trustees Gardner and Hammond and a follow-up review of documents which Trustee White plans to attach to the minutes of the latest board meeting of June, 2020. I noticed the 32 attachments which were part and parcel to my letter were not included.

*Mr. White has no obligation to include the attachments.*

Further, I noted that contrary to policy BEDH, the 32 attachments to my letter were not forwarded to the other board members. Was a decision made to present my inquires to the full board? If so, I did not receive any notice under policy BEDH of such. Was such a decision sent to others? I have it on good authority that your actions by not publishing my letter in its entirety with the 32 attachments included constitute censorship. Board members Gardner, Hammond and possibly the others were not given the full benefit of the body of the work.

*Policy BEDH, Public Participation at meetings, has no bearing on your request. Your letter to Dr. Melton and the response was sent to the full board. Your request was not for information but for an investigation. I am not sure it is covered by policy. Policy BEDGA, Board Records, addresses requests for information from board members. The policy states,*

*Requests by members of the board*

*Since the board is ultimately responsible for all district operations, individual board members are extended special consideration in obtaining information. Under normal circumstances, requests to inspect and/or receive copies of records should be made by individual board members to the superintendent who may refer such requests to the Office of Community Services.*

*These particular requests will be processed whenever possible in a more expeditious manner than otherwise required by law*

*and at no cost to the individual board members. All board members will be appropriately advised of all requests as well as the responses*

*If, on the other hand, the requests are determined by the superintendent to be unusual in nature, by reason of their content, subject matter or volume/size, then they should be referred by the superintendent to the fully seated board. The superintendent will require that such requests be made in writing. Upon affirmative action by the board, all requested information and available written documents once again will be provided board members as expeditiously as possible and at no cost to the individuals involved.*

*Individual board members may request information as a member of the general public in accordance with the provisions of the Freedom of Information Act*

*Dr. Melton chose to answer your questions, and you along with the full board received the response on April 20, 2020. She could have referred your request to the full board for a vote because it was undoubtedly "unusual in nature, by reason of their content, subject matter of volume/size..." To be clear, you have no individual authority to direct the work of the Superintendent. You do not have the individual authority to set deadlines for the Superintendent. Your insistence to act with individual authority is in direct violation of board policy, BB, School Board Legal Status, BBA, Board Powers and Duties BCA, Board Member Code of Ethics, and the Superintendent's contract of employment.*

*Your allegations appear to be refuted by the district consultant for construction matters, the construction management company, professional engineers, and the third-party inspector hired by the district. I am sure the response was at great expense to the district.*

*Mr. White had no right to launch into an obviously orchestrated cross examination of his expert witness because I was never given notice of any decision on your part under policy BEDH. Therefore, the opinions and conclusions offered and made could have been formed without important information.*

Attachment 17-1 FD-1 is included with the minutes of the 6/10/2020 meeting, at the request of Board member Michael Cates pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

*Policy BEDH has nothing to do with this. I am not sure what notice you require. Mr. White's questions were germane to the agenda item. Your claim that this was orchestrated is false and baseless.*

The topic was presented during a board meeting and was therefore up to you to state that important parts of my inquiry had been deleted and that notice under policy BEDH that a decision to present to the entire board had been made. Any acts that spring from your original action could be additional acts of censorship.

*Dr. Melton is a participant in the board meeting by contract and policy. The Superintendent is not responsible for managing the board meeting, which would be the board chair's responsibility. BEDH has no bearing on this matter.*

As a way forward, I request that you immediately explain in public your actions to: 1) not forward important portions of my letter to other decision makers and to: 2) not publish any decision to present my inquiry to the full board.

*Let me say once again you have no authority to direct the work of the Superintendent. You are welcome to share the attachments with the board. I believe you have shared documents with the board in the past. It is my understanding your letter stands on its own and the attachments were shared with those tasked with answering your inquiry.*

Further, I ask that if my letter is to be included in the minutes of the meeting, that the entire letter with all attachments be included. By copy of this communication to Board Chairman Michael Cates, that he by way of his role, direct that my letter in its entirety be included in the minutes. Sincerely, Kenneth B. Loveless, Trustee

*It is not up to you to determine what other board members will add to the record. Please review policy BEDG since my explanation of this policy in previous emails appears to be insufficient. Your request to add the attachments to the minutes should have been made the night of the meeting you wish to attach for the record items, they must be germane to the agenda and should be limited to five pages front and back. I have interpreted the five pages to be per item. As an example, I viewed Mr. White's request for the record as three distinct items. Your letter, the response form Contract Construction, and my response to a public participation question. The policy manual can be found at <https://boardpolicyonline.com/?b=lex5>*

Michael Cates  
School Board Trustee, Board Chair  
District Five of Lexington & Richland Counties  
803 518-4567  
[michaelcates@lexrich5.org](mailto:michaelcates@lexrich5.org)

Attachment #2, 13-4 is included with the minutes of the meeting, at the request of Board member Ed White, 8/10/2020  
pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

On Jul 10, 2020, at 10:53 PM, Kenneth Loveless <[kloveless@lexrich5.org](mailto:kloveless@lexrich5.org)> wrote:

Dr. Melton, in conversation with Trustees Gardner and Hammond and a follow-up review of documents which Trustee White plans to attach to the minutes of the latest board meeting of June, 2020. I noticed the 32 attachments which were part and parcel to my letter were not included. Further, I noted that contrary to policy BEDH, the 32 attachments to my letter were not forwarded to the other board members. Was a decision made to present my inquires to the full board? If so, I did not receive any notice under policy BEDH of such. Was such a decision sent to others? I have it on good authority that your actions by not publishing my letter in its entirety with the 32 attachments included constitute censorship. Board members Gardner, Hammond and possibly the others were not given the full benefit of the body of the work. Mr. White had no right to launch into an obviously orchestrated cross examination of his expert witness because I was never given notice of any decision on your part under policy

BEDH. Therefore, the opinions and conclusions offered and made could have been formed without important information. The topic was presented during a board meeting and was therefore up to you to state that important parts of my inquiry had been deleted and that notice under policy BEDH that a decision to present to the entire board had been made. Any acts that spring from your original action could be additional acts of censorship. As a way forward, I request that you immediately explain in public your actions to: 1) not forward important portions of my letter to other decision makers and to: 2) not publish any decision to present my inquiry to the full board. Further, I ask that if my letter is to be included in the minutes of the meeting, that the entire letter with all attachments be included. By copy of this communication to Board Chairman Michael Cates, that he by way of his role, direct that my letter in its entirety be included in the minutes. Sincerely, Kenneth B. Loveless, Trustee

Attachment #2, B.5 is included with  
the minutes of the 9/10/2020  
meeting, at the request of Board member  
Ed White  
pursuant to South Carolina Code  
Ann. Section 30-4-90(a)(4)  
and Board Policy BEDG. The Board majority  
did not approve, disapprove, or otherwise  
act upon the contents of this attachment.

For the Record - 9/14/2020  
Beth Hutchison



Attachment #21931 is included with the minutes of the 9/14/2020 meeting at the request of Board member Beth Hutchison pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

Doc F

**Fwd: familyneals@aol.com has sent you a file from the Terracon CDW**

1 message

July 16, 2020

**Kenneth Loveless** <kloveless@lexrich5.org>

Thu, Jul 16, 2020 at 5:17 PM

To: Michael Cates <michaelcates@lexrich5.org>, Beth Hutchison <bhutchison@lexrich5.org>, Robert Gantt <RGantt@lexrich5.org>, Nikki Gardner <ngardner@lexrich5.org>, Christina Melton <cmelton@lexrich5.org>, Janis Hammond <jhammond@lexrich5.org>, Edward White <EWhite@lexrich5.org>

All,

After receiving Terracon Report # 37, I offer the following:

Please review the attached photos above from the letter from Dan Neal to Dr.Melton dated 4:45 PM 7/13/2020. The letter contains Terracon report # 37 of which the photos are a part. The electrical code, NFPA 70 article 352.30 (B) requires 2' PVC conduit to be supported at no greater than 5'0" O.C. Look at the second photo. Do you see anything supporting the conduit off the earth? There is nothing there.

Both photos show the conduit is pinned down to the floor of the ditch with piles of dirt, not on PVC conduit spacer racks with restraints as required. Those dirt piles are still there right now separating the conduit from the concrete. The concrete is not homogeneous because the concrete has dirt mixed in with it. The conduit is on the ditch bottom held down by the dirt following the contour of the excavation, not suspended in the concrete as required. The conduit can be punctured by the mass of the concrete and backfilled earth above the concrete bearing on it. This mass can force the conduit into sharp rocks or other objects in the ditch bottom. That is why the NFPA 70 calls for such conduit to be Schedule 80 rather than schedule 40 as constructed. Had the duct bank been constructed properly, the schedule 40 PVC conduit would have been acceptable. Did Mr. Sims, the electrical engineer, know the full story when he wrote his letter in defense of Mr. Hughes? Why was Mr. Sims prompted to write the letter without full knowledge? Whether or not Mr. Sims agrees or not, best practices were not installed with the conduit on the ditch bottom. It's a simple concept.

Article 352.44 requires expansion fittings where there will be temperature changes. I don't see any.

Mr. Hughes says in his letter of 4/20/20 that all has been signed off by Terracon. Mr. Hughes knows that Terracon is not the deciding entity. Terracon works for the district to insure the district testing protocols are followed. As such, Terracon does not take on the role of interpreting the specifications for the contractor. Only the Architect can do that and the Architect must be informed before the work can continue or the contract is responsible for his actions.

I invite everyone to read this: The Project Manual Section 14000 1.8 B. states: "Project quality-control manager may also serve as Project superintendent." There is a built-in conflict of interest. The fox is guarding the hen house. Does anyone seriously believe that the same person who is paid to push production and schedule is going to also demand quality when that would mean slowing the schedule and production? Can you imagine any homeowner building a house who would cede to his builder the owner's right to control quality? Would any of you? Yet, the district did just that.

I have studied the Terracon reports that were provided to date. There are a minimum of 238 reports which are supposed to have been posted through 7/6/2020. 76 are actually posted. Of those 76, ten reports show deviations from the specifications. You can read them. They show that there are more than just a few instances where Terracon indicated discrepancies but the quality-control manager/ Project superintendent proceeded on without stopping.

See other side ->

July 16, 2020  
CMA:1

Mr. Gantt sent me Terracon reports 1-35 when he was chairman. Of those 35 reports only 1-18, 23 and 31A are shown on the website. I have the remainder and can prove that they came from the district. Contrary to the Director of Communications, the district has reports that it is not sharing with the public. Will they be shared today? What's in the remaining more than 162 reports? Why are they not being shared? You should ask that.

I have asked for all the missing reports through 7/6/2020. My wife has sent a FOIA request for the same. Other parties have sent FOIA requests for the same. To date, the website does not list the full complement of reports.

A package of concrete delivery tickets came anonymously in the mail. I have reviewed those and found serious problems which I forward in a letter to Mr. Cates and Dr. Melton on 7/14/2020. My letter of March 24, 2020 to Dr. Melton asked for other important information which has apparently been ignored. You should ask why I cannot see the things for which I have asked.

Please review and act accordingly by understanding that quality construction takes a group effort. I am trying to help the group.

Ken Loveless

----- Forwarded message -----

From: **Christina Melton** <csmelton@lexrich5.org>  
Date: Tue, Jul 14, 2020 at 9:06 AM  
Subject: Fwd: familyneals@aol.com has sent you a file from the Terracon CDW  
To: Katrina Goggins <kgoggins@lexrich5.org>

This message is being blindcopied to all Board of Trustees. An attachment is included for your information.



**Christina S. Melton, Ed.D.**

*Superintendent*

School District Five of Lexington & Richland Counties  
office: 803.476.8169 or 803.476-8116

[www.lexrich5.org](http://www.lexrich5.org)



**Pursuing Excellence for Tomorrow's Challenges**

----- Forwarded message -----

From: **Dan Neal** <familyneals@aol.com>  
Date: Mon, Jul 13, 2020 at 4:45 PM  
Subject: Fwd: familyneals@aol.com has sent you a file from the Terracon CDW  
To: csmelton@lexrich5.org <csmelton@lexrich5.org>

Here is the requested report 37.

Attachment #2, pg 2  
of the minutes of the meeting of the Board of Trustees, July 14, 2020  
is included with this email.  
Pursuant to South Carolina Code Ann. Section 30-4-90(e)(4) and Board Policy BEDG, the Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

DocG

## Philoma Skipper

**From:** Greg Hughes  
**Sent:** Monday, September 14, 2020 7:52 AM  
**To:** Philoma Skipper  
**Cc:** Kyle Farley  
**Subject:** Fwd: Response to Ken Loveless concerns regarding electrical duct bank, Ryan Drafts, and Curb and Gutter Concrete  
**Attachments:** Dennis Core Results (1).pdf; CC&I ES 13 Electrical Service Letter.pdf; Letter from Knights.pdf; Rebound Hammer Test Amicks Ferry.pdf; Curb Concrete Submittal.pdf

Philoma,

Please print me 4 copies of this (including attachments), paperclip, and put in a folder for Kyle to bring to the board meeting tonight. Thanks.

Greg Hughes, President  
Contract Construction, Inc.  
803.781.7058 o  
803.513.8090 c  
P.O. Box 269, Ballentine, SC 29002  
[www.contractconstruction.net](http://www.contractconstruction.net)

Attachment #2, pg 10 is included with the minutes of the 9/14/2020 meeting, at the request of Board member Dr. Melton pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.



Begin forwarded message:

**From:** Dan Neal <[familyneals@aol.com](mailto:familyneals@aol.com)>  
**Subject:** Fwd: Response to Ken Loveless concerns regarding electrical duct bank, Ryan Drafts, and Curb and Gutter Concrete  
**Date:** August 2, 2020 at 8:35:42 AM EDT  
**To:** "[csmelton@lexrich5.org](mailto:csmelton@lexrich5.org)" <[csmelton@lexrich5.org](mailto:csmelton@lexrich5.org)>, "[lrichard@lexrich5.org](mailto:lrichard@lexrich5.org)" <[lrichard@lexrich5.org](mailto:lrichard@lexrich5.org)>, "[michaelcates@lexrich5.org](mailto:michaelcates@lexrich5.org)" <[michaelcates@lexrich5.org](mailto:michaelcates@lexrich5.org)>  
**Cc:** "[ghughes@contractconstruction.net](mailto:ghughes@contractconstruction.net)" <[ghughes@contractconstruction.net](mailto:ghughes@contractconstruction.net)>, "[dquackenbush@quackenbusharchitects.com](mailto:dquackenbush@quackenbusharchitects.com)" <[dquackenbush@quackenbusharchitects.com](mailto:dquackenbush@quackenbusharchitects.com)>, "[mhm@montgomerywillard.com](mailto:mhm@montgomerywillard.com)" <[mhm@montgomerywillard.com](mailto:mhm@montgomerywillard.com)>  
**Reply-To:** Dan Neal <[familyneals@aol.com](mailto:familyneals@aol.com)>

Dr. Melton,

Please see attached Mr. Hughes' comments on Mr. Loveless' concerns in recent emails. I absolutely agree with everything in Mr. Hughes' email and especially his comments about Ryan Drafts and as the email states, the concrete strengths speak for themselves. I do not yet have the comments from Mr. Quackenbush on the electrical duct band, but I expect them before we have our meeting on Tuesday.

Dan Neal

Attachment #2, pg 11 is included with the minutes of the 9/19/2020 meeting, at the request of Board member Pete Knight pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

-----Original Message-----

From: Greg Hughes <ghughes@contractconstruction.net>  
To: Dan Neal <familyneals@aol.com>  
Sent: Thu, Jul 30, 2020 9:32 am  
Subject: Response to Ken Loveless concerns regarding electrical duct bank, Ryan Drafts, and Curb and Gutter Concrete

Dan,

In response to emails from Ken Loveless that have been forwarded to me I offer the following responses:

1. Regarding the electrical duct bank installation, see attached letter from CC&I, special inspection subcontractor to Terracon, explaining why Mr. Loveless' assertions are incorrectly applied to this installation. You will note that this is not just the opinion of the inspection agency, but also the opinion of Mid Carolina Electric Cooperative (the ultimate authority for this installation) and the Electrical Engineer of record. You may also want to get Quackenbush Architects and Planners to weigh in on this issue with their "interpretation" of their specifications, as Mr. Loveless points out as protocol.
2. Now I will address Mr. Loveless' attack on our Project Superintendent, Ryan Drafts. Ryan takes his job very seriously and is arguably one of the best school builders in this state. His attention to quality assurance is apparent by the speed at which he corrects discrepancies identified and his level of quality control is illustrated by the small number of discrepancies noted by Terracon. This is a testament to how he personally identifies issues and has them corrected prior to scheduled inspections. Mr. Loveless seems to think it is impossible to be exemplary in both quality and schedule but I can assure you that Ryan is nearly perfect at both. What is most disturbing is that on June 18, Mr. Loveless visited the jobsite with other board members and Dr. Melton and was very complimentary of Ryan's management of the jobsite and the flow at which he has constructed the facility. If Mr. Loveless still doubts Ryan's capabilities, I will be happy to provide a number of reference letters on Ryan's behalf that will be testimonials to Ryan's unique abilities to push a schedule without sacrificing quality.
3. Lastly, Mr. Loveless refers to an anonymous package of concrete tickets that came in the mail. These were not at all anonymous. Mr. Loveless used his recent re-established relationship with Pete Knight, Owner of Knight's Redi-Mix, as well as his position on the Board of Trustees to have Pete provide him with Coogler Construction's concrete delivery tickets for the curb and gutter. He went on to specifically request that they not be emailed, but mailed to him. Pete Knight is our preferred concrete supplier and has done business with us for many years and Mr. Loveless manipulated him under the guise that "as a board member he was trying to help put an issue to bed related to the concrete used for curb and gutter on Elementary School 13". Now that the manner in which these tickets were received has been cleared up, let's talk about the concrete itself. Mr. Loveless points out a number of tickets that have water added or have time limit issues. We decided to simply let the concrete speak for itself and did so using two different testing methods (you will note that we also tested the "identifying concrete" poured over the electrical duct bank since this was also a concern of Mr. Loveless in previous correspondences). Attached are the results of 20 concrete cores taken by Dennis Corporation, 17 of which were from curb and gutter and 3 of which were from the electrical duct bank. The average of the 17 cores in the curb and gutter was 4478 psi compared to the specified requirement of 3000 psi. The three cores taken at the electrical duct bank averaged 3780 psi, for concrete that had no specified strength requirements. As a second level of verification, Coogler Construction requested that Knights Redi-Mix perform non-destructive testing at 8 other locations and those results averaged 4686, which is very consistent with the destructive testing performed by Dennis Corporation. We utilized two different companies to perform testing so there would be no "fox watching the hen house" accusations. Knights goes further to explain the reason they were not concerned with the placement of concrete from trucks that had exceeded the normal time limitations for concrete.

In closing, we feel that we have gone above and beyond to address the issues that Mr. Loveless felt were detrimental to the project, and hope that we have provided information that proves, beyond a shadow of a doubt, that the work in place meets and exceeds the project requirements.

Feel free to contact me if there are any further questions regarding these matters.

Greg Hughes, President  
Contract Construction, Inc.  
803.781.7058 o  
803.513.8090 c  
P.O. Box 269, Ballentine, SC 29002  
[www.contractconstruction.net](http://www.contractconstruction.net)

Attachment #21pg12 is included with the minutes of the 9/14/2020 meeting, at the request of Board member Beth Hutchison pursuant to South Carolina Code Ann. Section 30-4-90(e)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.



On Jul 21, 2020, at 9:15 PM, Dan Neal <[familyneals@aol.com](mailto:familyneals@aol.com)> wrote:

Greg, please research these issues and let me know when you can provide a full report to me so that I can brief Dr. Melton. Thanks.

Dan

—Original Message—

From: Christina Melton <[csmelton@lexrich5.org](mailto:csmelton@lexrich5.org)>  
To: [familyneals@aol.com](mailto:familyneals@aol.com)  
Sent: Tue, Jul 21, 2020 8:35 pm  
Subject: Fwd: [familyneals@aol.com](mailto:familyneals@aol.com) has sent you a file from the Terracon CDW

Dan ,  
Upon your review , reach out to Erin for us to schedule a time to discuss this information.

Christina S. Melton , Ed.D.  
Superintendent of School District 5 of Lexington & Richland Counties

Sent from my iPhone

Begin forwarded message:

From: Michael Cates <[michaelcates@lexrich5.org](mailto:michaelcates@lexrich5.org)>  
Date: July 16, 2020 at 6:21:54 PM EDT  
To: Ken Loveless <[kloveless@lexrich5.org](mailto:kloveless@lexrich5.org)>  
Cc: Beth Hutchison <[bhutchison@lexrich5.org](mailto:bhutchison@lexrich5.org)>, Robert Gantt <[RGantt@lexrich5.org](mailto:RGantt@lexrich5.org)>, Nikki Gardner <[ngardner@lexrich5.org](mailto:ngardner@lexrich5.org)>, Christina Melton <[csmelton@lexrich5.org](mailto:csmelton@lexrich5.org)>, Jan Hammond <[jhammond@lexrich5.org](mailto:jhammond@lexrich5.org)>, Ed White <[EWhite@lexrich5.org](mailto:EWhite@lexrich5.org)>  
Subject: Re: [familyneals@aol.com](mailto:familyneals@aol.com) has sent you a file from the Terracon CDW

Mr. Loveless,

All Terracon reports are on the district website. The reports are listed by month some months have multiple pages and the district has been maintaining the site for some time. I am not sure how many

because I have not taken the time to count them. I see reports I-200 with some numbers having multiple reports (a,b,c) are listed. If you need help accessing them please let me know. They can be found at <https://www.lexrich5.org/Page/24735>

If, and I say if, what you are describing is so, what remedy are you suggesting?

Michael Cates  
School Board Trustee, Board Chair  
District Five of Lexington & Richland Counties  
803 518-4567  
[michaelcates@lexrich5.org](mailto:michaelcates@lexrich5.org)

Attachment #2, 7/13/20 is included with the minutes of the 7/14/2020 meeting, at the request of Board member Bern Pittman pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

On Jul 16, 2020, at 5:17 PM, Kenneth Loveless <[klloveless@lexrich5.org](mailto:klloveless@lexrich5.org)> wrote:

All,

After receiving Terracon Report # 37, I offer the following:

Please review the attached photos above from the letter from Dan Neal to Dr.Melton dated 4:45 PM 7/13/2020. The letter contains Terracon report # 37 of which the photos are a part. The electrical code, NFPA 70 article 352.30 (B) requires 2' PVC conduit to be supported at no greater than 5'0" O.C. Look at the second photo. Do you see anything supporting the conduit off the earth? There is nothing there.

Both photos show the conduit is panned down to the floor of the ditch with piles of dirt, not on PVC conduit spacer racks with restraints as required. Those dirt piles are still there right now separating the conduit from the concrete. The concrete is not homogeneous because the concrete has dirt mixed in with it. The conduit is on the ditch bottom held down by the dirt following the contour of the excavation, not suspended in the concrete as required. The conduit can be punctured by the mass of the concrete and backfilled earth above the concrete bearing on it. This mass can force the conduit into sharp rocks or other objects in the ditch bottom. That is why the NFPA 70 calls for such conduit to be Schedule 80 rather than schedule 40 as constructed. Had the duct bank been constructed properly, the schedule 40 PVC conduit would have been acceptable. Did Mr. Sims, the electrical engineer, know the full story when he wrote his letter in defense of Mr. Hughes? Why was Mr. Sims prompted to write the letter without full knowledge? Whether or not Mr. Sims agrees or not, best practices were not installed with the conduit on the ditch bottom. It's a simple concept.

Article 352.44 requires expansion fittings where there will be temperature changes. I don't see any.

Mr. Hughes says in his letter of 4/20/20 that all has been signed off by Terracon. Mr. Hughes knows that Terracon is not the deciding entity. Terracon works for the district to insure the district testing protocols are followed. As such, Terracon does not take on the role of interpreting the specifications for the contractor. Only the Architect can do that and the Architect must be informed before the work can continue or the contract is responsible for his actions.

I invite everyone to read this: The Project Manual Section 14000 1.8 B. states: "Project quality-control manager may also serve as Project superintendent." There is a built-in conflict of interest. The fox is guarding the hen house. Does anyone seriously believe that the same person who is paid to push production and schedule is going to also demand quality when that would mean slowing the schedule and production? Can you imagine any homeowner building a house who would cede to his builder the owner's right to control quality? Would any of you? Yet, the district did just that.

I have studied the Terracon reports that were provided to date. There are a minimum of 238 reports which are supposed to have been posted through 7/6/2020. 76 are actually posted. Of those 76, ten reports show deviations from the specifications. You can read them. They show that there are more than just a few instances where Terracon indicated discrepancies but the quality-control manager/ Project superintendent proceeded on without stopping.

Mr. Ganit sent me Terracon reports 1-35 when he was chairman. Of those 35 reports only 1-18, 23 and 31A are shown on the website. I have the remainder and can prove that they came from the district. Contrary to the Director of Communications, the district has reports that it is not sharing with the public. Will they be shared today? What's in the remaining more than 162 reports? Why are they not being shared? You should ask that.

I have asked for all the missing reports through 7/6/2020. My wife has sent a FOIA request for the same. Other parties have sent FOIA requests for the same. To date, the website does not list the full complement of reports.

A package of concrete delivery tickets came anonymously in the mail. I have reviewed those and found serious problems which I forward in a letter to Mr. Cates and Dr. Melton on 7/14/2020. My letter of March 24, 2020 to Dr. Melton asked for other important information which has apparently been ignored. You should ask why I cannot see the things for which I have asked.

Please review and act accordingly by understanding that quality construction takes a group effort. I am trying to help the group.

Ken Loveless

Attachment #2, pp 14 is included with the minutes of the 7/14/2020 meeting, at the request of Board member Beth Hutchinson pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

----- Forwarded message -----

From: Christina Melton <csmelton@lexrich5.org>

Date: Tue, Jul 14, 2020 at 9:06 AM

Subject: Fwd: familyneals@aol.com has sent you a file from the Terracon CDW

To: Katrina Goggins <kgoggins@lexrich5.org>

This message is being blindcopied to all Board of Trustees. An attachment is included for your information.



**Christina S. Melton, Ed.D.**

**Superintendent**

School District Five of Lexington & Richland Counties

office: 803.476.8169 or 803.476-8116

[www.lexrich5.org](http://www.lexrich5.org)



**Pursuing Excellence for Tomorrow's Challenges**

Doc H



P.O. Box 3408  
Summerville, SC 29484-3408

Office (843) 821-7600  
Fax (843) 821-7627

September 14, 2020

Mr. Greg Hughes  
Contract Construction  
P.O. Box 269  
Ballentine, SC 29002

Re: Amick's Ferry Elementary School Project

Dear Greg:

On or around April 17, 2020 Ken Loveless requested copies of concrete delivery tickets as it pertains to curb & gutter concrete supplied to Coogler Concrete for the above referenced project. At Mr. Loveless's request the delivery tickets were mailed to his attention.

Please contact me should you have any questions or if you need any additional information.

Respectfully,

Pete Knight  
President

Attachment #2, pg 3 is included with  
the minutes of the 9/14/2020  
meeting, at the request of Board member  
Beth Antelison  
pursuant to South Carolina Code  
Ann. Section 30-4-90(a)(4)  
and Board Policy BEDG. The Board majority  
did not approve, disapprove, or otherwise  
act upon the contents of this attachment.



Doc I

The State Newspaper  
September 18, 2020

## Feud over new Midlands school leads to ethics accusations against school board member

BY BRISTOW MARCHANT

SEPTEMBER 18, 2020 09:53 AM

Questions of ethics violation rise out of Lexington Richland District 5 board meeting

Some board members at Lexington Richland District 5 are concerned about contract awarded to a fellow board member Ken Loveless. BY LEXINGTON RICHLAND DISTRICT 5  
CHAPIN, SC

A long-simmering feud over a new elementary school in Lexington-Richland 5 has boiled over into accusations of unethical conduct against one of the project's biggest critics.

The spat escalated at Monday's Lexington-Richland 5 school board meeting, when members accused their colleague Ken Loveless of using his position on the board to secure lucrative jobs for his company.

Loveless Commercial Contracting was awarded a more than \$1 million contract this spring to perform subcontracting work on a construction project overseen by Contract Construction for the State Law Enforcement Division. Loveless's fellow board members blasted that decision.

Contract Construction is the firm overseeing the construction of Piney Woods Elementary School.

"He has turned his board seat into a money-making enterprise by submitting a bid to work for a contractor already doing business with the school district for which he serves as a board trustee," said board member Ed White.

Loveless disputes that his board position had anything to do with the contract.

"My company bid a project, put it out to five or six general contractors, and we were the low bidder with the contractor that was selected," Loveless said. "Period. It had nothing to do with anything with school board."

Loveless said he had spoken about the project with the S.C. Ethics Commission, who had assured him the contract did not raise legal issues.

Under questioning from White at Monday's meeting, Contract Construction president Greg Hughes acknowledged the two men had discussed potential business between the two firms during a June 18 tour that some school board members took of the Piney Woods site. White said that the incident showed Loveless mixing his personal business with the business of the board.

Loveless described the conversation as innocuous.

"After the tour was over, he was talking to me about how they had just bid this big west campus job at USC, and that our company had put out a preliminary bid to all the contractors," Loveless said. "He was talking to me that there was a possibility we would be working together... since then the project was shelved because of money problems, but he was asking me if I wanted to do other work with him. Of

course, we're a construction company, and we've been around here for years... I said, 'Why don't we go over some time and look at the SLED job?' I hadn't seen it. He said 'sure.'

"That was the extent of the conversation. What did I do wrong there? ... It doesn't create a conflict of interest for businessmen to talk about a project that's not related to School District 5."

Greg Hughes had a similar recollection of the conversation. "I mentioned he'd done good work on the SLED job, and he said he was interested in doing more," Hughes recalled.

But while answering questions at Monday's school board meeting, Hughes walked a fine line between defending his company's work on Piney Woods while acknowledging his relationship with Loveless.

"He does good work for us," Hughes said. "I'd like him to continue doing it."

The latest allegations are the latest in a long dispute between board members over construction of the new elementary school on Amicks Ferry Road about three miles southwest of Chapin, which is slated to open in the fall of 2021. Loveless has been critical of the project since he joined the board in 2018, questioning its cost and what he identifies as deficiencies in its construction.

Loveless criticized the strength of concrete used to insulate electrical wiring buried at the site, which caused the firm to do additional testing, and absorb the cost, before confirming its suitability. He's also questioned practices like doing work on the site at night. Other school board members say the independent inspectors contracted to oversee the project haven't flagged any serious issues.

The dispute continued Monday over a July 16 letter, in which Loveless claimed he had received an anonymous shipment of concrete delivery tickets detailing conditions of the material. In trying to determine where the tickets had come from, the board were told by the concrete supplier that they had provided the tickets at Loveless's request. Board member Beth Hutchison criticized Loveless for trying to mislead his colleagues about how he had acquired the tickets and why they might have been sent.

"He lied to us and he lied to the public," Hutchison said.

Loveless later told The State he didn't want to "rat out my source" for the delivery tickets, although Hughes openly acknowledged Monday their concrete supplier had produced the tickets at the board member's request. Loveless also complained he'd been unable to receive such documents when he requests them from the district.

Loveless also argues he's been denied the ability to visit the Piney Woods site, other than the June 18 site tour. White argues there are liability issues if a board member is issuing directions to contractors on the job.

"He says he ran on this theme of 'I'm going to oversee construction,'" White said. "But we all have equal rights to vote on policy. It's not proper for one board member to decide, 'I'm going to do this part of the district's business.'"

But Loveless says his critical stance on the project means it can't be unethical for him to work on another project with Contract Construction. He voted against their Piney Woods contract when he first joined the board and has continued to question its handling of the site, even after he received the SLED contract.

"Where's the conflict of interest?," he said. "You'd think they would welcome me being involved, since I think you can see I know what I'm talking about."

- I am a retired Navy Captain who commanded and who retired as the Assistant Chief of Civil Engineers for the entire Navy.
- I have three master's degrees and have been a PE in SC since 1982
- I ran operations in RSD 2 which included construction, facility maintenance and repair, food services, security, and transportation.
- I was the South Carolina Area Manager for a large international engineering firm whose projects included the design of the Ravenel Bridge in Charleston
- The Governor has appointed me to the SC Procurement Review Panel
- I was also on the RSD 2 school board and the last year I served I was the vice-chair of an effective board.
- I believe that I understand what a board and each member need to do.
- Dr. Hefner called me over 5 years ago and asked me if I could give him a day or two a week for a couple of months to help solve three issues at the Chapin HS addition project:
  - The inconsistent brick color
  - The slope in the football and soccer practice fields
  - The poor quality metal siding
- My tasking then went on to completing the renovations to Irmo HS, the completion of Chapin Middle School, the replacement of the siding at Chapin High, and the eventual addition of the third wing at Chapin Middle School.
- Dr. Melton asked me to stay on and work the design and construction of what was then ES 13

Attachment #1, pg 1 is included with the minutes of the 9/28/2020 meeting, at the request of Board member Michael Carey pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment

- Dan Neal  
pg. 1

- We worked through the Architect and CM@R contractor selections and are well on our way to delivering a state of the art school that will outlive us all
- When Dr. Hefner asked me to come and help 5 years ago, I told him I would do it if I had Board support and the work was rewarding
- Until recently that was the case
- I find that today I spend more time answering trivial questions by those who want to find fault and it detracts from the project
- When I was a Board member I understood that:
  - I had no authority as an individual
  - I chose not to visit construction projects unless I was invited by the administration and that was rare
  - I understood that it was not my job to supervise construction, but rather to support those who do
- Last Thursday I gave Dr. Melton my resignation in accordance with my ageement
- I am proud that I was able to work with the superb men and women in the District Administration, and the best K-12 architects and contractors in South Carolina
- Mr. Chairman, thank you for this personal privilege

Attachment #1, pg 2 is included with the minutes of the 9/28/2020 meeting, at the request of Board member Michael Cates pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

- Dan Neal  
pg. 2

Resubmitted by Beth Hutchison  
State of South Carolina

Doc K  
10/12/20 mtg

See pages 2 + 3 to see "Recusal requirement" for Mr. Loveless regarding Ethics Commission warning that he must recuse himself in School Board business whenever discussion of vote about contract construct - he must recuse himself.

# State Ethics Commission

CHILDREN'S TRUSTEE CHAIR  
DENISE H. HARRIS  
BRIAN M. BARNWELL



AJ HOLLOWAY  
DON JACKSON  
BRANDOLYN THOMAS PUKSTON

201 EXECUTIVE CENTER DRIVE, SUITE 150  
COLUMBIA, S.C. 29210

MEG LAMM  
EXECUTIVE DIRECTOR

September 25, 2020

### VIA ELECTRONIC MAIL ONLY

Kenneth B. Loveless  
228 Lookout Pointes Drive  
Chapin, SC 29036  
ken@lovelesscontracting.com

Attachment #3, pg 6 is included with the minutes of the 10/25/2020 meeting at the request of Board member Ken Loveless pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

Re: Informal Opinion Request

Dear Mr. Loveless:

Thank you for your request for an informal opinion from the State Ethics Commission (Commission). An informal opinion is the opinion of Commission staff, taking into consideration any applicable formal opinions, law, and/or judicial decisions. Please be advised that an informal opinion is not binding on the Commission. Additionally, the Commission's jurisdiction is limited to the applicability of the Ethics, Government Accountability, and Campaign Reform Act of 1991 (Act). This opinion is based solely on the facts relayed by you and does not supersede any other statutory or regulatory restrictions or procedures which may apply to this situation. A failure to disclose relevant information may void the opinion.

### ISSUE

On September 21, 2020, you presented the following in an e-mail:

I am an elected member of the Lexington-Richland District Five Board of Trustees. The company for whom I am employed as President, Loveless Commercial Contracting, Inc., from time to time subcontracts work from general contractors. I understand that our company can neither bid upon nor construct projects either as subcontractor or a general contractor for District Five. Loveless Commercial Contracting, Inc. has never done so.

If my employer, Loveless Commercial Contracting, Inc. is awarded a project outside of District Five such as an upcoming project at E.L. Wright Middle School in Richland District No. 2 as a subcontractor for a general contractor who does

See pages 2 + 3

Attachment #1, pg 1 is included with the minutes of the 10/12/2020 meeting at the request of Board member Beth Hutchison pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

Attachment #1, 192 is included with the minutes of the 10/12/2020 meeting, at the request of Board member Beth Hutchison pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

Kenneth B. Loveless, p. 2  
September 25, 2020

business with District Five, what ethics path in reference to voting upon matters that effect the general contractor with whom Loveless contracts should I follow?

LAW

Section 8-13-700 states, in 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.

Section 8-13-100(4) defines "business with which he is associated" as:

[a] business of which the person or a member of his immediate family is a director, an officer, owner, employee, a compensated agent, or holder of stock worth more than one hundred thousand dollars or more at fair market value and which constitutes five percent or more of the total outstanding stock of any class.

DISCUSSION

Based on the facts presented, the general contractor for which Loveless Construction subcontracts is a "business with which [you are] associated" for purposes of the Ethics Act. This means that whenever you are faced with a scenario in which the general contractor has an economic

General Contractor Contract Construction as of Oct. 2021

If other conflicts occur the requirement

#3 / pg 7  
Attachment #3 is included with the minutes of the 9/12/2020 meeting, at the request of Board member Kenneth B. Loveless pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

Ry  
Beth Hutchison  
10/12/2020

Note: Mr. Loveless must recuse himself

Kenneth B. Loveless, p. 3  
September 25, 2020

interest, you must recuse yourself from that matter following the instructions in Section 8-13-700(B). There is no outright prohibition against Loveless Construction performing subcontracting work for this general contractor; rather, Section 8-13-700(B) must be followed in instances where the general contractor has an economic interest. Thank you for contacting the Commission. If you have any questions or need anything further, please do not hesitate to contact me.

Attachment #1, pg 3 is included with the minutes of the 10/2/2020 meeting, at the request of Board member Beth Hutchinson pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

Sincerely,

*Courtney M. Laster*

Courtney M. Laster  
General Counsel

Attachment #3, pg 8 is included with the minutes of the 9/25/2020 meeting, at the request of Board member Ken Loveless pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

Doc L

District 5 of Lexington and Richland Counties

Today, the #LexRich5Schools Board of Trustees visited the construction site of Piney Woods Elementary School, along with princi... See More



From post on District 5's Facebook page. Dated 1/28/2020.



Names confirmed and added by Complainant

Doc M

Kenneth B. Loveless  
228 Lookout Pointes Drive  
Chapin, SC 29036

Mrs. Janis Hammond

Chairperson of the Board of Trustees

School District Five of Lexington-Richland Counties SC Ethics Commission Statements of Economic Interests

1020 Dutch Fork Road

Irmo, SC 29063

Re: Recusal of Kenneth B. Loveless on certain matters

Dear Mrs. Hammond:

In accordance with the requirements of SC Code Section 8-13-700(B)(1), I am advising you, as Chairperson of the Board of Trustees for School District Five of Lexington and Richland Counties, of my affiliation with Contract Construction, Inc. My affiliation with Contract Construction, Inc. is that the company which I am employed and a stockholder, Loveless Commercial Contracting, Inc. operates as a subcontractor on the S.C. Law Enforcement Division Forensics Lab project, Columbia, SC. The association began on March 12, 2020 and will end at the completion of the construction project.

Please be advised that effective immediately, I will recuse myself from any and all votes, deliberations, and other actions on any matter that comes before the Board of Trustees relating to Contract Construction, Inc.

Please publish my statement to the Board and the public at the Board's next meeting on February 8, 2021 and include a copy of this statement with the minutes of that meeting.

Yours Truly,

Kenneth B. Loveless

Vice Chairman of the Board of Trustees

School District Five of Lexington-Richland Counties

*State of South Carolina*  
*State Ethics Commission*

EXHIBIT E

CHILDS C. THRASHER, CHAIR  
DONALD GIST, VICE CHAIR  
BRIAN M. BARNWELL



AJ HOLLOWAY  
DON JACKSON  
BRANDOLYN THOMAS PINKSTON

201 EXECUTIVE CENTER DRIVE, SUITE 150  
COLUMBIA, S.C. 29210

MEGHAN L. WALKER  
EXECUTIVE DIRECTOR

September 25, 2020

**VIA ELECTRONIC MAIL ONLY**

Kenneth B. Loveless  
228 Lookout Pointes Drive  
Chapin, SC 29036  
ken@lovelesscontracting.com

Re: Informal Opinion Request

Dear Mr. Loveless:

Thank you for your request for an informal opinion from the State Ethics Commission (Commission). An informal opinion is the opinion of Commission staff, taking into consideration any applicable formal opinions, law, and/or judicial decisions. Please be advised that an informal opinion is not binding on the Commission. Additionally, the Commission's jurisdiction is limited to the applicability of the Ethics, Government Accountability, and Campaign Reform Act of 1991 (Act). This opinion is based solely on the facts relayed by you and does not supersede any other statutory or regulatory restrictions or procedures which may apply to this situation. A failure to disclose relevant information may void the opinion.

**ISSUE**

On September 21, 2020, you presented the following in an e-mail:

I am an elected member of the Lexington-Richland District Five Board of Trustees. The company for whom I am employed as President, Loveless Commercial Contracting, Inc., from time to time subcontracts work from general contractors. I understand that our company can neither bid upon nor construct projects either as subcontractor or a general contractor for District Five. Loveless Commercial Contracting, Inc. has never done so.

If my employer, Loveless Commercial Contracting, Inc. is awarded a project outside of District Five such as an upcoming project at E.L. Wright Middle School in Richland District No. 2 as a subcontractor for a general contractor who does

business with District Five, what ethics path in reference to voting upon matters that effect the general contractor with whom Loveless contracts should I follow?

## LAW

Section 8-13-700 states, in 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.

Section 8-13-100(4) defines "business with which he is associated" as:

[a] business of which the person or a member of his immediate family is a director, an officer, owner, employee, a compensated agent, or holder of stock worth more than one hundred thousand dollars or more at fair market value and which constitutes five percent or more of the total outstanding stock of any class.

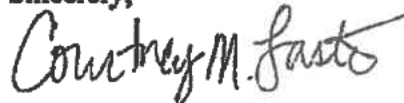
## DISCUSSION

Based on the facts presented, the general contractor for which Loveless Construction subcontracts is a "business with which [you are] associated" for purposes of the Ethics Act. This means that whenever you are faced with a scenario in which the general contractor has an economic

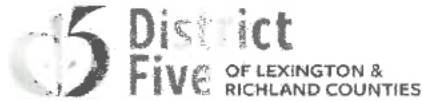
Kenneth B. Loveless, p. 3  
September 25, 2020

interest, you must recuse yourself from that matter following the instructions in Section 8-13-700(B). There is no outright prohibition against Loveless Construction performing subcontracting work for this general contractor; rather, Section 8-13-700(B) must be followed in instances where the general contractor has an economic interest. Thank you for contacting the Commission. If you have any questions or need anything further, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink that reads "Courtney M. Laster". The signature is written in a cursive style with a long horizontal flourish extending from the end of the name.

Courtney M. Laster  
General Counsel



**Agenda**

Board of Trustees

Regular Meeting

Location: Spring Hill High School, Multipurpose Room

Video Livestream: <https://lexrich5.rev.vbrick.com/#/webcasts/boardmeeting>

February 8, 2021

These documents are not date-stamped because the minutes from this meeting are not available yet. See pg. 2 of agenda.

1. Call to order at 5:00 p.m.
2. Approval of the agenda
3. Enter Executive Session to consider the following:
  - a. Selected employment items (*Exhibit A*) (Action)
  - b. Selected employment items (*Exhibit B*) (Information Only)
  - c. Discussion and review of the Superintendent's Goals/Expectations and the Board/Superintendent Relationship
  - d. Legal advice regarding one construction contract
  - e. Legal advice related to Amicks Ferry Elementary School sewer line
4. Call to order at 7:00 p.m.
5. Welcoming remarks – Jan Hammond, Board Chair
6. Invocation – Ken Loveless, Board of Trustees
7. Pledge of Allegiance – Ken Loveless, Board of Trustees
8. Superintendent's Report (Action as necessary)
  - 2020-2021 School Reentry Overview: Part XI
  - Flexible Innovative Virtual Education (FIVE)
9. Approval of the minutes of the January 25, 2021 board meeting
10. Public Participation\*

**ACTION AGENDA**

11. Action as Necessary or Appropriate on Matters Discussed in Executive Session

12. Approval of Proposed 2021-2022 School Year Calendar (*Exhibit C*)
13. Second Reading Approval of revisions to Policy BDE "Board Committees" (*Exhibit D*)

**DISCUSSION AGENDA**

14. Financial relationship of board member with a vendor and recusal requirements (*Exhibit E*)
15. Adjourn

**INFORMATION AGENDA**

16. Board Policy BEDB "Agenda"
17. The next regular scheduled board meeting will be February 22, 2021. Location to be determined.

*\*The Board welcomes and encourages public participation. We respectfully ask that you adhere to the procedures and the decorum provided in board policy BEDH "Public Participation at Meetings". Your comments should be limited to three minutes. Questions asked during public participation will be handled in accordance with board policy BEDH.*

**COVID-19 NOTICE:** Due to federal and state social distancing guidelines, seating capacity at our school board meeting will be limited. The district will live stream board meetings to provide virtual viewing options. Masks will be required.

# SC school board member steps away from construction project after ethics dispute

**BY BRISTOW MARCHANT**

FEBRUARY 09, 2021 02:20 PM,

UPDATED FEBRUARY 09, 2021 10:26 PM

Questions of ethics violation rise out of Lexington Richland District 5 board meeting

Some board members at Lexington Richland District 5 are concerned about contract awarded to a fellow board member Ken Loveless. BY LEXINGTON RICHLAND DISTRICT 5

A Lexington-Richland 5 school board member has recused himself from involvement with work on a new elementary school because of his ties to the construction company.

Facing criticism over his business relationship with Contract Construction, Loveless on Monday provided the board with a letter detailing the ties between his company, Loveless Commercial Contracting, and the firm overseeing construction of Piney Woods Elementary School.

“Please be advised that effective immediately, I will recuse myself from any and all votes, deliberations, and other actions on any matter that comes before the Board of Trustees relating to Contract Construction, Inc.,” Loveless wrote.

Contract Construction is the firm overseeing construction of Piney Woods Elementary School on Amicks Ferry Road near Chapin. The school is slated to open its classrooms to students this fall. The firm also contracts with Loveless Commercial Contracting, the board member’s firm, on a separate project outside Lexington-Richland 5.

On Monday, Loveless said that work is part of the “normal course of business” for his contracting firm, and it came about last March, long after the district agreed to use Contract Construction for the Piney Woods project. Loveless pointed out that he has been critical of the project for a long time and had voted against it on numerous occasions.

Loveless Commercial Contracting’s work with Contract Construction involves a project separate from Piney Woods Elementary. Loveless said he won the job based on a competitive public bidding process. Had Contract Construction not been selected for the other project, Loveless said, his firm could have ended up working with another company.

Speaking about the work he and his wife have done for Lexington-Richland 5, Loveless said, “We are not motivated by money or interest, as my opponents would have you believe.”

Loveless’ relationship with Contract Construction previously came under fire last fall when it was highlighted by board member Ed White and then-board member Beth Hutchison.

Loveless has said his construction work is unrelated to his role on the school board, and that his relationship with the company doesn’t pose an ethical conflict, citing an advisory from the S.C. Ethics Commission.

But in that letter to Loveless, an Ethics Commission attorney cited state ethics law requiring “No [public official] may make, participate in making, or in any way attempt to use his [office] to influence a

government decision in which he ... or a business with which he is associated has an economic interest," according to the document filed with the Sept. 28 board meeting minutes.

Critics argue that language would prohibit Loveless from having any involvement with the district's construction projects involving Contract Construction.

"It's clear he should not be involved in any way," Hutchison, who didn't seek reelection to the Lexington-Richland 5 school board last November, told The State.

On Monday, board member Catherine Huddle moved that the school board also ask the Ethics Commission whether White should recuse himself from matters involving Contract because of past campaign donations he received from the company and its executives as far as back as 2010. White declined to comment on the motion to The State.

Board member Rebecca Blackburn Hines also asked that ethics officials rule on whether Loveless' recusal precludes him from inspecting the construction site on Amicks Ferry. The board approved both motions.

Loveless was also criticized for discussing business with the company's president during a tour of the Piney Woods site last June. Hutchison argued the ethics rule should prohibit Loveless from even taking such district-arranged trips to the construction site.

She compared the situation to the board's role in hearing concerns about individual students. "If you know the family, you have to recuse yourself," Hutchison said. "You have to leave the room. You couldn't call or lobby your colleagues about the case. You couldn't have any influence at all. That's what recusal means."

But Loveless made clear at the board's Jan. 25 meeting he doesn't believe the recusal precludes him from making future visits to the site. "Just because I recuse myself does not mean I cannot go on a construction site," Loveless said at the meeting. "You're abridging my rights as a school board member to do that."

Doc O

From Facebook:

## Learn About Your D5 School District

Private group  
-3.8K members

### About This Group

This Facebook group is in NO WAY associated with School District 5 of Lexington and Richland Counties. This group was created by concerned citizens to allow for pertinent and timely discussion about the school district and its Board of Trustees, and the seats coming open in November. This group does not solicit funds nor fundraise for candidates. The administrators are not paid.

If you review our pre-Covid posts you can see the information we uncovered and shared about questionable actions by the current board. An incredible amount of research, FOIA requests, and study. The current board is controlled by 4 people who have a history of suppressing public input and not being transparent with this information. The only way to fix this is new blood.

### Sample posts/comments by Ken Loveless in this Facebook group:



Ken Loveless

Mar 7, 2020 · 🌐

In the January 27, 2020 board meeting and in previous ones, I have been attacked by Ed White and the rest of the board majority. I have been pointing out that the quality of construction through inspection needs to be carefully monitored at Amick's Ferry, lest we have another debacle like the 2008 Bond Referendum Renovation at Chapin High School. That work was never properly completed. New materials were torn out because specifications either weren't followed or were improperly drawn. We, the taxpayers, not the contractors paid for the rework. Not only that, the board paid the general contractor as settlement an extra \$700,000, in addition to his contracted amount. More rework continues at Chapin High recognized as "just discovered" and we, the taxpayers, again, are paying for it. Mr. White has repeatedly ascribed my motives at Amicks Ferry as trying to stop construction

and/or trying to usurp his precious 4 vote majority's decision to throw extra millions more than necessary at the project. Again, he is trying to use your money to deflect from the fact that his group sat on its laurels for ten years after not building the school the voters voted for in 2008 at Derrick's Pond. Now, after Susan Baker recently documented their placing concrete at night under tractor lights, the superintendent will not ask that contractor provide me with pertinent documents in his possession which his contract states he must. (blocking the request is Mr. White's precious 4 vote majority). I am being denied access and even threatened with removal from the board if I go on site. Mr. White has repeatedly stated in board meetings that his new school is beautiful and will be "built to last 100 years". If he wants that, then we need to adhere to the specs. It will have to be someone else. I will not be allowed to participate.



**Juli Jordan Booth** ▸ Learn  
**About Your D5 School District**

Jul 14, 2020 · 📄



There appeared to be a little dust-up between Chairman Cates and Trustee Loveless last night. Actually, Chairman Cates appeared to be "disciplining" Mr Loveless for something, but it was difficult to understand what was going on.

I'm hoping Trustee [Ken Loveless](#) will explain. This occurred when the board was voting on approval of the minutes from the last meeting.

The vote on approving the minutes was 4-3 ([Nikki Gardner](#), [Jan Hammond](#), Ken Loveless dissenting). So what was it about the minutes that they didn't want to approve?



**Ken Loveless**

Susan Baker questioned early on in public participation construction activities at night without lights. Susan, a longtime volunteer and SIC member at Chapin High was trying to prevent s repeat of the construction debacle at CHS which left us with 1100 deficiencies. Since that time Ed White,Michael Cates and the board majority have made it their mission to keep me, a general contractor since 1986 off the project. Having monitored the construction at Elementary School #13 from afar, I have been relegated to monitoring the inspection and testing reports supposedly provided by the district. I did that as well as noted serious safety viol... See More

reported by others in a letter to the Superintendent asking questions March 24, 2020. That detailed letter (nine pages with 32 attachments) noted serious matters. It asked for documents in the district's possession which I still have not been allowed to see. I received cover letter with a response from the district's paid contractor of choice defending himself but nothing of substance from the district's Project Representative, Dan Neal. Ed White at the June 15,2020 deemed that his contractor as the expert( fox guarding the henhouse)and proceeded to lob softball questions to him. I objected. I was gaveled out of order. Cates, the chairman, who lost control of the meeting, later wrote me that he stopped the meeting so that his witnesses (Dan Neal and others) could've the documents,i.e.get their stories straight. Ed White placed into the record at the last night's meeting my letter WITHOUT any of the 32 attachments which they did not want anyone to see and without anyone being able to see documents which purported to defend Ed's star witness, the paid contractor.Last night, I was attempting to include my full letter with attachments for the record. Cates, in an effort to at censorship supported by the board majority, scolded me by told me that my request was out of order. The vote to approve the minutes of the June 15,2020 meeting was approved 4-3 with the majority voting to keep everyone uninformed. I hope you will remember so all the work will not have been done in vain.

 **Jondy Loveless**

Sep 20, 2020 · 

This from Ken Loveless:

For as long as anyone can remember, this school board and administration have resorted to hurling accusations as a way to suppress criticism.

On Monday, the knives came out once again. Instead of making the agenda to discuss what is foremost in all parents' minds, re-entry, the majority members came after me. This time I was the target of well orchestrated, but completely baseless accusations. Make no mistake: The sole reason behind the false attacks was the fact that I'd brought to light very serious problems involving nonconforming materials being used on the ongoing new Piney Woods Elementary School Project.

Yes, I'm in the construction business. In fact, my construction background is one of the reasons I ran for the school board. I never made any bones about the fact that, given the persistent construction-related missteps in our district, someone with construction experience was need on the board.

No, that's not a conflict of interest. Nor have I done anything improper, unethical or illegal. It's no more a conflict of interest for a contractor to serve on the board than a government employee or a lawyer to serve on the board.

Unfortunately, character assassination has become the standard response to some pretty serious problems in this district, including even critical issues that deserve civil, rational discussion ... such as the mismanaged construction with multiple issues such as siding and its subsequent replacement at Chapin High, selection of

contractors and designers, actions that lead to the the never-built Derrick Pond school and latent soils and foundation matters on Oak Pointe Elementary School construction. it should be no surprise that these problems happen again and again and again: It's simply easier to kill the messenger than to acknowledge our shortcomings and address them.

For my part, I'm going to continue to do the job I came here to do, which is to clean up substandard practices in District 5's capital projects program. If that puts me in the crosshairs, so be it.

Ken Loveless > Learn About Your D5 School District  
Oct 13, 2020

Ken Loveless  
Oct 13, 2020

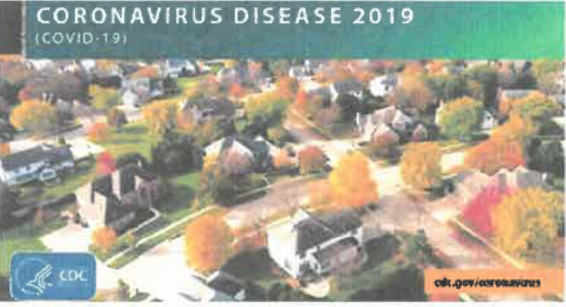
Robert Gantt and Ed White have worked diligently with their whisper campaign trying to blame the debacle with Chapin High construction on the "Lady in the Pink Hard Hat". In his diatribe at the September 28, 2020 school board meeting White was forced to bring his statements out in the open. Well, something happened yesterday that would have otherwise gone unnoticed if not mentioned here. Dr. Melton yesterday put out a statement that Facilities Director Clay Cannon would provide preliminary costs at the next juncture where Capital Budgets would be discussed to correct electrical problems at Chapin High. It took Scott Carlin, Dan Neal and Mike Montgomery leaving association with the District to finally get movement on the issue. Retiring board

member Beth Hutchison got the spot light at last night's board meeting but the true unsung super hero is my precious wife, Jondy Loveless, for staying true to her convictions for the safety of our teachers, staff and students. She knew that the contract work had never been completed at CHS. She knew that the contractor's performance bond was not called. She also knows that as it exists now, there are code violations and serious safety concerns with the electrical work. Kudos to Jondy Loveless," The Lady in the Pink Hard Hat". Now, it is up to the District to act sooner than later to make long overdue safety repairs!

Learn About Your D5 School District

Judy Raphael Kletter > Learn About Your D5 School District  
6 hrs

Is our new elementary school (and all of our schools) following the new CDC Covid guidelines for the safety of all student?



CDC.GOV  
**Community, Work, and School**  
Actions that communities can take to slow the spread of CO...



Ken Loveless  
I wouldn't know about Piney Woods. Board member Ed White and another have kept me away from Piney Woods by threatening me with Ethics Violations if I go on site. Their latest tact is to claim that because my company has a construction contract on a another project, an office building project for SC Law Enforcement Division with the same general contractor, that I cannot see construction documents on Piney Woods. I hate to disappoint them but I will continue to work to see that the public's money is properly spent and that some of the federal money is spent on older schools. Should you have questions about Piney Woods, contact board member Ed White.

# BOWERS LAW OFFICE LLC

Post Office Box 50549  
Columbia, South Carolina 29250

Phone: 803-753-1099

butch@butchbowers.com

February 28, 2022

Via Electronic Mail (rcaldwell@ethics.sc.gov)

Ryanne Caldwell

Chief Investigator

SC State Ethics Commission

201 Executive Center Drive, Suite 150

Columbia, South Carolina 29210

Re: *In the Matter of Kenneth Loveless*

Complaint No.: C2021-016

Dear Ms. Caldwell:

I hope this finds you well. As we discussed on January 25, 2022, Mr. Loveless wishes to provide a written response to the referenced complaint. However, we respectfully decline your invitation to shift the burden to Mr. Loveless of “address[ing] how his participation in discussions regarding Contract Construction from February 2020 through September 2020 did not violate Section 8-13-700(B)”. As you know, the burden of proof is not on Mr. Loveless, it is on the Commission. However, we will submit the following which should be considered as Mr. Loveless’s response to the complaint by Kim Benson on February 17, 2021.

Preliminarily, this letter shall serve as Mr. Loveless’ direction to the Commission that he waives confidentiality of these proceedings, as he is permitted to do under S.C. Code Ann. Section 8-13-320(10)(b). He reserves the right, therefore, to share any communications between himself and the Commission with whomever he desires to share the materials with.

As you know, Mr. Loveless became a “public official” when he was elected as a member of the Lexington-Richland School Board in November 2018. S.C. Code Ann. Section 8-13-100(27).

Prior to his election, on August 20, 2018, District Five issued a Notice of Intent to Award a contract for Construction Manager-at-Risk for construction of Elementary School #13, which was later named Piney Woods Elementary School.

Once Mr. Loveless was elected, Mr. Loveless did not have any individual authority to decide anything regarding Piney Woods Elementary school, or its construction. As you know, the Board collectively “manage[s] and control[s]” the school district. Section 59-19-10. Statutory duties of School Boards are spelled out by the general assembly, and they include the obligation

to “[p]rovide schoolhouses” and to [t]ake care of, manage and control . . . school property of the district. Section 59-19-90. District Five Board has a code of ethics that obligates its Trustees to “accept the responsibility along with . . . fellow board members of ensuring that optimal facilities and resources are provided for the proper functioning of schools” and “recognizing that authority rests only with the board in official meetings and that the individual member has no legal status to bind the board outside of such meetings.” District Five Policy BCA.

This is significant because SEC AO2003-002 relied on the fact that a public official who “has no independent decision-making authority” on his own was not required to recuse himself from providing services of drafting, coordination within the agency, presenting the consensus of the senior staff to the Board and representing the agency in the approval process in the General Assembly, even though his spouse “represents clients seeking permits.” The Commission found it significant that the public official’s decision-making authority was minimized by a “lengthy [process] that provides for public comment and legislative review” and only the Board as an entity had for initial approval of regulations. There, as here, Mr. Loveless has no individual ability to make decisions for the Board.

As a Board member, however, Mr. Loveless was obligated to the citizenry to bring matters to which he was alerted by citizens and that he personally observed regarding construction at Piney Woods Elementary School to the attention of the school administration. He has carried out his obligations throughout his tenure on the Board, but he has not taken any action with respect to the District’s contract with Contract Construction to benefit his economic interest or that of his family.

The company that employs Mr. Loveless was selected as a subcontractor by Contract Construction in connection with a construction project for SLED in late February, 2020. Bids are submitted by lower-level staff at Mr. Loveless’s office. In late February or early March 2020, Mr. Loveless became aware that a contract was going to be awarded by Contract Construction for the SLED project. It was Contract Construction that created the alleged “economic interest” by selecting Loveless Commercial Contracting as a subcontractor on the SLED Forensic Lab Project. However, at no time did Mr. Loveless or his employer have an economic interest in Contract Construction’s dealings with the school district. Mr. Loveless has no reason to believe that his status as a member of the school board influenced a decision by a private contractor who was performing a construction project for a public entity to choose Loveless Commercial Contracting as a sub-contractor. That is true, unless the private contractor awarded the contract to the company by which Mr. Loveless is employed for the intentional purpose of attempting to prevent Mr. Loveless from commenting on the quality of work by the contractor being performed for the School District, which is apparently what has occurred here.

Mr. Loveless did not believe that his company’s status as a subcontractor on the SLED project being constructed by a private entity constituted an “economic interest” within the definition set forth in Section 8-13-100 (11)(a). He believed then, and believes now, that his

company's contractual relationship as a sub-contractor on the SLED project is governed by Section 8-13-100(11)(b), because Loveless Commercial Contracting is a member of "a profession, occupation or large class . . ." which has the same economic interest in doing business with Contract Construction "to no greater extent than the economic interest or potential benefit [that] could reasonably be foreseen to accrue to all other members of the profession, occupation or class." Loveless Commercial Contracting's economic interest in the SLED project was no greater than the economic interest of any other bidder, subcontractor or potential subcontractor that may provide services to a general contractor who has been awarded a public or private construction project. Loveless Commercial Contracting is not prohibited from bidding on public or private jobs simply by virtue of Mr. Loveless's membership on the School Board.

The Commission has found on numerous occasions that economic interests involving a "large class" exempt public employees, officers or officials from the "economic interest" prohibition set forth in Section 8-13-700(B). The Commission has stated that questions such as these "must be answered on a case-by-case basis." SEC AO2004-001.<sup>1</sup> In concluding that a town councilman was not required to recuse himself from a vote on development of green space in the municipality "would appear to have an economic interest in taking actions that would directly impact" property he owned in the municipality; "however, the definition of economic interest provides for the large class exception." SEC AO2008-004. In that decision, the Commission referenced an earlier decision, AO92-201 that held "since the four Council Members are either school district employees or married to a school district employee, their interest is potentially no greater or less than that of all other members of the group of school employees." This was so even though the town council voted on the school district budget issue from which their spouses were paid.

The Commission noted "[t]he large class exception. . . has never made a numerical determination of what a large class is. The Commission prefers to review these questions on a case-by-case basis." In applying the large class exception, the Commission found that there were 171 property owners "with an interest in the property" and the public employee was only one and he "may participate in the selection process and award of a contract to a consultant for the management plan for the town-owned green space."

Similarly, based on the large class exception, the Commission allowed a City of Georgetown council member to vote on matters involving the repair and maintenance of a city

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<sup>1</sup> A public official could participate in a rezoning decision of the municipality which he serves even though he personally owns property that is in the vicinity of the land being considered for rezoning. The Commission ruled that it would be clear if the public official owned land in the area of the proposed rezoning, he would be required to recuse himself. Since the public official's land was merely in the vicinity of the land under consideration for rezoning but not in the property, "the public official's economic interest. . . is less clear." *Id.* The Commission held that the public official was not required to recuse himself on a rezoning application for property in which he owned property in the same vicinity.

Ms. Ryanne Caldwell

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boardwalk when she was one of 56 property owners whose property adjoined the boardwalk. “The Commission prefers to review these questions on a case-by-case basis since each set of facts is unique.” SEC AO2010-004.

While carrying out his duties as a Board member, Mr. Loveless is required to address issues to the full Board and the administration regarding provision of existing schoolhouses and construction of additional school facilities, particularly when raised by a member of the community. He has voiced his concerns repeatedly about deficiencies in work performed by Contract Construction to the administration of the District and generally. To require him to recuse himself from his statutory duties because he owns an interest in one of thousands of contractors and subcontractors in the state who work in commercial construction and might bid or be awarded contracts for construction of public buildings would create an opportunity for political abuse fraud by members of the construction industry and their allies. The only way Mr. Loveless has an economic interest by virtue of this company’s contract with Contract Construction in an unrelated matter is for this Commission to assist companies such as Contract Construction to force the recusal by a public official and prevent him from doing his statutory duties. It was Contract Construction that created this scenario, not Mr. Loveless. If Contract Construction did so to force Mr. Loveless’ recusal (and his criticism of their work for the District) they cannot be allowed to succeed.

When political opponents of Mr. Loveless’ attempted to raise the issue of conflict of interest with him in September, 2020, Mr. Loveless requested an opinion from this office to resolve the matter. This office declined, and instead in an informal opinion dated September 25, 2020 your agency opined that Mr. Loveless should recuse himself from “that matter” (which was not defined). In his follow-up with the Commission, Mr. Loveless was advised that “you are correct that the ultimate decision to recuse belongs to the public official.” (Letter from Courtney Laster dated 2.22.2021, p. 4).

While Mr. Loveless disagreed with the informal opinion of staff, and out of respect for the Commission’s position, he nevertheless wrote the statutorily-required notice to Janis Hammond, Chairperson of the Board of Trustees for the School District in early 2021, in accordance with Section 8-13-700(b)(1), based on the view expressed by Commission staff.

Since that time, Mr. Loveless has not made any votes, nor has he taken any action “that could be perceived as an attempt to influence the government decision.” (Laster to Loveless February 22, 2021). He has, however, continued to carry out his official duties, which included a site visit to the construction site at Piney Woods Elementary School, and he has privately observed the defective construction at Piney Woods Elementary School, while not voting or taking any action to interfere with the District’s contract with Contract Construction.

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“Recusal” is not defined in any of the published advisory opinions that are available for consultation and guidance, but Mr. Loveless has purposefully not voted or taken any action regarding Contract Construction since he complied with Section 7-13-700(b) in early 2021. He is, however, permitted by the First Amendment to make public comment on matters in which he has expertise, and failure to do so would constitute an abandonment of his obligations as a member of the school board. In fact, he cannot be forced to abandon his duties to the District by Contract Construction’s attempts, in conjunction with others, to silence him.

If there is existing precedent which prohibits him from voicing his opinion regarding the quality of work being performed for the school district, and therefore expressly allows such an infringe on his first amendment right of free speech, please point those out for our consideration. Similarly, if he is prohibited from listening to discussions about the projects for which he is statutorily required to carry out his duties as a member of the school board (other than voting), please provide that. He has not voted or attempted to influence any vote or any action regarding Contract Construction’s involvement with the Piney Woods Elementary School nor taken any other action which would compromise his integrity as a Board member.

If it was Contract Construction’s intent to prevent Mr. Loveless from carrying out his duties as a member of the District Five school board by awarding a contract to his employer in an attempt to silence him, then Contract Construction has violated Section 8-13-705(A) and (C), and I request that the Commission investigate appropriately. The statute provides that if Contract Construction attempted to initiate his recusal by awarding Loveless Commercial Contracting a subcontract for an unrelated project after he was elected to the School Board, they are guilty of a misdemeanor. Section 8-13-705(F). Contract Construction’s actions should also be examined under Section 8-13-720.

If you have any specific questions, or wish to modify any of the statements made by yourself or Commission staff, we would be happy to hear from you. Mr. Loveless intends to continue to faithfully discharge the duties of his elected position.

Thank you for the opportunity to respond to the complaint in this matter. We look forward to closure of this matter with all deliberate speed.

Sincerely yours,

BOWERS LAW OFFICE LLC

A handwritten signature in blue ink that reads "Butch Bowers". The signature is written in a cursive, slightly slanted style.

Karl S. Bowers, Jr.

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

BEFORE THE STATE ETHICS COMMISSION

IN THE MATTER OF: )

Complaint C2021-016 )

Kenneth Loveless )  
Respondent. )

**NOTICE OF HEARING**

Kim Benson )  
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 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 16, 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**  
**FAILURE TO RECUSE FROM A GOVERNMENTAL DECISION IN WHICH A**  
**BUSINESS WITH WHICH ASSOCIATED HAD AN ECONOMIC INTEREST**  
**SECTION 8-13-700(B), S.C. CODE ANN., 1976, AS AMENDED**

That Kenneth Loveless, Lexington-Richland School District Five Board Member, did in Richland County, write a letter dated March 24, 2020 inquiring about construction work of a district facility by Contract Construction, Inc., a business with which he was associated, in violation of Section 8-13-700(B).

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

That Kenneth Loveless, Lexington-Richland School District Five Board Member, did in Richland County, on June 15, 2020, participate in discussion about construction of a district facility by Contract Construction, Inc., a business with which he was associated, in violation of Section 8-13-700(B).

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

That Kenneth Loveless, Lexington-Richland School District Five Board Member, did in Richland County, on September 14, 2020, participate in discussion about construction of a district facility by Contract Construction, Inc., a business with which he was associated, in violation of Section 8-13-700(B).

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

That Kenneth Loveless, Lexington-Richland School District Five Board Member, did in Richland County, in June of 2020, participate in a site visit of a district facility being constructed by Contract Construction, Inc., a business with which he was associated, in violation of Section 8-13-700(B).

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 11<sup>th</sup> day,  
of July, 2022.

*Certificate of Service by Certified Mail*

I hereby certify that a copy of this **NOTICE OF HEARING** was duly served on Karl S. Bowers, Jr., Esquire, PO Box 50549, Columbia, SC 29250 by depositing said **NOTICE OF HEARING** in the United States mail, Columbia, South Carolina on this 11th day of July 2022, 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:       | ) |                                    |
|                         | ) | <b>NOTICE OF APPEARANCE</b>        |
| Complaint C-2021-016    | ) |                                    |
|                         | ) |                                    |
| Kenneth Loveless,       | ) |                                    |
| Respondent.             | ) |                                    |
|                         | ) |                                    |
| Kim Benson,             | ) |                                    |
| Complainant.            | ) |                                    |
| _____                   | ) |                                    |

Please note the appearance of the undersigned in this matter as co-counsel for Respondent along with existing counsel for Respondent Karl Smith “Butch” Bowers, Esquire. You are requested to include the undersigned on all communications, notices and filings in the subject case, along with Mr. Bowers.

This Notice is made with confirmation that the merits hearing for this matter has been scheduled for October 20 and October 21, 2022.

Respectfully submitted,

    s/ Desa Ballard      
Desa Ballard (S.C. Bar No. 498)  
Harvey M. Watson III (S.C. Bar No. 74053)  
Haley Hubbard (S.C. Bar No. 103195)

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ATTORNEY FOR RESPONDENT

August 2, 2022

STATE OF SOUTH CAROLINA  
STATE ETHICS COMMISSION

Kim Benson,  
  
Complainant,  
  
vs.  
  
Kenneth Loveless,  
  
Respondent.

Case Number: C-2021-016

**MOTION TO DISMISS**

Pursuant to Regulation 52-703(C), Respondent Kenneth Loveless moves to dismiss this pending action. Regulation 52-703(C) provides that the Commission may take “such action as it deems appropriate to accomplish the purposes and intent of the Act, including dismissing . . . violations of the Act with or without the consent of the person . . . filing the complaint.” In other words, even if the Commission believes a Respondent may violated the word of a provision of the Act, based on the circumstances, the Commission may still dismiss the complaint.

The complaint arises out of Respondent’s criticism of construction work being performed for the Lexington-Richland School District 5. The Act is allegedly implicated because the company of which Respondent is president had an ongoing subcontract with the same contractor on a totally unrelated project at the time Respondent began to question the quality of work being performed for the District. Rather than attempting to use his position as a public official to gain a benefit, Respondent has been critical of the quality of work being performed by the contractor who was building a new elementary school for the district. Far from attempting to gain an advantage for himself or his company, Respondent’s criticism of the building contractor would likely have had the opposite effect, *i.e.*, alienating him from the contractor so they never do business together again.

With the knowledge that the kind of conduct proscribed by the act is exactly the opposite of what is alleged to have occurred here, *i.e.*, Respondent criticizing a contractor with whom he had an unrelated subcontract, thereby risking any financial benefit that might come to his company in the future. The acts alleged to form the basis of the complaint in this action are exactly the opposite of the kind of conduct this Commission is required to regulate.

With that factual basis in mind, Respondent moves to dismiss this proceeding, even if there has been a preliminary determination that his conduct may have violated the act. The motion to dismiss is based upon:

- (1) the failure of the Commission to allege any misconduct under the state ethics act; and
- (2) the failure of the Commission to comply with the statutory mandates prescribed for proceedings before the State Ethics Commission.

This Motion is submitted for consideration by the Full Commission at its meeting to be held on September 15, 2022, at which time another motion by Respondent is scheduled to be heard. In the event this Motion is granted, the motion already pending will be rendered moot.

#### **NO ALLEGATION OF MISCONDUCT UNDER THE STATE ETHICS ACT**

On or about February 17, 2021, Kim Benson filed a Complaint Form with the State of South Carolina State Ethics Commission (“SEC”) regarding Kenneth Loveless (hereafter “Respondent”), a School Board Member of the Lexington-Richland District 5 (“District”). This complaint was provided to Respondent via U.S. mail by letter dated February 23, 2021, which stated that the Commission had reviewed the complaint and “determined that there are sufficient facts to warrant an investigation.”<sup>1</sup>

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<sup>1</sup> Based upon the Commission’s public records, there was no meeting of the Commission between the receipt of the complaint and the transmittal of the complaint to Respondent, which leaves open the question of when the full Commission could have reviewed the complaint, since its meetings for early 2021 were held on January 21, 2021 (before the complaint was transmitted to the Commission), and March 18, 2021 (after the complaint had been received by the Commission). Moreover, it appears there is no evidence of a review and/or determination by the Commission

Neither the complaint nor the cover letter transmitting it to Respondent cited any provision of the State Ethics Act upon which the investigation was focused, *i.e.*, Respondent was not told what statutory violation was being investigated.

A year later, the SEC requested a written response to the complaint. By letter dated February 28, 2022, Respondent sent a written Response to the Complaint. In that response he waived confidentiality of these proceedings.

By Notice dated July 11, 2022, Respondent was advised that the Commission had determined that “probable cause” existed to support the allegations made in the above captioned complaint.<sup>2</sup> The Notice of Hearing notified Respondent that a hearing would be held on four (4) counts of violation of S. C. Code Ann. § 8-13-700(B), which provides:

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. . . or a business with which he is associated has an economic interest.

Key to an alleged violation of the statutory provision is the existence of a “governmental decision” in which a public official made or participated in making. No such allegation has been made.

The Notice of Hearing<sup>3</sup> sets forth four scenarios for the alleged violation by Respondent of Section 8-13-700(B), none of which alleges a governmental decision was made.<sup>4</sup> According to the Notice of Hearing, the commission will determine whether:

Count One: Whether Respondent “**wrote a letter**” on March 24, 2020.

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that the investigation should proceed, despite the statement to Respondent in its letter dated February 19, 2021 that such a review and determination had been made.

<sup>2</sup> Notice of Hearing dated July 11, 2022, of record.

<sup>3</sup> The State Ethics Act does not require issuance of a Notice of Hearing. *See* discussion below.

<sup>4</sup> Once a determination of probable cause has been found, the Commission is required to notify a Respondent of “the particulars of the violation” in writing. S.C. Code Ann. § 8-13-320(d).

Count Two: Whether Respondent “**participate[d] in discussion**” about construction of a district<sup>5</sup> facility on June 15, 2020, which discussion was about a facility being built by Contract Construction Inc., “a business with which he was associated. . .”

Count Three: Whether Respondent **participate[d] in discussion**” [on the same topic] on September 14, 2020.

Count Four: Whether Respondent “**participate[d] in a site visit**” [on the same topic] in June of 2020.

None of the “particulars” asserted against Respondent, which form the basis of the Commission’s determination of probable cause and determination to proceed with a “formal hearing” against Respondent, alleges Respondent’s participation in a “governmental decision.” Respondent’s participation in a “decision” is the key and fundamental basis for a proceeding against Respondent under the Section 8-13-700(b) of the State Ethics Act.

Respondent is informed and believes the Commission construes the prohibition on participation in a “governmental decision” to prohibit a public official from witnessing, being aware of, or having knowledge of any kind with a project being performed by a “business with which he is associated.” Based on past decisions of the Commission, no “governmental decision” is necessary for the statute to have been violated. Prior matters have been addressed as violations when a public official has any awareness of or makes any comment with respect to on an ongoing project being performed for the governmental agency by a “business with which he is associated,” even when no governmental decision is pending constitutes a violation S.C. Code. § 8-13-700(B).

The State Ethics Commission lacks the authority to rewrite the statute or initiate an investigation or hearing based on its own expanded view what conduct is prohibited under the Act. The Board may

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<sup>5</sup> The “district” referenced in Counts one through four presumably refer to facilities of the Lexington-Richland District 5 School Board, of which Respondent is a member, having been elected to and taken office in November, 2018.

have historically proceeded with investigations or hearings based on an expansive reading of Section 8-13-700(B), which requires participation in a “governmental decision” to investigate or proceed with a hearing on something that is not expressly prohibited by the statute. Doing so, however, was legal error, and allowing these proceedings to continue based on a tortured expansion by the Commission the unambiguous language of the statute is not permitted.

As an agency of the State and a creature of statute, the Commission’s authority is dependent upon statute. The Commission is possessed only with those powers specifically delineated or necessarily implied in their enabling legislation. *City of Columbia v. Board of Health and Environmental Control*, 292 S.C. 199, 355 S.E.2d 536 (1987), cited with approval in *Charlotte-Mecklenburg Hospital Authority et al. v. South Carolina Department of Health and Environmental Control et al.*, Civil Action No. 06-ALJ-07-0713CC (Order dated December 9, 2009).

[Administrative] bodies, being unknown to the common law, and deriving their authority wholly from constitutional and statutory provisions, will be held to possess only such powers as are conferred, expressly or by reasonably necessary implication, or such as are merely incidental to the powers expressly granted . . . ‘Any reasonable doubt of the existence in the commission of any particular power should ordinarily be resolved against its exercise of the power.’

*Mungo v. Smith*, 289 S.C. 560,564, 347 S.E.2d 514, 517 (1986). See also *Stoneledge At Lake Keowee Owners Association Inc. v. Imk Dev. Co.*, 435 S.C. 109, 866 S.E.2d 542 (2021) (Statutes in derogation of the common law are to be strictly construed, and a statute restricting the common law will not be extended beyond the clear intent of the legislature), quoting *Eades v. Palmetto Cardiovascular & Thoracic P.A.*, 422 S.C. 196, 201, 810 S.E.2d 848, 850 (2018).

It is true that Courts generally defer to the opinion of a state agency as to the interpretation of a statute it is charged with the duty of enforcing. *S.C. Coastal Conservation League v. South Carolina Department of Health and Environmental Control*, 380 S.C. 349, 669 S.E.2d 899 (Ct.App. 2008). “It is well established that construction of a statute by the agency charged with its administration will be

accorded the most respectful consideration and will not be overruled absent compelling reasons.” *Lloyd v. South Carolina Department of Health and Environmental Control*, 328 S.C. 419, 428-29, 491 S.E.2d 582, 595 (Ct. Ap. 1999), cited with approval *Safety Disposal Systems Inc. v. South Carolina Department of Health and Environmental Control*, No. 01-ALJ-07-012CC, 2002 WL 1354623 at \*26.

However, an agency’s interpretation of a statute cannot be sustained when it is in violation of the clear language of the statute or constitutes a clear abuse of discretion. *Brown v. Bi-Io Inc.*, 354 S.C. 436, 440, 581 S.E.2d 836, 838 (2003). “South Carolina Courts have long held that however clear the language is in a statute, the courts will not apply a construction that reaches an absurd result the Legislature clearly did not intend.” *Charlotte Mecklenburg Hospital Authority v. South Carolina Department of Health and Environmental Control*, *supra.*, citing *Kiriakides v. United Artists Communication Inc.*, 312 S.C. 271, 2275, 440 S.E.2d 364, 366 (1994) (“If possible, the court will construe the statute so as to escape the absurdity and carry the [legislative] intention into effect.” *Catawba Indian Tribe of South Carolina v. State of South Carolina*, 372 S.C. 519, 527, 642 S.E.2d 751, 755 (2007).

It is undisputed that the factual basis for the alleged violation of the Act as set forth in the Notice of Hearing do not challenge Respondent’s actions in connection with any “governmental decision”. Respondent’s participation in a governmental decision is a clear prerequisite to a determination that there has been a violation of Section 8-13-700(B). Only under what could best be described as the Commission’s widely expanded construction of the “governmental decision” standard, which is strictly prohibited by law, could this matter be allowed to proceed without violating Respondent’s rights.

The four counts, which are based on Respondent’s alleged conduct, *i.e.*, writing a letter, two counts of participating in discussions, and one count of participating in a site visit, clearly implicate Respondent’s constitutional rights of speech and his right to liberty (and free association). The Commission’s attempt to inquire into and possibly sanction Respondent based on an expansive, and

unsupported, construction of Section 8-13-700(B) is clearly an illegal attempt to regulate Respondent's freedom of speech. *Greenville Bistro LLC v. Greenville County*, 435 S.C. 146, 866 S.E.2d 562 (2021), citing *Ashcroft v. Free Speech Coalition*, 535 U.S. 234, 245, 122 S. Ct. 1398, 152 L.E.2d 403 (2002) “ (. . . the First Amendment bars the government from dictating what we see or read or speak or hear.)”. The Commission's actions in further attempting to infringe on Respondent's right to liberty, his right to be free from “unwarranted governmental interference” is an equally powerfully protected right that these proceedings attempt to thwart. *State v. Dykes*, 403 S.C. 499, 744 S.E.2d 505 (2013). *See also Sunset Cay LLC v. City of Folly Beach*, 357 S.C. 414, 430, 593 S.E.2d 462, 470 (2004) (a government restriction on liberty must “bear a reasonable relationship to [a] legitimate interest of government.”).

Respondent's election to public office did not deprive him of his right to freedom of speech nor of his protected liberty interests and cannot be restricted in the absence of a legitimate state interest. *Powell v. Keel*, 433 S.C. 457, 860 S.E.2d 344 (2021).

Had the Commission alleged the actual prohibition contained in Section 8-13-700(B), *i.e.* Respondent's participation in a “governmental decision” which compromised his objectivity as a public official or benefitted him in some financial way, the Commission would have every right to proceed with this matter.

However, by not basing its investigation and prosecution on Respondent's participation in a “governmental decision” and instead attempting to apply its unwarranted and expanded construction of the statute in order to pursue these proceedings, the Commission is clearly acting outside its authority.

The Notice of Hearing does not properly allege any violation of S.C. Code Ann. § 8-13-700(B). It is defective on its face. It represents a clearly unwarranted attempt by the Commission to regulate conduct which it has no authority to regulate. The Commission's attempt to do so is especially egregious

when its attempts to sanction Respondent interfere with his constitutional rights, which were not forfeited when he became a public figure.

If this were a civil action, this motion to dismiss would be based on Rule 12(b)(6), *i.e.*, a failure to state a cause of action against Respondent since the Notice of Hearing does not allege facts which would constitute a violation of Section 8-13-700(B). Instead, this motion is based upon Regulation 52-703(C), which permits the Commission to “take such action as it deems necessary and appropriate to accomplish the purposes and intent of the act including dismissing . . . violations of the Act with or without the consent of the person . . . filing the complaint.”

Respondent moves for dismissal in full of these proceedings based on the legal insufficiency of the alleged counts alleged, since they do not allege any misconduct.

### **PROCEDURAL DEFECTS IN THESE PROCEEDINGS**

#### A. Failure to properly authorize investigation

As set forth above, the Commission received a complaint from complainant Kim Benson on or about February 17, 2021.<sup>6</sup> In its letter to Respondent dated February 23, 2021, which provided Respondent with a copy of the complaint, the Commission advised that “the State Ethics Commission reviewed the complaint. . . and determined . . . there are sufficient facts to warrant an investigation.” Disturbingly, the letter stated that the Commission’s review and determination had occurred on February 17, 2021, the same date the complaint was received.

S.C. Code § 8-13-310(9)(a) permits the Commission to commence an investigation only after “a majority vote of the total membership of the commission.”<sup>7</sup>

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<sup>6</sup> February 17, 2021 was a Wednesday. The complaint was forwarded to Respondent on February 23, 2021, the following Tuesday.

<sup>7</sup> S.C. Code §8-13-10(c) permits an investigation to proceed “if the commission, its executive director or staff

It is impossible for the investigation to have commenced on the same date it was received, or even on the date the complaint was forwarded to Respondent, because the Commission's public records reflect no meeting of the Commission between the receipt of the complaint on February 19, 2021 and the transmittal of the complaint to Respondent on February 23, 2021. (Letter to Respondent dated February 23, 2021, attached as **Exhibit A**).

A majority vote of the total membership, as required by S.C. Code § 8-13-310(9)(a), or a vote of the Commission as required by S.C. Code §8-13-310(10)(c) could not have occurred between the receipt of the complaint on February 19, 2021 and prior to the February 23, 2021 letter to Respondent. The Commission records show no Commission meeting at which a majority of the Commission could have reviewed the complaint and authorized the investigation. The Commission's own records for early 2021 were held on January 21, 2021<sup>8</sup> (before the complaint was transmitted to the Commission), and March 18, 2021 (after the complaint had been received by the Commission. The only possible conclusions based on this procedural defect is (1) no review of the complaint occurred in accordance with S.C. Code § 8-13-310(9)(a); no a majority of the Commission had "reviewed the complaint and determined that there are sufficient facts to warrant an investigation;" (3) an illegal meeting was held at which time the complaint was authorized by

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designated by the commission determines that the complaint alleges facts sufficient to constitute a violation" an investigation may proceed. Section 8-13-(9)(a) requires a majority vote of the Commission to proceed with an investigation "as provided in item 10(d)" While the two statutes could be seen to conflict, it is undisputed that Respondent was notified that "the Commission" has voted to authorize the investigation" and that was the basis upon which this investigation proceeded. **Exhibit A**.

<sup>8</sup> The minutes of the January 21, 2021 reflect executive session to review "legal and probable cause matters." The minutes further reflect a vote after executive session to "adopt and ratify actions taken on legal and probable cause matters in executive session." The minutes of the March 18, 2021 meeting of the Commission reflect the Commission went into executive session to discuss "a legal matter" but that no action was taken in executive session or after open session reconvened. A second executive session occurred during the March 18, 2021 meeting, and the minutes reflect that the Commission "adopt[ed] and ratify[d] actions taken with regard to probable cause matters in executive session. The minutes of both meetings may be in error, because no "actions" are permitted to be taken in executive session. - S.C. Code § 30-4-70 (no action may be taken in executive session except to (a) adjourn or (b) return to public session.")

someone who would have had authority if done legally; or (4) the complaint was reviewed and authorized by the Executive Director or his designee under Regulation 52-704(A)(1).<sup>9</sup>

If a meeting of the Commission was held on or between February 19 and Feb 23, 2021, the meeting was held in violation of state law since it was not announced to the public with a posted agenda. The Commission's calendar shows a Commission Meeting was scheduled to be held on February 18, 2021, which was the day after the complaint was received. However, there are no minutes of a Commission meeting held on February 18 (or on any date in February). The absence of a February, 2021 meeting is confirmed by the minutes of the Commission meeting held on March 18, 2021, which document a vote of the Commission to approve the minutes of the January 21, 2021 meeting, further verifying no February 2021 meeting of the Commission occurred.

It is clear that any investigation which resulted in the issuance of the Notice of Hearing dated July 11, 2022 was an improper proceeding, because the investigation was not properly authorized in accordance with S.C. Code §8-13-320(9)(a) or § 8-13-320(10)(c). The Notice of Hearing in this matter, and the underlying complaint which ostensibly resulted in the Notice, must be dismissed.

**B. Absence of a verified complaint**

As discussed above, an investigation which has been properly authorized must be initiated by the issuance of a verified complaint from the Commission. While the complaint by Ms. Benson might have been verified<sup>10</sup>, the notification that probable cause had been determined and the counts alleged against

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<sup>9</sup> Regulation 52-704(A)(1) permits the executive director or his designee to review the complaint to determine if there are facts sufficient to warrant going forward with an investigation. Such a regulation, however, is unenforceable, because it directly contradicts the statutory requirements of S.C. § 8-13-9(A). AGO 1988-107. Moreover, the letter to Respondent expressly states that the approval to proceed with the investigation was authorized by a "the Commission," which precludes the reliance by the Commission on Regulation 52-704(A)(1).

<sup>10</sup> Ms. Benson's complaint is signed (and undated) but appears to be notarized by a staff member at the Commission. See Page 1 of the complaint, where Ms. Benson's name is written into the first line of the verification by the same

Respondent were contained in a Notice of Hearing transmitted to Respondent's counsel by United States mail on July 11, 2022. There is no "verified complaint" initiating these hearing proceedings, despite the mandate of Section 8-13-320(10)(d) that the Commission issue a verified complaint.

The Commission is required to file its own "verified complaint" following a determination of probable cause, and to serve a copy of that verified complaint along with other information upon Respondent. S.C. Code § 8-13-320(10)(d).

If the commission . . . finds probable cause to believe that a violation . . . has occurred, it may, upon an affirmative vote of six or more members of the commission, file a verified complaint. . . [and it must] forward a copy of the complaint. . . within ten days of the filing of the complaint.<sup>11</sup>

There is no "verified complaint" from the Commission in these proceedings. All that was issued was a Notice of Hearing, which states a finding of probable cause was made, but fails to state when the finding was made. The Notice of Hearing recites the four counts, schedules a hearing for February, 2023, and sets forth "a general statement of the applicable law" as required by Section 8-13-320(9)(d).

It is a mystery as to when the Commission allegedly found probable cause in this case. The verified complaint must be provided to Respondent "within ten days of the filing of the complaint." Section 8-13-320(9)(d). Not only is there no verified complaint filed, there is no notification of when a finding of probable cause occurred.

According to the published calendar of the Commission, the Commission meeting which last preceded the issuance of the Notice of Hearing occurred on Thursday, June 16, 2022. Unfortunately, the last published minutes of the Commission are for a meeting held on March 21, 2022. Those minutes do

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person who notarized it, who is the same person at the Commission who scanned the complaint into the Commission's records. Page 1 of Ms. Benson's complaint is attached hereto as **Exhibit B**.

<sup>11</sup> In a classic demonstration of the artistry of legislation, the statute uses the permissive "may" to address the issuance of a verified complaint, but a mandatory "shall" for service of the verified complaint upon the Respondent. Obviously, if the Commission "shall" serve a copy of the complaint on a Respondent, it has to issue one first.

not contain any indication that the Commission was presented with or considered the approval of any findings of probable cause at that meeting.

There is a published agenda for a Commission meeting on May 19, 2022 which indicates a “probable cause agenda” was scheduled for consideration by the Commission on that date. Since no minutes are published, the public cannot know whether that Commission meeting occurred, or whether a probable cause agenda was considered on that date. There is also a published agenda for a Hearing Panel meeting on June 16, 2022 at which time five (5) individual matters were listed for hearing, but there was no indication that any probable cause determinations were made at that meeting.

If Respondent’s matter was presented for a determination of probable cause at the May 19, 2022 Commission meeting, the Notice of Hearing issued on July 11, 2022 is not timely, since it was not served within ten days, and it isn’t even a complaint, verified or not verified. There may not even be a complaint, because if there was one, it should have been served on Respondent.

Respondent is unable to locate any further agenda or minutes that might indicate when (if at all) a proper determination of probable cause has ever been made by the Commission as required by Section 8-13-320(10)(d).

As noted, the Commission’s calendar shows a Commission meeting was scheduled for June 16, 2022, but there is no evidence<sup>12</sup> an agenda was issued for that meeting nor are there minutes verifying the meeting ever occurred. If it is assumed, despite the complete lack of evidence, that a finding of probable cause was considered by the Commission and made on June 16, 2022, then the service of the Notice of Hearing on July 11, 2022 violates Section 8-13-320(10)(d) since it was not served within ten days of filing of the complaint. There is no evidence a verified complaint from the Commission even

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<sup>12</sup> All public entities are required to publish agenda for regular meetings of their governing bodies.

exists. If it was issued in May, 2022, it is a nullity under Section 8-13-320(10)(d) because of the two-month delay in serving it on Respondent.

### CONCLUSION

The Commission has failed to allege any violation of law against Respondent in its Notice of Hearing. That, in itself, requires a dismissal of these proceedings.

Moreover, the multiple procedural irregularities in these proceedings to date call into question the propriety of these entire proceedings.

For the reasons set forth above, Respondent moves that this matter be dismissed in its entirety. If the Commission wants to move forward with this matter,<sup>13</sup> assuming a proper complaint is filed by any member of the public or initiated by the Commission itself, it may do so after Respondent's upcoming election on November 8, 2022. Doing so prior to the election would appear to serve an improper attempt to influence an election, and this Commission should not further allow itself to be manipulated by Respondent's political opponents into being a sword for destroying Respondent's commitment to his public duties. The provisions of S.C. Code Ann. §8-13-320(9)(b)(1) prohibit any complaint being initiated against Respondent at this time, and any proceedings between now and November 8, 2022 must be brought in circuit court.

Furthermore, From the content of the motions filed and heard by a Panel of this Commission on September 8, 2022, and from discussion during the hearing, it appears that there is other litigation, unrelated to this Commission, in which some or all of the parties are involved, or may be involved in, in the future. It cannot escape the Commission that these proceedings have formed the basis of a media circus.

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<sup>13</sup> As noted, Regulation 52-703(C) permits dismissal of a complaint even if a violation of the Act has occurred (or a finding of probable cause has been made).

The Commission must be aware it is being used by opponents of Respondent, based on whatever grievances they have against him or others. It is apparent from the filings of the moving parties and the discussion on the record on September 8, 2022 that this Commission has unwittingly drawn into what appears to be a political and/or personal disagreement and/or attacks among undefined warring factions. This Commission should do its job as required by the General Assembly, but not allow itself to be used to further private disputes among anyone.<sup>14</sup>

The Commission has an urgent and important job to do to ensure the integrity of the conduct of public employees and officials and candidates for public office. It is an abuse of the Commission to involve it in furthering the private agendas of any individuals and should be recognized as such and shut down now.

Respectfully submitted,

s/ Desa Ballard  
Desa Ballard (S.C. Bar No. 498)  
Harvey M. Watson III (S.C. Bar No. 74053)  
Haley Hubbard (S.C. Bar No. 103195)  
**BALLARD & WATSON**  
226 State Street  
West Columbia, South Carolina 29169  
Telephone 803.796.9299  
desab@desaballard.com  
harvey@desaballard.com  
haley@desaballard.com

Karl Bowers, Jr. (S.C. Bar No. 16141)  
**BOWERS LAW OFFICE**  
Post Office Box 50549  
Columbia, South Carolina 29250  
Telephone 803.753.1099  
butch@butchbowers.com

September 11, 2022

ATTORNEYS FOR RESPONDENT

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<sup>14</sup> The Commission's investigative file, provided to Respondent with the Notice of Hearing, contains one page of interview notes by Commission staff, but of the approximately 43 pages, more than half are emails from complainant criticizing the Commission because the investigation is taking so long.

*State of South Carolina*  
*State Ethics Commission*

CHILDS C. THRASHER, CHAIR  
DONALD GIST, VICE CHAIR  
A H O L L O W A Y



DON JACKSON  
BRIAN M. BARNWELL  
BRANDOLYN THOMAS PINKSTON

201 EXECUTIVE CENTER DRIVE, SUITE 180  
COLUMBIA, S.C. 29210

MEGHAN L. WALKER  
EXECUTIVE DIRECTOR

February 23, 2021

Mr. Kenneth Loveless  
228 Lookout Pointes Dr  
Chapin, SC 29036

Certified Mail: 92148969009997901419048826

**PERSONAL AND CONFIDENTIAL**

In the Matter of Kenneth Loveless

RE: Complaint C2021-016

Dear Mr. Loveless:

In accordance with Section 8-13-320(10)(a) of the Ethics Reform Act, we are providing you with a copy of a complaint filed against you.

On February 17, 2021, in accordance with Section 8-13-320(10) Code of Laws for SC 1976 as amended, the State Ethics Commission reviewed the complaint provided and determined that there are sufficient facts to warrant an investigation. You will be contacted in the near future by an investigator concerning any evidence or statements you may desire to make. If you wish, you may provide a written response to the complaint, including any documentation you wish the Commission to consider. Should you retain legal counsel, please advise the Commission.

In accordance with Section 8-13-320(9) and (10), all complaints, investigations, inquires, hearings, and accompanying documents are confidential unless the respondent waives the right to confidentiality in writing to the Commission, or the Commission issues a public disposition. 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 or imprisoned for not more than one year.

Complaint procedures are outlined on our website under the link to complaints. We shall keep you informed of the status of this complaint.

Sincerely,

A handwritten signature in blue ink that reads "Meghan Walker".

Meghan L. Walker  
Executive Director

MLW:rp  
Enclosure: Complaint

**Kenneth B. Loveless**  
**228 Lookout Pointes Drive**  
**Chapin, SC 29036**  
February 28, 2022

Mrs. Janis Hammond  
Chairperson of the Board of Trustees  
School District Five of Lexington-Richland Counties  
1020 Dutch Fork Road  
Irmo, South Carolina 29063

Re: Recusal of Kenneth B. Loveless

Dear Mrs. Hammond:

As you know, on February 8, 2021 I submitted a statement regarding my affiliation with Contract Construction Inc. as a result of the company by which I am employed and of which I am a stockholder Loveless Commercial Contracting Inc., was operating as a subcontractor on the S.C. Law Enforcement Division Forensic Lab project, Columbia, SC. On that date, I recused myself from any and all votes, deliberations, and other actions on any matter that comes before the Board of Trustees relating to Contract Construction Inc.

Since that time and as a result of consultation with ethical and legal experts, I intend to terminate my recusal effective at the next Board meeting, currently scheduled for March 14, 2022. At the beginning of the next Board meeting, I will submit a statement setting forth the reason my recusal has terminated, and I will participate fully in any matter involving Contract Construction after today's meeting.

However, in recognition that there was no prior notice my recusal was ending, I am not going to participate in anything related to Contract Construction during this meeting, so the Board members and the public will be aware that my recusal will conclude when this meeting is adjourned. I will step out of the room for any discussion or vote on anything involving Contract Construction this evening.

Sincerely yours,



Kenneth B. Loveless

Vice Chairman of the Board of Trustees

Board Member

STATE OF SOUTH CAROLINA  
STATE ETHICS COMMISSION

RECEIVED  
2021 FEB 17 AM 11:43

STATE ETHICS  
COMMISSION

COMPLAINT FORM

FOR COMMISSION USE ONLY:  
CASE NUMBER  
C-2021-016

COMPLAINANT: Kim Benson  
ADDRESS:  
TELEPHONE NUMBER: 803-361-9510  
TITLE: Parent & Tax Payer

RESPONDENT: Kemeth Loveless  
ADDRESS:  
TELEPHONE NUMBER: 803-345-0547  
TITLE: School Board Trustee

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).

Address:  
1415 Beaver Dam Rd.  
Columbia SC 29212

Address:  
228 Lookout Pointes DR  
Chapin SC 29036.

\* Please see attached document which contains various links to additional documents & media.

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 Kim Benson 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  
17th day of February, 2021  
[Signature]

[Signature]  
Complainant Signature

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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RP

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STATE OF SOUTH CAROLINA  
STATE ETHICS COMMISSION

Kim Benson,

Complainant,

vs.

Kenneth Loveless,

Respondent.

Case Number: C-2021-016

**ORDER GRANTING CONTINUANCE**

On September 7, 2022, Kim Benson and Michael Cates moved through their attorney, Tucker Player, to quash deposition subpoenas served upon them at the request of Respondent's attorney, Desa Ballard. The Commission scheduled a hearing so that these matters may be heard on September 12, 2022 at 2:00 p.m. At the joint request of Mr. Player and Ms. Ballard, this matter is continued indefinitely and the Commission Hearing previously scheduled for September 12, 2022 is cancelled.

And it is **SO ORDERED**.

  
Scott E. Frick  
Chairman

September 12<sup>th</sup>, 2022  
Columbia, South Carolina.

STATE OF SOUTH CAROLINA )  
 COUNTY OF RICHLAND )  
 )  
 IN THE MATTER OF: )  
 COMPLAINT C2021-016 )  
 )  
 Kim Benson, )  
 Complainant. )  
 )  
 Kenneth Loveless, )  
 Respondent. )  
 \_\_\_\_\_ )

BEFORE THE STATE ETHICS COMMISSION

**RESPONSE TO RESPONDENT’S  
 MOTION TO DISMISS**

This matter comes before the South Carolina State Ethics Commission (Commission) by way of a Motion to Dismiss (Motion) filed by Respondent Kenneth Loveless (Respondent) on September 12, 2022. As discussed herein, Respondent’s Motion should be denied and this matter should proceed to a hearing on the merits.

**PROCEDURAL HISTORY**

The above-referenced Complaint was filed against Respondent, a member of the Board of Trustees (Board) for School District Five of Lexington and Richland Counties (District), on February 17, 2021. Pursuant to Section 8-13-320(10)(c) of the Ethics, Government Accountability, and Campaign Reform Act (Ethics Act or Act), the Commission’s Executive Director determined that the Complaint alleged facts sufficient to constitute a violation of the Act and ordered an investigation. In a certified letter dated February 23, 2021, Respondent was provided with a copy of the Complaint. See Attachment 1. Respondent provided a written response on February 28, 2022. See Attachment 2. On May 19, 2022, following the investigation, the Commission found probable cause to believe Respondent violated the Ethics Act as follows:

**COUNT ONE FAILURE TO RECUSE FROM A GOVERNMENTAL DECISION IN WHICH A BUSINESS WITH WHICH ASSOCIATED HAD AN ECONOMIC INTEREST SECTION 8-13-700(B), S.C. CODE ANN., 1976, AS AMENDED.** That Kenneth Loveless, Lexington-Richland School

District Five Board Member, did in Richland County, write a letter dated March 24, 2020 inquiring about construction work of a district facility by Contract Construction, Inc., a business with which he was associated, in violation of Section 8-13-700(B).

**COUNT TWO FAILURE TO RECUSE FROM A GOVERNMENTAL DECISION IN WHICH A BUSINESS WITH WHICH ASSOCIATED HAD AN ECONOMIC INTEREST SECTION 8-13-700(B), S.C. CODE ANN., 1976, AS AMENDED.** That Kenneth Loveless, Lexington-Richland School District Five Board Member, did in Richland County, on June 15, 2020, participate in discussion about construction of a district facility by Contract Construction, Inc., a business with which he was associated, in violation of Section 8-13-700(B).

**COUNT THREE FAILURE TO RECUSE FROM A GOVERNMENTAL DECISION IN WHICH A BUSINESS WITH WHICH ASSOCIATED HAD AN ECONOMIC INTEREST SECTION 8-13-700(B), S.C. CODE ANN., 1976, AS AMENDED.** That Kenneth Loveless, Lexington-Richland School District Five Board Member, did in Richland County, on September 14, 2020, participate in discussion about construction of a district facility by Contract Construction, Inc., a business with which he was associated, in violation of Section 8-13-700(B).

**COUNT FOUR FAILURE TO RECUSE FROM A GOVERNMENTAL DECISION IN WHICH A BUSINESS WITH WHICH ASSOCIATED HAD AN ECONOMIC INTEREST SECTION 8-13-700(B), S.C. CODE ANN., 1976, AS AMENDED.** That Kenneth Loveless, Lexington-Richland School District Five Board Member, did in Richland County, in June of 2020, participate in a site visit of a district facility being constructed by Contract Construction, Inc., a business with which he was associated, in violation of Section 8-13-700(B).

On July 11, 2022, a Notice of Hearing was issued setting forth the aforementioned violations. This Motion followed.

### **ARGUMENTS**

#### **I. The Notice of Hearing Alleges Violations of the Ethics Act**

Respondent argues the Complaint should be dismissed because the Notice of Hearing fails to allege conduct that violates the Ethics Act. Specifically, Respondent contends (1) there is no

evidence he participated in a “governmental decision” as required by Section 8-13-700; (2) that his actions were permissible because he attempted to harm, rather than benefit, the business with which he was associated; and (3) that the Commission’s interpretation of Section 8-13-700 improperly prohibits a public official from “witnessing, being aware of, or having knowledge of any kind with a project being performed by a ‘business with which he is associated.’”<sup>1</sup> As discussed herein, these arguments are without merit because (1) the “governmental decision” Respondent improperly interfered with was the District’s contract with Contract Construction; (2) Respondent’s behavior once he improperly interfered in the matter is irrelevant; and (3) the Commission’s interpretation of Section 8-13-700 is supported by the text of the Ethics Act and decades of enforcement actions and Commission guidance.

Section 8-13-700(B) of the Ethics Act provides, in relevant part:

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:

...

(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

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<sup>1</sup> Respondent briefly argues that Respondent is being deprived of his First Amendment rights by these proceedings and/or the Commission’s interpretation of Section 8-13-700. However, the U.S. Supreme Court has “rejected the notion that the First Amendment confers a right to use governmental mechanics to convey a message.” See Nevada Ethics Comm’n v. Carrigan, 564 U.S. 117, 131 S.Ct. 2343 (2011) (finding lower court’s “belief that recusal rules violate legislators’ First Amendments rights is also inconsistent with long-standing traditions in the State. A number of States, by common-law rule, have long required recusal of public officials with a conflict.”).

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.

(emphasis added).

Section 8-13-100(4) of the Ethics Act defines “business with which he is associated” as:

A business of which the person or a member of his immediate family is a director, an officer, owner, employee, a compensated agent, or holder of stock worth one hundred thousand dollars or more at fair market value and which constitutes five percent or more of the total outstanding stock of any class.

The Commission is the entity responsible for interpreting the Ethics Act. See S.C. Coastal Conservation League v. S.C. DHEC, 380 S.C. 349, 669 S.E.2d 899 (Ct. App. 2008). The Commission has long held that recusal is required in any matter that implicates the economic interest of a business with which a public official is associated. See also Attachment 3, SEC AO92-072 (advising public servant to disqualify from all matters affecting the economic interests of a business with which he is associated); SEC AO2000-004 (same); SEC AO2000-011 (same). This interpretation is supported by the text of the Ethics Act, which uses the phrase “governmental decision” just once in the main text of Section 8-13-700(B), then clarifies in the following subsections that public officials are required to recuse “from any votes, deliberations, and other actions on the matter” and on all “matters pertaining to that economic interest.” This interpretation is also supported by decades of guidance and enforcement actions. See Attachment 3; see also Attachment 4, Complaint Nos. 97-035 and 97-036 (holding discussion by a public servant about a matter in which his wife had an economic interest violated Section 8-13-700(B)).

Here, it is undisputed that Contract Construction entered into a contract with the District in 2018 for the construction of an elementary school. See Attachment 2. It is also undisputed that Respondent became a subcontractor for Contract Construction on February 11, 2020 on a South

Carolina Law Enforcement Division (SLED) construction project, thereby making Contract Construction a business with which Respondent was associated. See Attachment 3, SEC AO2000-004 (defining “compensated agent” as “any ongoing client relationship in which the [public official] receives compensation for services rendered”).

Section 8-13-700 prohibited Respondent from participating in any matter in which Contract Construction had an economic interest, to include its contract with the District. It is irrelevant what Respondent did once he improperly interfered in the matter - it is the *participation* that creates the basis for the violation, not the outcome of that participation. Any other interpretation would lead to an absurd result and would defeat the entire purpose of the Ethics Act, which is outlined in the Preamble:

Whereas, one of the most important functions of any law aimed at making public servants more accountable is that of complete and effective disclosure. Since many public officials serve on a part-time basis, it is inevitable that conflicts of interest and appearances of impropriety will occur. Often these conflicts are unintentional and slight, but at every turn those who represent the people of this State must be certain that it is the interests of the people, and not their own, that are being served. Officials should be prepared to remove themselves immediately from a decision, vote, or process that even appears to be a conflict of interest.

## **II. The Commission’s Complaint and Investigation Processes Comply with the Ethics Act**

Respondent argues the Complaint must be dismissed because (1) the full Commission did not vote to open an investigation; (2) the Complaint was not notarized by the Commission; and (3) the Notice of Hearing was not provided to Respondent within ten (10) days of the finding of probable cause. These arguments are without merit because none of these events are required by the Ethics Act.

As an initial matter, Respondent appears to conflate the process for opening a Commission-

generated Complaint (outlined in Section 8-13-320(10)(d)) with a Complaint filed by a member of the public (outlined in Section 8-13-320(10)(c)). Pursuant to Section 8-13-320(10)(c) of the Ethics Act, “if the Commission, its executive director, or staff designated by the commission determines that the complaint alleges facts sufficient to constitute a violation, an investigation may be conducted of the alleged violation.” This is exactly what occurred - the Complaint was filed on February 17, 2021, the Executive Director determined the Complaint contained sufficient facts, an investigation was ordered, and Respondent was notified by way of a certified letter dated February 23, 2021. See Attachment 1.

As to whether the Complaint was properly verified, it clearly contains a notarization. See Attachment 5, Complaint Cover Sheet. There is no requirement that the Commission itself verify the Complaint. In fact, to the contrary, Section 8-13-320(10)(a) allows the Commission to “accept from an individual, whether personally or on behalf of an organization or governmental body, a verified complaint . . .”

As to the ten (10) day notice requirement, this applies to the Respondent’s receipt of the Complaint, not of the Notice of Hearing. See Section 8-13-320(10)(a) (requiring the Commission to forward a copy of a complaint filed by an individual within ten (10) days); Section 8-13-320(10)(d) (requiring the Commission to forward a copy of a Commission-generated complaint within ten (10) days). There is no timeline set forth in the Ethics Act or the corresponding regulations regarding the Notice of Hearing, aside from Regulation 52-707, which requires the Notice of Hearing to be issued “at least thirty days before the scheduled hearing.”

### **CONCLUSION**

For these reasons, Respondent’s Motion to Dismiss should be denied and this matter should proceed to a hearing on the merits.

Respectfully submitted,

s/ Courtney M. Laster  
Courtney M. Laster  
State Ethics Commission  
201 Executive Center Dr., Suite 150  
Columbia, SC 29210  
803-253-4192  
claster@ethics.sc.gov

September 26, 2022  
Columbia, South Carolina

## **ATTACHMENT 1**

*State of South Carolina*  
*State Ethics Commission*

CHILDS C. THRASHER, CHAIR  
DONALD GIST, VICE CHAIR  
A H O L L O W A Y



DON JACKSON  
BRIAN M. BARNWELL  
BRANDOLYN THOMAS PINKSTON

201 EXECUTIVE CENTER DRIVE, SUITE 150  
COLUMBIA, S.C. 29210

MEGHAN L. WALKER  
EXECUTIVE DIRECTOR

February 23, 2021

Mr. Kenneth Loveless  
228 Lookout Pointes Dr  
Chapin, SC 29036

Certified Mail: 92148969009997901419048826

**PERSONAL AND CONFIDENTIAL**

In the Matter of Kenneth Loveless

RE: Complaint C2021-016

Dear Mr. Loveless:

In accordance with Section 8-13-320(10)(a) of the Ethics Reform Act, we are providing you with a copy of a complaint filed against you.

On February 17, 2021, in accordance with Section 8-13-320(10) Code of Laws for SC 1976 as amended, the State Ethics Commission reviewed the complaint provided and determined that there are sufficient facts to warrant an investigation. You will be contacted in the near future by an investigator concerning any evidence or statements you may desire to make. If you wish, you may provide a written response to the complaint, including any documentation you wish the Commission to consider. Should you retain legal counsel, please advise the Commission.

In accordance with Section 8-13-320(9) and (10), all complaints, investigations, inquires, hearings, and accompanying documents are confidential unless the respondent waives the right to confidentiality in writing to the Commission, or the Commission issues a public disposition. 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 or imprisoned for not more than one year.

Complaint procedures are outlined on our website under the link to complaints. We shall keep you informed of the status of this complaint.

Sincerely,

A handwritten signature in black ink that reads "Meghan L. Walker".

Meghan L. Walker  
Executive Director

MLW:rp  
Enclosure: Complaint

## **ATTACHMENT 2**

**BOWERS LAW OFFICE LLC**

**Post Office Box 50549  
Columbia, South Carolina 29250**

**Phone: 803-753-1099**

**butch@butchbowers.com**

February 28, 2022

*Via Electronic Mail* (rcaldwell@ethics.sc.gov)

Ryanne Caldwell

Chief Investigator

SC State Ethics Commission

201 Executive Center Drive, Suite 150

Columbia, South Carolina 29210

**Re: *In the Matter of Kenneth Loveless*  
Complaint No.: C2021-016**

Dear Ms. Caldwell:

I hope this finds you well. As we discussed on January 25, 2022, Mr. Loveless wishes to provide a written response to the referenced complaint. However, we respectfully decline your invitation to shift the burden to Mr. Loveless of “address[ing] how his participation in discussions regarding Contract Construction from February 2020 through September 2020 did not violate Section 8-13-700(B)”. As you know, the burden of proof is not on Mr. Loveless, it is on the Commission. However, we will submit the following which should be considered as Mr. Loveless’s response to the complaint by Kim Benson on February 17, 2021.

Preliminarily, this letter shall serve as Mr. Loveless’ direction to the Commission that he waives confidentiality of these proceedings, as he is permitted to do under S.C. Code Ann. Section 8-13-320(10)(b). He reserves the right, therefore, to share any communications between himself and the Commission with whomever he desires to share the materials with.

As you know, Mr. Loveless became a “public official” when he was elected as a member of the Lexington-Richland School Board in November 2018. S.C. Code Ann. Section 8-13-100(27).

Prior to his election, on August 20, 2018, District Five issued a Notice of Intent to Award a contract for Construction Manager-at-Risk for construction of Elementary School #13, which was later named Piney Woods Elementary School.

Once Mr. Loveless was elected, Mr. Loveless did not have any individual authority to decide anything regarding Piney Woods Elementary school, or its construction. As you know, the Board collectively “manage[s] and control[s]” the school district. Section 59-19-10. Statutory duties of School Boards are spelled out by the general assembly, and they include the obligation

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to “[p]rovide schoolhouses” and to [t]ake care of, manage and control . . . school property of the district. Section 59-19-90. District Five Board has a code of ethics that obligates its Trustees to “accept the responsibility along with . . . fellow board members of ensuring that optimal facilities and resources are provided for the proper functioning of schools” and “recognizing that authority rests only with the board in official meetings and that the individual member has no legal status to bind the board outside of such meetings.” District Five Policy BCA.

This is significant because SEC AO2003-002 relied on the fact that a public official who “has no independent decision-making authority” on his own was not required to recuse himself from providing services of drafting, coordination within the agency, presenting the consensus of the senior staff to the Board and representing the agency in the approval process in the General Assembly, even though his spouse “represents clients seeking permits.” The Commission found it significant that the public official’s decision-making authority was minimized by a “lengthy [process] that provides for public comment and legislative review” and only the Board as an entity had for initial approval of regulations. There, as here, Mr. Loveless has no individual ability to make decisions for the Board.

As a Board member, however, Mr. Loveless was obligated to the citizenry to bring matters to which he was alerted by citizens and that he personally observed regarding construction at Piney Woods Elementary School to the attention of the school administration. He has carried out his obligations throughout his tenure on the Board, but he has not taken any action with respect to the District’s contract with Contract Construction to benefit his economic interest or that of his family.

The company that employs Mr. Loveless was selected as a subcontractor by Contract Construction in connection with a construction project for SLED in late February, 2020. Bids are submitted by lower-level staff at Mr. Loveless’s office. In late February or early March 2020, Mr. Loveless became aware that a contract was going to be awarded by Contract Construction for the SLED project. It was Contract Construction that created the alleged “economic interest” by selecting Loveless Commercial Contracting as a subcontractor on the SLED Forensic Lab Project. However, at no time did Mr. Loveless or his employer have an economic interest in Contract Construction’s dealings with the school district. Mr. Loveless has no reason to believe that his status as a member of the school board influenced a decision by a private contractor who was performing a construction project for a public entity to choose Loveless Commercial Contracting as a sub-contractor. That is true, unless the private contractor awarded the contract to the company by which Mr. Loveless is employed for the intentional purpose of attempting to prevent Mr. Loveless from commenting on the quality of work by the contractor being performed for the School District, which is apparently what has occurred here.

Mr. Loveless did not believe that his company’s status as a subcontractor on the SLED project being constructed by a private entity constituted an “economic interest” within the definition set forth in Section 8-13-100 (11)(a). He believed then, and believes now, that his

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company's contractual relationship as a sub-contractor on the SLED project is governed by Section 8-13-100(11)(b), because Loveless Commercial Contracting is a member of "a profession, occupation or large class . . ." which has the same economic interest in doing business with Contract Construction "to no greater extent than the economic interest or potential benefit [that] could reasonably be foreseen to accrue to all other members of the profession, occupation or class." Loveless Commercial Contracting's economic interest in the SLED project was no greater than the economic interest of any other bidder, subcontractor or potential subcontractor that may provide services to a general contractor who has been awarded a public or private construction project. Loveless Commercial Contracting is not prohibited from bidding on public or private jobs simply by virtue of Mr. Loveless's membership on the School Board.

The Commission has found on numerous occasions that economic interests involving a "large class" exempt public employees, officers or officials from the "economic interest" prohibition set forth in Section 8-13-700(B). The Commission has stated that questions such as these "must be answered on a case-by-case basis." SEC AO2004-001.<sup>1</sup> In concluding that a town councilman was not required to recuse himself from a vote on development of green space in the municipality "would appear to have an economic interest in taking actions that would directly impact" property he owned in the municipality; "however, the definition of economic interest provides for the large class exception." SEC AO2008-004. In that decision, the Commission referenced an earlier decision, AO92-201 that held "since the four Council Members are either school district employees or married to a school district employee, their interest is potentially no greater or less than that of all other members of the group of school employees." This was so even though the town council voted on the school district budget issue from which their spouses were paid.

The Commission noted "[t]he large class exception. . . has never made a numerical determination of what a large class is. The Commission prefers to review these questions on a case-by-case basis." In applying the large class exception, the Commission found that there were 171 property owners "with an interest in the property" and the public employee was only one and he "may participate in the selection process and award of a contract to a consultant for the management plan for the town-owned green space."

Similarly, based on the large class exception, the Commission allowed a City of Georgetown council member to vote on matters involving the repair and maintenance of a city

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<sup>1</sup> A public official could participate in a rezoning decision of the municipality which he serves even though he personally owns property that is in the vicinity of the land being considered for rezoning. The Commission ruled that it would be clear if the public official owned land in the area of the proposed rezoning, he would be required to recuse himself. Since the public official's land was merely in the vicinity of the land under consideration for rezoning but not in the property, "the public official's economic interest. . . is less clear." *Id.* The Commission held that the public official was not required to recuse himself on a rezoning application for property in which he owned property in the same vicinity.

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boardwalk when she was one of 56 property owners whose property adjoined the boardwalk. "The Commission prefers to review these questions on a case-by-case basis since each set of facts is unique." SEC AO2010-004.

While carrying out his duties as a Board member, Mr. Loveless is required to address issues to the full Board and the administration regarding provision of existing schoolhouses and construction of additional school facilities, particularly when raised by a member of the community. He has voiced his concerns repeatedly about deficiencies in work performed by Contract Construction to the administration of the District and generally. To require him to recuse himself from his statutory duties because he owns an interest in one of thousands of contractors and subcontractors in the state who work in commercial construction and might bid or be awarded contracts for construction of public buildings would create an opportunity for political abuse fraud by members of the construction industry and their allies. The only way Mr. Loveless has an economic interest by virtue of this company's contract with Contract Construction in an unrelated matter is for this Commission to assist companies such as Contract Construction to force the recusal by a public official and prevent him from doing his statutory duties. It was Contract Construction that created this scenario, not Mr. Loveless. If Contract Construction did so to force Mr. Loveless' recusal (and his criticism of their work for the District) they cannot be allowed to succeed.

When political opponents of Mr. Loveless' attempted to raise the issue of conflict of interest with him in September, 2020, Mr. Loveless requested an opinion from this office to resolve the matter. This office declined, and instead in an informal opinion dated September 25, 2020 your agency opined that Mr. Loveless should recuse himself from "that matter" (which was not defined). In his follow-up with the Commission, Mr. Loveless was advised that "you are correct that the ultimate decision to recuse belongs to the public official." (Letter from Courtney Laster dated 2.22.2021, p. 4).

While Mr. Loveless disagreed with the informal opinion of staff, and out of respect for the Commission's position, he nevertheless wrote the statutorily-required notice to Janis Hammond, Chairperson of the Board of Trustees for the School District in early 2021, in accordance with Section 8-13-700(b)(1), based on the view expressed by Commission staff.

Since that time, Mr. Loveless has not made any votes, nor has he taken any action "that could be perceived as an attempt to influence the government decision." (Laster to Loveless February 22, 2021). He has, however, continued to carry out his official duties, which included a site visit to the construction site at Piney Woods Elementary School, and he has privately observed the defective construction at Piney Woods Elementary Sschool, while not voting or taking any action to interfere with the District's contract with Contract Construction.

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“Recusal” is not defined in any of the published advisory opinions that are available for consultation and guidance, but Mr. Loveless has purposefully not voted or taken any action regarding Contract Construction since he complied with Section 7-13-700(b) in early 2021. He is, however, permitted by the First Amendment to make public comment on matters in which he has expertise, and failure to do so would constitute an abandonment of his obligations as a member of the school board. In fact, he cannot be forced to abandon his duties to the District by Contract Construction’s attempts, in conjunction with others, to silence him.

If there is existing precedent which prohibits him from voicing his opinion regarding the quality of work being performed for the school district, and therefore expressly allows such an infringe on his first amendment right of free speech, please point those out for our consideration. Similarly, if he is prohibited from listening to discussions about the projects for which he is statutorily required to carry out his duties as a member of the school board (other than voting), please provide that. He has not voted or attempted to influence any vote or any action regarding Contract Construction’s involvement with the Piney Woods Elementary School nor taken any other action which would compromise his integrity as a Board member.

If it was Contract Construction’s intent to prevent Mr. Loveless from carrying out his duties as a member of the District Five school board by awarding a contract to his employer in an attempt to silence him, then Contract Construction has violated Section 8-13-705(A) and (C), and I request that the Commission investigate appropriately. The statute provides that if Contract Construction attempted to initiate his recusal by awarding Loveless Commercial Contracting a subcontract for an unrelated project after he was elected to the School Board, they are guilty of a misdemeanor. Section 8-13-705(F). Contract Construction’s actions should also be examined under Section 8-13-720.

If you have any specific questions, or wish to modify any of the statements made by yourself or Commission staff, we would be happy to hear from you. Mr. Loveless intends to continue to faithfully discharge the duties of his elected position.

Thank you for the opportunity to respond to the complaint in this matter. We look forward to closure of this matter with all deliberate speed.

Sincerely yours,

BOWERS LAW OFFICE LLC



Karl S. Bowers, Jr.

## **ATTACHMENT 3**

**OPINION OVERTUNED IN PART BY AMENDMENT TO SECTION 8-13-740(4) AND (5).  
EFFECTIVE APRIL 12, 2007. SEE R12, H3226 FROM THE 2007 TERM AT  
<http://www.scstatehouse.net/index.html>.**

SEC AO92-072

March 25, 1992

SUBJECT: ENGINEER SERVING ON COUNTY PLANNING COMMISSION

SUMMARY:

An engineer would not be prohibited from serving on a County Planning Commission if such service is authorized by local statutes or ordinances. If so authorized, the State Ethics Commission would not find a violation for the engineer to serve and for members of his firm to represent clients before county agencies in order to carry out the functions of their profession.

QUESTION:

A member of the Greenville County Planning Commission is a Civil Engineering Designer and Construction Coordinator for an engineering firm. He questions whether there is a violation in his serving on the Planning Commission.

DISCUSSION:

This opinion is rendered in response to a letter dated January 7, 1992 requesting an opinion from the State Ethics Commission. The Commission's jurisdiction is limited to the applicability of the Ethics, Government Accountability, and Campaign Reform Act of 1991 (Act No. 248 of 1991; Section 8-13-100 et. seq., as amended, 1976 Code of Laws). This opinion does not supersede any other statutory or regulatory restrictions or procedures which may apply to this situation. Section 8-13-730 provides in part as follows:

Unless otherwise provided by law, no person may serve as a member of a governmental regulatory agency that regulates any business with which that person is associated.

Section 8-13-730 basically mirrors Section 8-13-450 of the previous Ethics Act. In S. C. Coastal Council et. al. v. S.C. State Ethics Commission, Op. No. 23496 (S.C. Sup. Ct. filed October 14, 1991), the Supreme Court examined whether Section 8-13-450 applied to members of the Coastal Council. The Court first reviewed in detail the Coastal Management Act (Act) and the regulations promulgated pursuant to that Act. See, S.C. Code Ann. Section 48-39-10, et. seq., (1987) and 23 S.C. Code Ann. Reg. 30-2-11 and 12 (1976). The Court then held based on its reading of the above law that Coastal Council regulated the "use of critical areas by a business" but not the specific way a particular business is operated. Therefore, the issue pursuant to Section 8-13-

730 is whether the Planning Commission regulates the specific way an engineer operates his business.

However, since the laws and promulgating regulations of the planning Commission are not before this Ethics Commission, it is unclear from the request letter whether the Planning Commission is a regulatory agency. If the Planning Commission specifically regulates the operation of engineers in Greenville County, Section 8-13-730 applies to this situation. Otherwise Section 730 is not applicable.

Upon determination that Section 8-13-730 does not preclude a member of the Planning Commission from serving, the impact of Section 8-13-740 must be considered. Section 8-13-740 provides in part as follows:

(4) A public official, public member, or public employee of a county, an individual with whom the public official, public member or public employee is associated or a business with which the public official, public member, or public employee is associated may not knowingly represent a person before any agency, unit, or subunit of that county except:

- (a) as required by law; or
- (b) before a court under the unified judicial system.

Represent is defined in Section 8-13-100(28) as:

"Represent" or "representation" means making an appearance, whether gratuitous or for compensation, before a state agency, office, department, division, bureau, board, commission, or council, including the General Assembly, or before a local or regional government office, department, division, bureau, board, or commission.

If an engineer does not serve pursuant to a statute specifically providing for the service of an engineer upon the Planning Commission, then these provisions apply. However, a statutory provision should be given reasonable and practical construction consistent with the purpose and policy expressed in the statute. Hay v. South Carolina Tax Commission, 273 S.C. 269, 255 S.E. 2d 837, (1979). And, "[t]he real purpose and intent of the law makers will prevail over the literal import of the words." Greenville Baseball, Inc. v. Bearden, Sheriff, et al., 200 S.C. 363, 20 S.E. 2d 813, 815 (1942). Therefore, the Commission finds that if the Greenville County ordinances or regulations authorize that an engineer serves on the Planning Commission and that engineer serves pursuant to that authorization, Section 8-13-740 would not prohibit that person or the individuals or businesses with which the engineer is associated from representing clients before the Planning Commission.

The Commission advises that the provisions of Section 8-13-700(B) would apply to continued service if allowed as mentioned above. Section 8-13-700(B) provides:

(B) No public official, public member, or public employee may make, participate in making, or in any way attempt to use his office, membership, or employment to influence a governmental decision in which he, a member of his immediate family, an individual with

whom he is associated, or a business with which he is associated has an economic interest. A public official, public member, or public employee 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 member of his immediate family 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;

\* \* \*

(5) if he is a public member, he shall furnish a copy to the presiding officer of any agency, commission, board, or of any county, municipality, or a political subdivision thereof, on which he serves, who shall cause the statement to be printed in the minutes and shall 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 such disqualification and the reasons for it to be noted in the minutes.

The State Ethics Commission advises that, if the engineer is allowed to serve in accordance with the above discussion, members of his engineering firm would not be prohibited from representing clients before the Planning Commission, provided the member follows the procedures of Section 8-13-700(B) on all matters affecting the economic interests of the engineering firm.

**SUBJECT:** COMMUNITY APPEARANCE BOARD MEMBER PARTICIPATING IN MATTER INVOLVING ECONOMIC INTERESTS OF A CLIENT.

**SUMMARY:** A public member should disqualify himself from all matters in which a business with which he has an ongoing client relationship has an economic interest.

**QUESTION:** This opinion is issued in response to the ongoing concern the State Ethics Commission has regarding violations of Section 8-13-700(A) and (B) of the Ethics Reform Act of 1991, by public members who participate in, and vote on matters before their board or commission involving the economic interest of a business with which the public member has an ongoing client relationship.

**DISCUSSION:**

The State Ethics Commission's jurisdiction is limited to the applicability of the Ethics, Government Accountability, and Campaign Reform Act of 1991 (Act Number 248 of 1991; Section 2-17-5 et. seq. and Section 8-13-100 et. seq.). This opinion does not supersede any other statutory or regulatory restriction or procedure which may apply to this situation.

Section 8-13-700(A) provides as follows:

(A) No public official, public member, or public employee may knowingly use his official office, membership, or employment to obtain an economic interest for himself, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated. This prohibition does not extend to the incidental use of public materials, personnel, or equipment, subject to or available for a public official's, public member's, or public employee's use which does not result in additional public expense.

Section 8-13-700(B) provides as follows:

(B) No public official, public member, or public employee may make, participate in making, or in any way attempt to use his office, membership, or employment to influence a governmental decision in which he, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated has an economic interest. A public official, public member, or public employee 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 member of his immediate family, 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;

\* \* \*

(5) if he is a public member, he shall furnish a copy to the presiding officer of any agency, commission, board, or of any county, municipality, or a political subdivision thereof, on which he serves, who shall cause the statement to be printed in the minutes and shall 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 such disqualification and the reasons for it to be noted in the minutes.

Section 8-13-100(3) defines business as:

(3) 'Business' means a corporation, partnership, proprietorship, firm, an enterprise, a franchise, an association, organization, or a self-employed individual.

Section 8-13-100(4) defines business with which he is associated as:

(4) 'Business with which he is associated' means a business of which the person or a member of his immediate family is a director, an officer, owner, employee, a **compensated agent**, or holder of stock worth one hundred thousand dollars or more at fair market value and which constitutes five percent or more of the total outstanding stock of any class. [Emphasis Added]

Also, the Ethics Reform Act, in its Preamble states:

Whereas, the trust of the public is essential for government to function effectively. Public policy developed by elected officials affects every citizen of the State, and it must be based on honest and fair deliberations and decisions. This process must be free from all threats, favoritism, undue influence, and all forms of impropriety so that the confidence of the public is not eroded; and

\* \* \*

Whereas, one of the most important functions of any law aimed at making public servants more accountable is that of complete and effective disclosure. Since many public officials serve on a part-time basis, it is inevitable that conflicts of interest and appearances of impropriety will occur. Often these conflicts are unintentional and slight, but at every turn those who represent the people of this State must be certain that it is the interests of the people, and not their own, that are being served. Officials should be prepared to remove

themselves immediately from a decision, vote, or process that even appears to be a conflict of interest;...

Many local boards and commissions are created by statute and require that a certain number of their members be professionals in the field of the area of review. These public members/professionals often must avail themselves of the recusal procedures of Section 8-13-700(B) when a project or plan that they contributed to in some way appears before their board. What the Commission finds troublesome is when there is an ongoing relationship between the public member and a party before the board. The question becomes how can the public member be associated with a business on some projects before the public member's board but not with other projects of the business that come before the public member's board. Additionally, an agent is under a duty to report information he/she receives pertaining to matters the principal needs to be aware of. This runs head long into Section 8-13-725 which prohibits the disclosure of confidential information.

Agents also have a duty not to adversely affect the interest of their principal. If there is an ongoing relationship, the public member must not vote on the matter affecting the principal. He should recuse herself. He is caught between a duty not to act adversely with regard to the principal and a duty to the public to act in its best interest. Even should he be able to clear himself of any actual bias, the appearance of the relationship would serve to taint his vote and cause his actions to be held in question. This would obviously handicap his effectiveness as a member of the public body.

In complaint advisory opinion C89-017, with regard to a procurement matter, the Commission opined that "potential vendors by state policy and regulation are to remain at arms-length in transactions with public agencies. This policy is amply illustrated in open bid procedures and limitations on ex parte communications with procurement officials. Any provision of service or goods to either individual agency officials or employees or to groups of such officials or employees does not obliterate the need to maintain this arms-length arrangement".

The reverse, as in this matter, should also be true. A public member who maintains an ongoing business relationship should maintain an arms-length arrangement with any client. The Preamble to the Ethics Reform Act provides that "it is inevitable that conflicts of interests and appearances of impropriety will occur. Often these conflicts are unintentional and slight, but at every turn those who represent the people of this state must be certain that it is the interest of the people, and not their own, that are being served."

The awarding of contracts, as in the procurement process, charges public officials and public members to objectively and impartially consider and determine contractual matters. The prohibitions contained in Section 8-13-700(A) and (B) serve the public interest in objective, impartial, and effective government by preventing the creation of situations which would tend to impair the objectivity and impartiality, and therefore, the effectiveness of a public member.

CONCLUSION: The Ethics Commission is mindful that the Ethics Act does not define the

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term "compensated agent", nor has the Commission specifically defined the term in its prior opinions or decisions. Accordingly, the State Ethics Commission hereby defines "compensated agent" as "any ongoing client relationship in which the public official, public member, or public employee, receives compensation for services rendered".

Further, it is the opinion of the State Ethics Commission that a public official's, public member's, or public employee's participation in a matter involving a business with which the public official, public member or public employee is a "compensated agent", gives rise to a rebuttable presumption that to take an action or make a decision which affects the economic interest of the business with which associated would therefore be a violation of Section 8-13-700(A) and (B), South Carolina Code of Laws, 1976, as amended.

KEYWORDS: Compensated Agent, Economic Interest

ANNOTATIONS: 8-13-100 (3) and (4), 8-13-700 (A) and (B), Preamble

SEC AO2000-011

May 17, 2000

**SUBJECT:** Conflicts of Interest for County, City and Town Council Members who sit on various boards.

**SUMMARY:** A public official should recuse himself from all matters in which a business with which he is associated has an economic interest. A business with which associated includes those non-profit agencies and boards on which a public official serves, unless he serves on the agency or board in his official capacity as a council member.

**QUESTION:** This opinion is issued in response to the ongoing concern the State Ethics Commission has regarding violations of Section 8-13-700(A) and (B) of the Ethics Reform Act of 1991, by public officials who participate in, and vote on matters before their councils involving the economic interest of a business with which the public officials are associated through their employment or membership on the board or other governing bodies, not affiliated with their councils.

**DISCUSSION:** The State Ethics Commission's jurisdiction is limited to the applicability of the Ethics, Government Accountability, and Campaign Reform Act of 1991 (Act no. 248 of 1991; Section 2-17-5 et seq. and Section 8-13-100 et seq., as amended, 1976 Code of Laws of South Carolina). This opinion does not supersede any other statutory or regulatory restrictions or procedures which may apply to this situation. Failure to disclose relevant information may void the opinion.

Section 8-13-700(A) provides as follows:

(A) No public official, public member, or public employee may knowingly use his official office, membership, or employment to obtain an economic interest for himself, a member of his immediate family, an individual with whom he is

associated, or a business with which he is associated. This prohibition does not extend to the incidental use of public materials, personnel, or equipment, subject to or available for a public official's, public member's, or public employee's use which does not result in additional public expense.

Section 8-13-700(B) provides as follows:

(B) No public official, public member, or public employee may make, participate in making, or in any way attempt to use his office, membership, or employment to influence a governmental decision in which he, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated has an economic interest. A public official, public member, or public employee 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 member of his immediate family, 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;

\* \* \*

(3) if he is a public employee, he shall furnish a copy of the statement to his superior, if any, who shall assign the matter to another employee who does not have a potential conflict of interest. If he has no immediate superior, he shall take the action prescribed by the State Ethics Commission;

\* \* \*

(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 any agency, commission, board, or of any 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;

\* \* \*

(5) if he is a public member, he shall furnish a copy to the presiding officer of any agency, commission, board, or of any county, municipality, or a political subdivision thereof, on which he serves, who shall cause the statement to be printed in the minutes and shall 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 such disqualification and the reasons

for it to be noted in the minutes.

Section 8-13-100(3) defines business as:

(3) 'Business' means a corporation, partnership, proprietorship, firm, an enterprise, a franchise, an association, organization, or a self-employed individual.

Section 8-13-100(4) defines business with which he is associated as:

(4) 'Business with which he is associated' means a business of which the person or a member of his immediate family is a director, an officer, owner, employee, a compensated agent, or holder of stock worth one hundred thousand dollars or more at fair market value and which constitutes five percent or more of the total outstanding stock of any class.

Section 8-13-100(11) defines economic interest as:

(11)(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.

Section 8-13-100(30) defines official capacity as:

(30) 'Official capacity' means activities which:

(a) arise because of the position held by the public official, public member, or public employee;

(b) involve matters which fall within the official responsibility of the agency, the public official, the public member, or the public employee; and

(c) are services the agency would normally provide and for which the public official, public member, or public employee would be subject to expense reimbursement by the agency with which the public official, public member, or public employee is associated.

The Commission has issued many Advisory Opinions setting forth the proper procedure to which a public official must adhere when required to take an official action on a matter that would affect the economic interest of a business with which he is associated. See SEC AO92-14, AO92-77, AO92-115, AO92-131, AO92-145, AO92-152, AO92-221, AO95-10 and AO98-09. The Commission in AO92-014 stated "(t)hus on matters affecting the economic interests of business or individual where there is an association, there are three steps which should be taken: 1. The preparation of a written statement describing the matter of potential conflict, which is to be made a part of the meeting minutes, 2. Abstention or recusal from action, vote, and deliberation on the matter, and 3. To avoid any influence, absenting oneself from the meeting location."

In addition, the Commission has reviewed those situations in which the public official has not had to recuse himself because he is a member of a large class. See SEC AO92-64, AO92-92 and AO92-201. The opinions primarily deal with council members who are also school district employees or spouses of school district employees and the question posed is whether those council members could vote on the school board appropriation. The Commission in AO92-201 stated "(s)ince the four Council Members are either school district employees or married to a school district employee, their interest is potentially no greater or less than that of all other members of the group of school employees. Therefore, the State Ethics Commission sees no prohibition against the four Council Members participating in the deliberations and votes on the school district budget issue. **The members are advised, however, that issues directly affecting their own economic interests to greater extent than other members of the school district employee group will necessitate following the procedures of Section 8-13-700(B).**" (Emphasis added.) The large class exception is just that, an exception to the recusal requirements of Section 8-13-700(B) for public officials and businesses with which they are associated and this exception must be reviewed case by case to determine whether a large class exists.

A final exception to the recusal requirement is that situation in which the public official sits on a board in his official capacity as a council member. In order to be serving in his official capacity, the public official must sit on a board, foundation, agency, etc. which is an arm or child of the council, i.e. created by council and existing solely at the discretion of council. In addition the public official must sit on the board, etc based solely on his position on council. Clearly many public officials are asked to sit on boards of non-profits because of their public status, but that status does not, in and of itself, fall within this exception to the recusal requirements. The Commission has issued two Orders dismissing complaints under this exception. See C2000-014 Decision and Order and C2000-049 Decision and Order. In both complaints the Respondent was

an elected member of council who sat in his official capacity on a board which was a creation of council. Finally the prohibitions of Section 8-13-700, as it applies to a business with which a public official is associated, does not include an association of which the official is a member and not an officer, director or employee. See C98-035 Decision and Order.

The Commission is aware that many times public officials are voting on total council budgets which include appropriations to businesses with which they are associated. In those situations, the public official should request that the appropriation be a line item budget matter separate from the total budget. The public official could then vote on the total budget and follow the recusal requirements of Section 8-13-700(B) for the line item budget matter.

**CONCLUSION:** The Commission is mindful that public officials often sit on various boards and agencies because they are public officials; however, unless they sit on council created boards in their official capacity as council members, then the boards, non-profits, agencies, etc. are businesses with which they are associated. A public official should recuse himself from all matters in which a business with which he is associated has an economic interest.

**KEY WORDS:** Business With Which Associated, Economic Interest, Official Capacity

**ANNOTATIONS:** 8-13-100 (3), (4) and (11), 8-13-700 (A) and (B),

## **ATTACHMENT 4**

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND )

BEFORE THE  
STATE ETHICS COMMISSION  
COMPLAINT NO. SEC. NO. 97-035 & 97-036

STATE ETHICS COMMISSION, )  
COMPLAINANT )

VS. )

**CONSENT ORDER**

DR. O. HENDERSON POWELL )

AND )

DR. JAMES D. GIVENS, )  
RESPONDENTS. )  
\_\_\_\_\_ )

These cases arose out of substantially similar facts and are subject to a joint disposition by consent of the parties. The parties have entered into this Consent Order and request Commission approval as the final disposition of the matter. The State Ethics Commission is represented by Kelly J. Golden, Esquire. The Respondents are represented by Richard J. Breibart, Esquire.

A complaint was filed by the Commission, a finding of facts sufficient was made, and probable cause issued by the Commission alleging the Respondents violated S.C. Code § 8-13-700(A) & (B) (Supp. 1996) while acting in their official capacity of Board members of the Lexington Medical Center.

Pursuant to S.C. Code Regs. 52-708 (1997), the Commission through its attorney, requested remediation of the alleged violations. The request for remediation, to which the Respondents agree, stipulates that the Respondents will cause Lexington Medical Center, a governmental entity, to be reimbursed in the amount of Forty Thousand Eight Hundred Three and 32/100 (\$40,803.32) Dollars to be paid in equal shares of Twenty Thousand Four Hundred One and 66/100 (\$20,401.66) Dollars each. Upon proof of compliance with the request for remediation, the Commission shall by entry of this Order dismiss the action.

Therefore, in accord with S.C. Code § 1-23-310, et seq; S.C. Code §8-13-320, and

S.C. Code Regs. 52-101 et seq. (Supp. 1997) the undersigned enters the following findings of facts, conclusions of law and Order.

#### FINDINGS OF FACTS

1. Dr. James D. Givens was a public member as defined in S.C. Code §8-13-100 by virtue of his membership on the Board of Directors of the Lexington Medical Center.
2. Dr. O. Henderson Powell was a public member as defined in S.C. Code §8-13-100 by virtue of his membership on the Board of Directors of the Lexington Medical Center.
3. Dr. James D. Givens is married to Louise M. Givens who at all times relevant hereto was engaged as a real estate sales agent for Bob Capes Realtors, Inc.
4. Dr. O. Henderson Powell is married to Susan M. Powell who at all times relevant hereto was engaged as a real estate sales agent for Bob Capes Realtors, Inc.
5. Louise M. Givens and Susan M. Powell, as sales agents for Bob Capes Realtors, Inc. stood to obtain an economic interest (e.g., a commission) from the certain real estate transactions as more fully discussed herein.
6. Mr. Michael Biediger, President and CEO of Lexington Medical Center, would establish the following facts if called to testify.

Approximately one year prior to the real estate transaction giving rise to this action<sup>1</sup> (hereinafter property B), an informal decision was made to use the services of real estate sales persons Susan M. Powell and Louise M. Givens.

7. Mr. Biediger would establish that in the last quarter of 1996, he asked Ms. Powell to "be on the look out for property in the Lexington area." The request was not reduced to writing. In October, 1996, Ms. Powell told Mr. Biediger of potentially suitable property.

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<sup>1</sup>The real estate transaction giving rise to this action is referred to as property B to distinguish it from a prior unsuccessful attempt to purchase a different parcel of real estate hereinafter referred to as property A.

Ms. Powell organized a meeting in the offices of Bob Capes Realtors, Inc. at which Ms. Powell, Ms. Givens, Melinda Kruzner, CFO of Lexington Medical Center, Mr. Biediger, and Lewis T. Truesdale of Bob Capes Realtors attended. As a result of the meeting, Mr. Biediger obtained preliminary authorization from Bill Coleman, Chairman of the Board, Steven Mungo, Vice Chairman of the Board, and Keith Dooley, Chairman of the Planning Committee to make an offer on property A. The following documents were executed (1) *An Agency Policy and Agency Policy & Acknowledgement* was signed by Lewis Truesdale and Louise Powell as witness to Ms. Kruzner for the Buyer and bears the date of October 8, 1996. (2) *An Information & Disclosure Regarding Real Estate Agency Relationships* form was signed by Lewis Truesdale with Mr. Truesdale signing as the representative of Bob Capes Realtors, Inc., agent for the buyer and Ms. Kruzner signing on behalf of the buyer. Two dates appear on this document, to wit: October 8 & 9, 1996.

8. An offer to purchase property A was extended to the owner's agent and rejected by counteroffer on or about November 20, 1996.

9. On October 24, 1996, the Board of Directors of the Lexington Medical Center met. Dr. Givens was absent. Dr. Powell was present. The minutes from the October 24, 1996 meeting are silent concerning the real estate transaction in general or the actions which took part discussed in the above paragraph.

10. On November 21, 1996, the Board of Directors met. The minutes from November 21, 1996, Executive Committee indicate that Dr. Givens was not present when the committee was advised of the offer and counter offer regarding property A. Dr. Powell was not a member of this committee and was therefore not involved.

11. Hospital administration then turned its attention to property B.

12. With regard to property B, a document entitled *Bob Capes Realtors "Speed Process"* dated December 13, 1996, states that the "selling associate branch or company" is:

"Truesdale, Givens, Powell", the Purchaser's name and address" is "Palmetto Health Systems, Inc.", the "Source of Seller" was "Listing" and the "Source of Purchaser" was "Personal Referral".

13. On December 19, 1996, the Board of Directors met. Dr. Givens and Dr. Powell were in attendance. The executive Committee minutes state that properties A and B were discussed and that Dr. Givens left before property A was discussed and did not return. The minutes do not contain a statutory statement of disqualification. The Executive Committee agreed to discuss property acquisition in Lexington County at the Board of Directors meeting. The accuracy of the Board of Directors meeting minutes is disputed by the Board Chairman and Hospital personnel in the following particulars. The Board of Directors minutes state: "A motion was presented to pursue the purchase of property in Lexington as discussed in executive session. This was seconded and carried. "A handwritten notes states "Motion deleted in March 27, 1997 mins. see 3/27/97 reg. session."<sup>2</sup> The executive session minutes state: "The Board agreed to proceed with plans for a medical facility...and to pursue the purchase of property in Lexington. "Both Drs. Givens and Powell were present in Executive Session.

14. William L. Coleman, Carol Dorman, and Shirley Padgett would establish that at the December 19, 1996 meeting, Dr. Powell and Dr. Givens were present and that Dr. Powell discussed in general a need for a facility in Lexington and stated that other physicians in the Lexington area had voiced to him a need for Lexington Medical Center to establish a presence in the Lexington area. Neither Dr. Givens nor Dr. Powell disqualified themselves

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<sup>2</sup>An excerpt from the March 27, 1997 minutes states: "Upon detailed review of the executive session and regular minutes of the December 19, 1996 Board meeting, it was found that a motion regarding the purchase of property in Lexington had been recorded in the regular session that was not made. This mistake occurred as a result of staff being excused from the Board to discuss a personnel matter. A motion carried to approve the deletion of this motion from the December 1996 minutes.

from the matter.

15. On December 19, 1996, Dr. Givens and Dr. Powell were present at Board meeting(s) where real property acquisition was discussed by the Respondents, the real property acquisition involved property in which their spouses were associated as sales agents and the Respondents failed to disqualify themselves in writing pursuant to S.C. Code §8-13-700(B). However, the Respondents would testify that they had orally informed the board and/or staff of the board that they would not be involved in the deliberations.

16. On December 20, 1996, a Letter of Intent was executed by Louise Given and Dee Frith as witnesses to Ms. Kruzner for the purchaser regarding property B. Pursuant to this document this agreement would not be legally valid without board approval.

17. On December 20, 1996, check number 399578 was issued by Lexington Medical Center in the amount of \$25,000.00 as earnest money for the purchase of property B.

18. On December 31, 1996, Dr. O. Henderson Powell resigned from the Lexington Medical Center Board of Directors. (term expired)

19. On January 13, 1997, Check number 399593 was issued by Lexington Medical Center in the amount of \$25,000.00 as additional earnest money for the purchase of property B.

20. On January 13, 1997, a Contract for Sale was executed for the purchase of property B. The contract was contingent on approval by the Board of Directors of Lexington Medical Center.

21. On January 30, 1997, the Board of Directors of Lexington County Health Services District met with Dr. Givens in attendance. The minutes state that "A motion was presented to proceed with the purchase of the Kyzer property (property B) contingent upon environmental studies and that no environmental concerns are found as discussed in executive session. This was seconded and carried with Dr. Givens not participating in the

discussion or the vote." Attached to the minutes is a form entitled Disclosure of Potential Conflict Form, signed by Dr. Givens, dated January 30, 1997, and stating that the nature of the conflict is "Family member is a realtor". The Executive Session minutes of the same date state Dr. Givens did not participate in the discussion to purchase property B. The Executive Committee met the same date with Dr. Givens in attendance. Property B was discussed and the minutes state that "the committee agreed to recommend to the full Board that administration proceed with the purchase of the property." The presiding official did not enter into the record the statement of disqualification executed by Dr. Givens although the statute required it and also did not enter a separate statement of disqualifications into the Executive Session.

22. The transaction to purchase property B closed on February 12, 1997, and Bob Capes Realtors, Inc. paid commissions to Louise M. Givens and Susan M. Powell among others.

23. On February 27, 1997 Board of Directors met. The Executive Committee met and discussed the property acquisition issue. The Minutes state that Dr. Givens left the meeting and did not participate in the discussion.

#### CONCLUSIONS OF LAW

1. At all times relevant Dr. Givens and Dr. Powell were non-compensated members of the Board. The evidence suggests that they relied upon various staff personnel and legal advice from attorneys employed by the hospital to assist them in complying with all relevant statutes. The record indicates that their wives never solicited any business and that no commissions were ever received as a result of any relationship with Lexington Medical Center except the commission in this case. There was no evidence of any deceitful conduct and the respondents have been fully cooperative with this investigation. There is no evidence of any intent by the respondents to ever influence the board regarding

the purchase of the property in question and, in fact, the commissions were paid to a professional association owned by Mrs. Givens and Mrs. Powell in which the respondents had no financial or pecuniary interest. Furthermore, the evidence suggests that there was information given by the staff of the board of the Lexington Medical Center to the Respondents and their spouses that their presence at the Board meetings were appropriate as long as they did not actively take part in any discussions or votes regarding the acquisition of the property. The Commission specifically finds that there was no intent to violate the State Ethics Act by the Respondents and that there was no attempt by the respondents to gain any financial advantage as a result of their status as board members. Additionally, prior to the votes of the board the respective spouses of the respondents had offered to waive any commission regarding the purchase of property by the hospital in or near Lexington and this offer was specifically rejected by the Lexington Medical Center.

2. The Respondents are public members and are covered by the Ethics Reform Act of 1991. S.C. Code §8-13-100(Supp. 1996). Therefore, jurisdiction is proper.

3. Respondents were timely and properly notified of this matter as required by S.C. Code §8-13-320(Supp. 1996). Therefore, all procedural requirements have been met.

4. S.C. Code §8-13-700 (A) prohibits knowingly using one's public office to obtain an economic interest for one's self or a member of the immediate family. The evidence does not support a finding of knowingly using a public office to obtain an economic interest.

5. S.C. Code §8-13-700(B) prohibits a public member from making, participating in making, or in any way attempting to use one's official office, membership or employment to influence a governmental decision in which the public member, a member of public member's immediate family (e.g., spouse), an individual with whom he is associated or a business with which he is associated has an economic interest.

6. A member of the immediate family is defined at S.C. Code §8-13-100 and economic

interest is defined at S.C. Code §8-13-100(11).

7. Susan Powell and Louise Givens are members of the respective Respondent's immediate family by virtue of their marital status.

8. Respondents had a potential economic interest in real estate transactions in which their spouses were agents for a party to the transaction S.C. Code §8-13-100(11)(a)(Supp. 1996).

9. In construing S.C. Code §8-13-700(B), we find that primary concern in interpreting a statute is to ascertain and effectuate legislative intent if it reasonably can be discovered in the language when construed in light of its intended purpose. All rules of statutory construction are subservient to the one that legislative intent must prevail if it can reasonably be discovered in the language used. If a statute's language is plain and unambiguous, and conveys a clear and definite meaning, there is no occasion for employing rules of statutory interpretation and the court {and this Commission} has no right to look for or impose another meaning. Lester v. S.C. Worker's Compensation Commission, Op. No. 2733 S.C. Ct. App. filed October 6, 1997 Davis Adv. Sh.No. 29 at 18 (citations omitted). We find as a matter of law that the intent of S.C. Code §8-13-700(B) is given in the following quote from the Preamble to the Ethics Reform Act of 1991:

Whereas, one of the most important functions of any law aimed at making public servants more accountable is that of complete and effective disclosure. Since many public officials serve on a part-time basis, it is inevitable that the conflicts of interest and appearances of impropriety will occur. Often these conflicts are unintentional and slight, but at every turn those who represent the people of this State must be certain that it is the interests of the people, and not their own, that are being served. Officials should be prepared to remove themselves immediately from a decision, vote, or process that even appears to be a conflict of interest;

To achieve the intent of the legislature, we further find that S.C. Code §8-13-700(B) is unambiguous in its requirements.

Therefore, we conclude as a matter of law that statutory disqualification in accord with S.C. Code §8-13-700(B) is a four step process which requires (1) the member prepare a written statement describing the matter requiring action or decision and the nature of the potential conflict of interest with respect to the action or decision; (2) the member furnish the presiding officer with a copy of the written statement; (3) the presiding officer cause the statement of disqualification and the reasons for it to be printed in the minutes; and (4) the presiding officer excuse the public member from any votes, deliberations, and other actions on the matter on which the potential conflict of interest exists.

10. Pursuant to S.C. Code §8-13-700(B) a public member is prohibited from discussing or otherwise affecting a matter in which disqualification is required.

11. Having found the Respondents failed to strictly comply with the statutory formula for disqualification, we conclude as a matter of law that disgorgement of the financial gain from the transaction is appropriate.

12. S.C. Code Regs. 52-708(B) provides that upon receipt of a request for remediation, the Respondent may take the remedial action recommended by the Commission to cure the infraction including payment of a fine or reimbursement to a governmental entity.

(1) Compliance with the request for remediation and proof thereof obviates the need for a hearing and the Commission shall by order dismiss the action. (2) The order shall be a public record and the final disposition of the matter.

#### **ORDER**

IT IS, THEREFORE, ORDERED that within ten (10) calendar days of entry of this Order reimbursement must be made to the Lexington Medical Center in the amount of Forty Thousand Eight Hundred Three and 32/100 (\$40,803.32) Dollars. Upon proof of compliance with the terms of this order by filing copies of evidence of payment to the Lexington Medical Center in a total amount of Forty Thousand Eight Hundred and Three

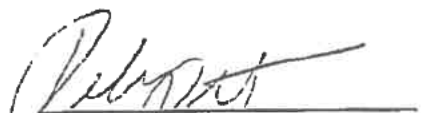
and 32/100 (\$40,803.32) Dollars with the State Ethics Commission, this matter shall be,  
and hereby is dismissed.

AND IT IS SO ORDERED!

  
By: Frederick A. Hofer, II  
Chairman  
South Carolina State Ethics Commission

This 13<sup>th</sup> day of February, 1998

I Consent:

  
Richard J. Breibart  
Attorney for the Respondents

3588.ord

**ATTACHMENT 5**

RECEIVED

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STATE ETHICS COMMISSION

STATE OF SOUTH CAROLINA  
STATE ETHICS COMMISSION

COMPLAINT FORM

FOR COMMISSION USE ONLY:

CASE NUMBER

C-2021-016

COMPLAINANT: Kim Benson  
ADDRESS:  
TELEPHONE NUMBER: 803-361-9510  
TITLE: Parent & Tax Payer

RESPONDENT: Kemeth Loveless  
ADDRESS:  
TELEPHONE NUMBER: 803-345-0547  
TITLE: School Board Trustee

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).

Address:  
1415 Beaver Dam Rd.  
Columbia SC 29212

Address:  
228 Lookout Pointes Dr  
Chapin SC 29036.

\* Please see attached document which contains various links to additional documents & media.

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 Kim Benson 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 17th day of February, 2021

[Signature]  
Notary Public for South Carolina  
My Commission expires 8-11-2025

[Signature]  
Complainant Signature

SEC-7 (Revised 8/2019)

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

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AP

STATE OF SOUTH CAROLINA  
STATE ETHICS COMMISSION

Kim Benson,

Complainant,

vs.

Kenneth Loveless,

Respondent.

Case Number: C-2021-016

**ORDER DENYING MOTION FOR  
EXPEDITED HEARING**

This matter comes before the State Ethics Commission (Commission) on Respondent Kenneth Loveless's (Respondent) Motion for Expedited Hearing. On September 12, 2022, Respondent filed a Motion to Dismiss in the above captioned matter. The matter was noticed for hearing before the Commission on September 15, 2022. The Commission's counsel was unavailable due to a family emergency and Respondent's counsel agreed to continue the matter until the Commission's counsel returned to work. The Commission's counsel filed a Response to Respondent's Motion to Dismiss on September 26, 2022. Respondent's counsel filed the present motion on September 27, 2022, requesting an expedited hearing "before the Full Commission."

The Commission denies Respondent's Motion for Expedited Hearing as it is not properly before the full Commission. Chapter 52 of the South Carolina Code of Regulations (Code) sets forth the manner by which hearings before the Commission should be conducted. Specifically, Section 52-713(A) of the Code directs that the chairman of the hearing panel "shall have the authority to hear preliminary and interlocutory matters and take such other action as is necessary to conduct the hearing." Respondent's motion is, therefore, denied. Respondent may refile the motion for consideration by the hearing panel.

And it is **SO ORDERED**.

  
\_\_\_\_\_  
Scott E. Frick  
Chairman

September 28<sup>th</sup>, 2022  
Columbia, South Carolina.

STATE OF SOUTH CAROLINA  
STATE ETHICS COMMISSION

Kim Benson,

Complainant,

vs.

Kenneth Loveless,

Respondent.

Case Number: C-2021-016

**ORDER DENYING RESPONDENT'S  
SECOND MOTION FOR EXPEDITED  
HEARING**

This matter comes before the State Ethics Commission (Commission) on Respondent Kenneth Loveless's (Respondent) Second Motion for Expedited Hearing. On September 12, 2022, Respondent filed a Motion to Dismiss in the above captioned matter. The Motion to Dismiss was noticed for hearing before the Commission on September 15, 2022. The Commission's counsel was unavailable due to a family emergency and Respondent's counsel agreed to continue the Motion to Dismiss until the Commission's counsel returned to work. The Commission's counsel filed a Response to Respondent's Motion to Dismiss on September 26, 2022. Respondent's counsel then filed a Motion for an Expedited Hearing on September 27, 2022. On September 28, 2022, that motion was denied as it was not properly before the full Commission. Respondent's present motion was filed on September 29, 2022.

Respondent's Motion for Expedited Hearing is denied. On July 25, 2022, Respondent, through his attorney Karl S. Bowers, received a Notice of Hearing scheduling this matter for February 16, 2023. On September 15, 2022 Respondent's attorney requested that this case be moved to the Commission's October term – that request was denied. Respondent now requests that a hearing on his Motion to Dismiss be held within two weeks of September 30, 2022. Section 8-13-320(9)(b)(2) states that "action on a complaint filed against a candidate which was received more

than fifty days before the election, but which cannot be disposed of or dismissed by the commission at least thirty days before the election must be postponed until after the election.” Section 8-13-320(9)(b)(2) of the Act requires that the Motion to Dismiss be scheduled, heard, and that an Order be issued before October 7, 2022.

Respondent’s hearing in the above-captioned matter will take place on February 16, 2023 and all motions will be heard prior to the hearing on February 16, 2023.

And it is **SO ORDERED**.

  
F. Xavier Starkes  
Chairman, Hearing Panel

September 30, 2022  
Columbia, South Carolina.

STATE OF SOUTH CAROLINA  
STATE ETHICS COMMISSION

Kim Benson,

Complainant,

vs.

Kenneth Loveless,

Respondent.

Case Number: C-2021-016

**ORDER GRANTING RESPONDENT'S  
THIRD MOTION FOR EXPEDITED  
HEARING**

This matter comes before the State Ethics Commission (Commission) on Respondent Kenneth Loveless's (Respondent) Third Motion for Expedited Hearing. On September 12, 2022, Respondent filed a Motion to Dismiss in the above captioned matter. The Motion to Dismiss was noticed for hearing before the Commission on September 15, 2022. The Commission's counsel was unavailable due to a family emergency and Respondent's counsel agreed to continue the Motion to Dismiss until the Commission's counsel returned to work. The Commission's counsel filed a Response to Respondent's Motion to Dismiss on September 26, 2022. Respondent's counsel then filed a Motion for an Expedited Hearing on September 27, 2022. On September 28, 2022, that motion was denied as it was not properly before the full Commission. Respondent's second Motion for Expedited Hearing was filed on September 29, 2022 and was denied on September 30, 2022. Respondent's present motion was filed on October 3, 2022.

As of today's date, counsel for both Respondent and the Commission are available on the afternoon of October 6, 2022. As such, a hearing on Respondent's Motion to Dismiss in the above-referenced matter will be heard on October 6, 2022 at 3:00 PM at the State Ethics Commission. The parties may elect to appear either in-person or via Zoom. Pursuant to Regulation 52-712(A)

of the South Carolina Code of Regulations, the matter will be heard by Commissioner F. Xavier Starkes as Commissioner Starkes is the Panel Chair for February 2023 hearings.

And it is **SO ORDERED**.



---

F. Xavier Starkes  
Chairman, Hearing Panel

October 3, 2022  
Columbia, South Carolina.

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

BEFORE THE STATE ETHICS COMMISSION

IN THE MATTER OF: )  
COMPLAINT C2021-016 )

Kim Benson, )  
Complainant. )

**ORDER DENYING RESPONDENT'S  
MOTION TO DISMISS**

Kenneth Loveless, )  
Respondent. )

This matter comes before the South Carolina State Ethics Commission (Commission) on Respondent Ken Loveless's (Respondent) Motion to Dismiss (Motion), filed on September 12, 2022. The Motion was originally noticed for a hearing before the Commission on September 15, 2022. The Commission's counsel was unavailable due to a family emergency and Respondent's counsel agreed to continue the Motion until the Commission's counsel returned to work. The Commission's Counsel filed a Response to Respondent's Motion on September 26, 2022 and the Panel Chair heard oral arguments on Respondent's Motion on October 6, 2022.

**PROCEDURAL HISTORY**

The above-referenced Complaint was filed against Respondent, a member of the Board of Trustees (Board) for School District Five of Lexington and Richland Counties (District), on February 17, 2021. The Complaint alleged, among other things, that Respondent improperly participated in Board discussions and/or other activities that involved a District contract with Contract Construction, a business with which Respondent was associated.

Pursuant to Section 8-13-320(10)(c) of the Ethics, Government Accountability, and Campaign Reform Act (Ethics Act or Act), the Commission's Executive Director determined that the Complaint alleged facts sufficient to constitute a violation of the Act and ordered an investigation. In a certified letter dated February 23, 2021, Respondent was provided with a copy

of the Complaint. Respondent provided a written response on February 28, 2022. On May 19, 2022, following the investigation, the Commission found probable cause to believe Respondent violated the Ethics Act as follows:

**COUNT ONE FAILURE TO RECUSE FROM A GOVERNMENTAL DECISION IN WHICH A BUSINESS WITH WHICH ASSOCIATED HAD AN ECONOMIC INTEREST SECTION 8-13-700(B), S.C. CODE ANN., 1976, AS AMENDED.** That Kenneth Loveless, Lexington-Richland School District Five Board Member, did in Richland County, write a letter dated March 24, 2020 inquiring about construction work of a district facility by Contract Construction, Inc., a business with which he was associated, in violation of Section 8-13-700(B).

**COUNT TWO FAILURE TO RECUSE FROM A GOVERNMENTAL DECISION IN WHICH A BUSINESS WITH WHICH ASSOCIATED HAD AN ECONOMIC INTEREST SECTION 8-13-700(B), S.C. CODE ANN., 1976, AS AMENDED.** That Kenneth Loveless, Lexington-Richland School District Five Board Member, did in Richland County, on June 15, 2020, participate in discussion about construction of a district facility by Contract Construction, Inc., a business with which he was associated, in violation of Section 8-13-700(B).

**COUNT THREE FAILURE TO RECUSE FROM A GOVERNMENTAL DECISION IN WHICH A BUSINESS WITH WHICH ASSOCIATED HAD AN ECONOMIC INTEREST SECTION 8-13-700(B), S.C. CODE ANN., 1976, AS AMENDED.** That Kenneth Loveless, Lexington-Richland School District Five Board Member, did in Richland County, on September 14, 2020, participate in discussion about construction of a district facility by Contract Construction, Inc., a business with which he was associated, in violation of Section 8-13-700(B).

**COUNT FOUR FAILURE TO RECUSE FROM A GOVERNMENTAL DECISION IN WHICH A BUSINESS WITH WHICH ASSOCIATED HAD AN ECONOMIC INTEREST SECTION 8-13-700(B), S.C. CODE ANN., 1976, AS AMENDED.** That Kenneth Loveless, Lexington-Richland School District Five Board Member, did in Richland County, in June of 2020, participate in a site visit of a district facility being constructed by Contract Construction, Inc., a business with which he was associated, in violation of Section 8-13-700(B).

On July 11, 2022, a Notice of Hearing was issued setting forth the aforementioned violations. This Motion followed.

### DISCUSSION

As discussed herein, Respondent's Motion to Dismiss is denied and this matter shall proceed to a hearing on the merits.

I. The Notice of Hearing Properly Alleges Conduct That Violates the Ethics Act

Respondent argues the Complaint should be dismissed because the Notice of Hearing fails to allege conduct that violates the Ethics Act. Specifically, Respondent contends he did not participate in any "governmental decision" that implicates Section 8-13-700 and, therefore, the allegations contained in the Notice of Hearing are faulty.<sup>1</sup> I disagree and find that the Notice of Hearing properly alleges conduct that violates the Ethics Act.

Section 8-13-700(B) of the Ethics Act provides, in relevant part:

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:

...

(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

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<sup>1</sup> Respondent briefly argues that Respondent is being deprived of his First Amendment rights by these proceedings and/or the Commission's interpretation of Section 8-13-700. However, the U.S. Supreme Court has "rejected the notion that the First Amendment confers a right to use governmental mechanics to convey a message." See Nevada Ethics Comm'n v. Carrigan, 564 U.S. 117, 131 S.Ct. 2343 (2011) (finding lower court's "belief that recusal rules violate legislators' First Amendments rights is also inconsistent with long-standing traditions in the State. A number of States, by common-law rule, have long required recusal of public officials with a conflict.").

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.

(emphasis added).

Section 8-13-100(4) of the Ethics Act defines “business with which he is associated” as:

A business of which the person or a member of his immediate family is a director, an officer, owner, employee, a compensated agent, or holder of stock worth one hundred thousand dollars or more at fair market value and which constitutes five percent or more of the total outstanding stock of any class.

“Primary jurisdiction for interpretation of the Act is bestowed upon the State Ethics Commission, pursuant to § 8-13-320(11) . . .” Op. S.C. Att’y. Gen., 2006 WL 2593082 (August 24, 2006). Regarding conflicts of interest, the Commission has long held that recusal is required in any matter that implicates the economic interest of a business with which a public official is associated. See SEC AO92-072 (advising public servant to disqualify from all matters affecting the economic interests of a business with which he is associated); SEC AO2000-004 (same); SEC AO2000-011 (same). This interpretation is supported by the text of the Ethics Act, which uses the phrase “governmental decision” just once in the main text of Section 8-13-700(B), then clarifies in the following subsections that public officials are required to recuse “from any votes, deliberations, and other actions on the matter” and on all “matters pertaining to that economic interest.” This interpretation is also supported by decades of guidance and enforcement actions. Id.; see also Complaint Nos. 97-035 and 97-036 (holding discussion by a public servant about a matter in which his wife had an economic interest violated Section 8-13-700(B)).

Here, it is undisputed that Contract Construction entered into a contract with the District in 2018 for the construction of Piney Woods Elementary School (PWES). It is also undisputed that

Respondent became a subcontractor for Contract Construction on February 11, 2020 on an unrelated South Carolina Law Enforcement Division (SLED) construction project, thereby making Contract Construction a business with which Respondent was associated. See Section 8-13-1300(4) (defining “business with which he is associated” as “ a business of which the person . . . is a . . . compensated agent”); SEC AO2000-004 (defining “compensated agent” as “any ongoing client relationship in which the [public official] receives compensation for services rendered”).

Section 8-13-700 therefore prohibited Respondent from participating in any matter in which Contract Construction had an economic interest, to include the PWES contract. See SEC AO2002-003 (finding the economic interest of a business with which the public official is associated is imputed to the public official for purposes of Section 8-13-700). Any other interpretation of Section 8-13-700 would lead to an absurd result and would defeat the entire purpose of the Ethics Act, which is outlined in the Preamble:

Whereas, one of the most important functions of any law aimed at making public servants more accountable is that of complete and effective disclosure. Since many public officials serve on a part-time basis, it is inevitable that conflicts of interest and appearances of impropriety will occur. Often these conflicts are unintentional and slight, but at every turn those who represent the people of this State must be certain that it is the interests of the people, and not their own, that are being served. Officials should be prepared to remove themselves immediately from a decision, vote, or process that even appears to be a conflict of interest.

I therefore find that the Notice of Hearing properly alleges violations of the Ethics Act.

## II. The Commission’s Complaint Process Complies with the Ethics Act

Respondent argues the Complaint must be dismissed because (1) the full Commission did not vote to open an investigation; (2) the Complaint was not notarized by the Commission; and (3) the Notice of Hearing was not provided to Respondent within ten (10) days of the finding of probable cause. I disagree and find that the Commission’s complaint process complied with the

Ethics Act.

Pursuant to Section 8-13-320(9) of the Ethics Act, the Commission has the duty and power “to initiate and receive complaints and make investigations, as provided in item (10) . . . of statements filed or allegedly failed to be filed . . . and, upon complaint by an individual, of an alleged violation of this chapter.” Section 8-13-320(9)(a) of the Ethics Act allows the Commission to “commence an investigation on the filing of a complaint by an individual or by the commission, as provided in item (10)(d), upon a majority vote of the total membership of the commission.” (emphasis added).

Section 8-13-320(10) of the Ethics Act provides for the various ways the Commission may accept a complaint and provides the process for each of these filings, the relevant portions of which are provided below:

- (a) The commission shall accept from an individual, whether personally or on behalf of an organization or governmental body, a verified complaint, in writing, that states the name of a person alleged to have committed a violation of this chapter and the particulars of the violation. The Commission shall forward a copy of the complaint, a general statement of the applicable law with respect to the complaint, and a statement explaining the due process rights of the respondent including, but not limited to, the right to counsel to the respondent within ten days of the filing of the complaint.

...

- (c) If the commission, its executive director, or staff designated by the commission determines that the complaint alleges facts sufficient<sup>2</sup> to constitute a violation, an investigation may be conducted of the alleged violation.

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<sup>2</sup> “Facts sufficient” means a preliminary determination based on the face of the complaint of jurisdiction over the Respondent and whether the facts plead, if true, would constitute a violation of the Act. S.C. Code Ann. Reg. 52-203(B)(6).

(d) If the commission, upon receipt of any information, finds probable cause to believe that a violation of the chapter has occurred, it may, upon its own motion and an affirmative vote of six or more members of the commission, *file a verified complaint*, in writing, that states the name of the person alleged to have committed a violation of this chapter and the particulars of the violation. The commission shall forward a copy of the complaint, a general statement of the applicable law with respect to the complaint, and a statement explaining the due process rights of the respondent including, but not limited to, the right to counsel to the respondent within ten days of the filing of the complaint. (emphasis added).

...

(e) At the conclusion of its investigation, the commission staff, in a preliminary written decision with findings of fact and conclusions of law, must make a recommendation whether probable cause exists to believe that a violation of this chapter has occurred. If the commission determines that probable cause does not exist, it shall send a written decision with findings of fact and conclusions of law to the respondent and the complainant. If the commission determines, by an affirmative vote of six or more commission members, that there is probable cause to believe that a violation has been committed, its preliminary decision may contain an order setting forth a date for a hearing before a panel of three commissioners, selected at random, to determine whether a violation of the chapter has occurred. If the commission finds probable cause, by an affirmative vote of six or more commission members, to believe that violation of this chapter has occurred, the commission may waive further proceedings if the respondent takes action to remedy or correct the alleged violation. Probable cause is a finding that the allegations contained in the complaint are more likely than not to have occurred and constitute a violation of this chapter or Chapter 17, Title 2.

The statutory language is clear that the Commission may accept complaints in a number of different ways. The language is equally clear that the Commission is only required to notarize complaints that it generates itself pursuant to Section 8-13-320(10)(d). Complaints filed by individuals are notarized prior to filing. There is no requirement that the Commission notarize every Complaint filed by a member of the public. In fact, to the contrary, Section 8-13-320(10)(a)

allows the Commission to “accept from an individual, whether personally or on behalf of an organization or governmental body, a verified complaint . . .” This interpretation is further supported by the Ethics Act’s accompanying regulations, which outline the Complaint process in a similar manner. See S.C. Code Ann. Regs. 52-701, et seq.

As to the ten (10) day notice requirement, this applies to the Respondent’s receipt of the Complaint, not of the Notice of Hearing. See Section 8-13-320(10)(a) (requiring the Commission to forward a copy of a complaint filed by an individual within ten (10) days); Section 8-13-320(10)(d) (requiring the Commission to forward a copy of a Commission-generated complaint within ten (10) days). There is no timeline set forth in the Ethics Act or the corresponding regulations regarding the Notice of Hearing, aside from Regulation 52-707, which requires the Notice of Hearing to be issued “at least thirty days before the scheduled hearing.”


In this matter, Respondent conflates the process for opening a Commission-generated Complaint (outlined in Section 8-13-320(10)(d)) with a Complaint filed by a member of the public or on behalf of an organization (outlined in Section 8-13-320(10)(c)). Pursuant to Section 8-13-320(10)(c) of the Ethics Act, “if the Commission, its executive director, or staff designated by the commission determines that the complaint alleges facts sufficient to constitute a violation, an investigation may be conducted of the alleged violation.” This is exactly what occurred - the Complaint was filed on February 17, 2021, the Executive Director determined the Complaint contained sufficient facts, an investigation was ordered, and Respondent was notified by way of a certified letter dated February 23, 2021.

I therefore find that the Complaint process in this matter complied with the relevant provisions of the Ethics Act.

**CONCLUSION**

Based on the reasoning set forth above, Respondent's Motion to Dismiss is hereby DENIED and this matter shall proceed to a hearing on February 16, 2023.

AND it is **SO ORDERED**.

  
\_\_\_\_\_  
F. Xavier Starkes  
Chairman, Hearing Panel

October 6, 2022  
Columbia, South Carolina

|                         |   |                                    |
|-------------------------|---|------------------------------------|
| STATE OF SOUTH CAROLINA | ) |                                    |
| COUNTY OF RICHLAND      | ) | BEFORE THE STATE ETHICS COMMISSION |
|                         | ) |                                    |
|                         | ) |                                    |
| IN THE MATTER OF:       | ) |                                    |
|                         | ) |                                    |
| Complaint C-2021-016    | ) | <b>DEMAND FOR NOTICE</b>           |
|                         | ) | <b>AND DOCUMENTS</b>               |
| Kenneth Loveless,       | ) |                                    |
| Respondent.             | ) |                                    |
|                         | ) |                                    |
| Kim Benson,             | ) |                                    |
| Complainant.            | ) |                                    |
| _____                   | ) |                                    |

Pursuant to S.C. Code Ann. § 8-23-320(12), and Rule 25(a), SCACR, respondent demands written copies within twenty (20) of service of this notice of the following:

1. The names and addresses of all persons known to have knowledge of the relevant facts or who may be expected to testify for the Commission in these proceedings;
2. All non-privileged evidence relevant to the charge in this proceeding;
3. The names of expert witnesses expected to testify at the hearing and affidavits setting forth their opinions and the basis therefore;
4. Any and all exculpatory evidence relevant to the charges;
5. Written evidence of a majority vote of the total membership of the commission to commence an investigation in accordance with S.C. Code Ann. § 8-13-320(9)(a).
6. Any verified complaint filed by the Commission in this matter pursuant to §8-13-320(10)(c).
7. Written evidence of a finding by the Commission of a finding of probable cause to proceed with this action in accordance with §8-13-320(10)(d) and/or (i) and the date on which such finding was made.

8. Copies of any request for assistance for investigation of this matter pursuant to § 8-13-320(10)(e).
9. Any sworn testimony taken in this matter by the Commission or staff in accordance with § 8-13-320(f)
10. Any subpoenas issued by the Commission or staff in accordance with § 8-13-320(1)(f) and any and all documents received in response.
11. Any written preliminary decision from commission staff with findings of fact and conclusions of law regarding whether probable cause exists, as required by § 8-13-320(10)(i).
12. All evidence the Commission will consider and made a part of the record in these proceedings in accordance with § 8-13-320(k)
13. Any and all rules and regulations, including policies, adopted by the Commission relevant to these proceedings in accordance with § 8-13-320(12).
14. Copies of any and all statements and reports filed with the commission relative to respondent at any time in accordance with § 8-13-360.

Respondent also demands the names, addresses and contact information for all witnesses the Commission plans to call in its case in chief.

Respondent demands a summary of the testimony expected from each witness.

Respectfully submitted,

s/ Desa Ballard  
Desa Ballard (S.C. Bar No. 498)  
Harvey M. Watson III (S.C. Bar No. 74053)  
Haley Hubbard (S.C. Bar No. 103195)  
**BALLARD & WATSON**  
226 State Street  
West Columbia, South Carolina 29169

Telephone 803.796.9299  
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Karl Bowers, Jr. (S.C. Bar No. 16141)  
**BOWERS LAW OFFICE**  
Post Office Box 50549  
Columbia, South Carolina 29250  
Telephone 803.753.1099  
butch@butchbowers.com

September 30, 2022

ATTORNEYS FOR RESPONDENT

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )  
IN THE MATTER OF: )  
COMPLAINT C2021-016 )  
Kim Benson, )  
Complainant. )  
Kenneth Loveless, )  
Respondent. )

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BEFORE THE STATE ETHICS COMMISSION

**RESPONSE TO RESPONDENT'S  
DEMAND FOR NOTICE**

In response to Respondent's Demand for Notice and Documents, the Commission provides the following. The Commission reserves the right to modify this information.

**1. The names and addresses of all persons known to have knowledge of the relevant facts or who may be expected to testify for the Commission in these proceedings.**

- a. Greg Hughes, 1125 Bickley Road, Irmo, SC 29063.
- b. Michael Cates, 206 Charter House Road, Columbia, SC 29212.
- c. Christina Melton, 1429 Senate Street, Columbia, SC 29201.
- d. Beth Hutchison, 906 Shadetree Court, Columbia, SC 29212.
- e. Robert Gantt, 1213 Old Tamah Road, Irmo, SC 29063.
- f. Nikki Gardner, 699 Village Market Drive, Chapin, SC 29036.
- g. Jan Hammond, 141 Stephenson Lane, Columbia, SC 29212.
- h. Edward K. White, 327 Steeple Crest North, Irmo, SC 29063.
- i. Dan Neal, 165 Golfview Bend, Elgin, SC 29045.
- j. Any other person who attended the Lexington Richland School District Five (District) Board of Trustees (Board) meetings held on June 15, 2020, July 13, 2020, and September 14, 2020.
- k. Any other person who attended the June 18, 2020 site visit to Piney Woods

Elementary School (PWES).

1. A records custodian from the District, if necessary, 1020 Dutch Fork Road, Irmo, SC 29063.
2. **All non-privileged evidence relevant to the charge in this proceeding.** Any non-privileged evidence in this matter was provided to Respondent on July 26, 2022.
3. **The names of expert witnesses expected to testify at the hearing and affidavits setting forth their opinions and the basis therefore.** None.
4. **Any and all exculpatory evidence relevant to the charges.** Any exculpatory evidence in this matter was provided to Respondent on July 26, 2022.
5. **Written evidence of a majority vote of the total majority membership of the commission to commence an investigation in accordance with Section 8-13-320(9)(a).** There is no evidence of a majority vote of the total membership of the Commission to commence an investigation into this matter because one is not required by statute.
6. **Any verified complaint filed by the Commission in this matter pursuant to § 8-13-320(10)(c).** The Complaint in this matter was filed by an individual pursuant to Section 8-13-320(9)(a) and Section 8-13-320(10)(a), not the Commission.
7. **Written evidence of a finding by the Commission of a finding of probable cause to proceed with this action in accordance with §8-13-320(10)(d) and/or (i) and the date on which such finding was made.** Please see the attached Notice of Hearing. In addition, the Commission's findings of probable cause are updated following each Commission meeting at:

[https://ethics.sc.gov/sites/ethics/files/Documents/About%20Us/hearing%20docket\\_online%2010.17.22.pdf](https://ethics.sc.gov/sites/ethics/files/Documents/About%20Us/hearing%20docket_online%2010.17.22.pdf)

8. **Copies of any request for assistance for investigation of this matter pursuant to § 8-13-320(10)(e).** None.
9. **Any s[w]orn testimony taken in this matter by the Commission or staff in accordance with § 8-13-320(f).** None.
10. **Any subpoenas issued by the Commission or staff in accordance with § 8-13-320(l)(f) and any and all documents received in response.** None, aside from the subpoenas requested by Respondent. No documents have been received by the Commission in response to these subpoenas.
11. **Any written preliminary decision from commission staff with findings of fact and conclusions of law regarding whether probable cause exists, as required by § 8-13-320(10)(i).** Please see the attached Investigative Summary, which was provided to Respondent on July 26, 2022.
12. **All evidence the Commission will consider and made a part of the record in these proceedings in accordance with § 8-13-320(k).** The Hearing Panel will consider all evidence presented by the parties and will enter any evidence that it finds admissible into the record. All evidence in this matter was provided to the Respondent on July 26, 2022.
13. **Any and all rules and regulations, including policies, adopted by the Commission relevant to these proceedings in accordance with § 8-13-320(12).** The Commission did not adopt any rules, regulations, or policies in conjunction with these proceedings.
14. **Copies of any and all statements and reports filed with the Commission relative to respondent at any time in accordance with § 8-13-360.** All “statements and reports” referred to in Section 8-13-360 are filed electronically pursuant to Section 8-13-365 and may be found at: <https://ethicsfiling.sc.gov/public/home>. Searches using this website are

conducted by entering the filer's last name.

**Respondent also demands the names, addresses and contact information for all witnesses the Commission plans to call in its case in chief. Respondent demands a summary of the testimony expected from each witness.**

The Commission plans to call one or more of the following individuals to testify. The Commission notes that some (or all) of these witnesses may not be required, depending on what, if any, stipulations are agreed upon by the parties.

- a. Greg Hughes, 1125 Bickley Road, Irmo, SC 29063. Mr. Hughes is expected to testify as to the relationship between Respondent and Contract Construction regarding the South Carolina Law Enforcement Division (SLED) contract. Mr. Hughes is also expected to testify as to the relationship between Contract Construction and the District, to include relevant details regarding the PWES contract. Finally, Mr. Hughes is expected to testify as to what transpired at the Board meetings held on June 15, 2020, September 14, 2020, and the June 18, 2020 site visit to PWES.
- b. Michael Cates, 206 Charter House Road, Columbia, SC 29212. Mr. Cates is expected to testify as to what transpired at the Board meetings held on June 15, 2020, July 13, 2020, September 14, 2020, and the June 18, 2020 site visit to PWES. Mr. Cates may also provide relevant background information related to the District's contract with Contract Construction.
- c. Christina Melton, 1429 Senate Street, Columbia, SC 29201. Ms. Melton is expected to testify as to what transpired at the Board meetings held on June 15, 2020, July 13, 2020, September 14, 2020, and the June 18, 2020 site visit to PWES. Ms. Melton is also expected to testify as to the substance of the letter she received from Respondent on March 24, 2020. Ms. Melton may also provide relevant background information related to the District's contract with Contract Construction.
- d. Beth Hutchison, 906 Shadetree Court, Columbia, SC 29212. Ms. Hutchinson is expected to testify as to what transpired at the Board meetings held on June 15, 2020, July 13, 2020, September 14, 2020, and the June 18, 2020 site visit to PWES, if she was in attendance. Ms. Hutchison may also provide relevant background information related to the District's contract with Contract Construction.
- e. Robert Gantt, 1213 Old Tamah Road, Irmo, SC 29063. Mr. Gantt is expected to testify as to what transpired at the Board meetings held on June 15, 2020, July 13, 2020, September 14, 2020, and the June 18, 2020 site visit to PWES, if he was in

attendance. Mr. Gantt may also provide relevant background information related to the District's contract with Contract Construction.

- f. Nikki Gardner, 699 Village Market Drive, Chapin, SC 29036. Ms. Gardner is expected to testify as to what transpired at the Board meetings held on June 15, 2020, July 13, 2020, September 14, 2020, and the June 18, 2020 site visit to PWES, if she was in attendance. Ms. Gardner may also provide relevant background information related to the District's contract with Contract Construction.
- g. Jan Hammond, 141 Stephenson Lane, Columbia, SC 29212. Ms. Hammond is expected to testify as to what transpired at the Board meetings held on June 15, 2020, July 13, 2020, September 14, 2020, and the June 18, 2020 site visit to PWES. Ms. Hammond may also provide relevant background information related to the District's contract with Contract Construction.
- h. Edward K. White, 327 Steeple Crest North, Irmo, SC 29063. Mr. White is expected to testify as to what transpired at the Board meetings held on June 15, 2020, July 13, 2020, September 14, 2020, and the June 18, 2020 site visit to PWES, if he was in attendance. Mr. White may also provide relevant background information related to the District's contract with Contract Construction.
- i. Dan Neal, 165 Golfview Bend, Elgin, SC 29045. Mr. Neal is expected to testify as to what transpired at the Board meetings held on June 15, 2020, July 13, 2020, September 14, 2020, and the June 18, 2020 site visit to PWES, if he was in attendance. Mr. Neal may also provide relevant background information related to the District's contract with Contract Construction.
- j. The Commission may call any other person who attended the District Board meetings held on June 15, 2020, July 13, 2020, and September 14, 2020, or the June 18, 2020 site visit to PWES.
- k. The Commission may call a records custodian from the District to establish what transpired at the District Board meetings held on June 15, 2020, July 13, 2020, and September 14, 2020 via Board meeting agendas, meeting minutes and/or video footage of these Board meetings.

Respectfully submitted,

s/ Courtney M. Laster

Courtney M. Laster

State Ethics Commission

201 Executive Center Dr., Suite 150

Columbia, SC 29210

803-253-4192

claster@ethics.sc.gov

October 31, 2022  
Columbia, South Carolina

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

BEFORE THE STATE ETHICS COMMISSION

IN THE MATTER OF: )

Complaint C2021-016 )

Kenneth Loveless )  
Respondent. )

Kim Benson )  
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, February 16, 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**  
**FAILURE TO RECUSE FROM A GOVERNMENTAL DECISION IN WHICH A**  
**BUSINESS WITH WHICH ASSOCIATED HAD AN ECONOMIC INTEREST**  
**SECTION 8-13-700(B), S.C. CODE ANN., 1976, AS AMENDED**

That Kenneth Loveless, Lexington-Richland School District Five Board Member, did in Richland County, write a letter dated March 24, 2020 inquiring about construction work of a district facility by Contract Construction, Inc., a business with which he was associated, in violation of Section 8-13-700(B).

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

That Kenneth Loveless, Lexington-Richland School District Five Board Member, did in Richland County, on June 15, 2020, participate in discussion about construction of a district facility by Contract Construction, Inc., a business with which he was associated, in violation of Section 8-13-700(B).

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

That Kenneth Loveless, Lexington-Richland School District Five Board Member, did in Richland County, on September 14, 2020, participate in discussion about construction of a district facility by Contract Construction, Inc., a business with which he was associated, in violation of Section 8-13-700(B).


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

That Kenneth Loveless, Lexington-Richland School District Five Board Member, did in Richland County, in June of 2020, participate in a site visit of a district facility being constructed by Contract Construction, Inc., a business with which he was associated, in violation of Section 8-13-700(B).

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.).

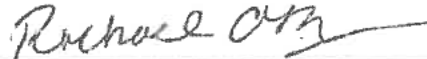
A pre-hearing conference may be scheduled prior to the hearing to allow exchange of witness lists and evidence, marking of exhibits, and disposition of motions or pleadings. In the event you fail to appear, judgment by default will be rendered against you. If there are any questions concerning the above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

  
\_\_\_\_\_  
Meghan L. Walker, Executive Director  
State Ethics Commission

Dated this 11<sup>th</sup> day,  
of July, 2022.

*Certificate of Service by Certified Mail*

I hereby certify that a copy of this **NOTICE OF HEARING** was duly served on Karl S. Bowers, Jr., Esquire, PO Box 50549, Columbia, SC 29250 by depositing said **NOTICE OF HEARING** in the United States mail, Columbia, South Carolina on this 11th day of July 2022, 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

**Complaint C2021-016  
In the Matter of Kenneth Loveless**

**ALLEGATION:**

On February 17, 2021, the State Ethics Commission received a complaint filed by Kim Benson, citizen, against Kenneth Loveless, Lexington-Richland 5 School District Board Member. The complaint alleged that Loveless participated in board discussions regarding a business with which he was associated. Specifically, the complaint alleges Contract Construction was awarded the contract to build Elementary School #13 (now named Piney Woods Elementary School) in 2018, and that Respondent's company, Loveless Commercial Construction, became a subcontractor for Contract Construction on the SLED Forensic Lab project which began in February 2020. The complaint alleges that Loveless participated in numerous discussions regarding Contract Construction's progress on the Piney Woods Elementary School project.

**RELATED CODE SECTIONS:**

**SECTION 8-13-100. Definitions.**

(4) "Business with which he is associated" means a business of which the person or a member of his immediate family is a director, an officer, owner, employee, a compensated agent, or holder of stock worth one hundred thousand dollars or more at fair market value and which constitutes five percent or more of the total outstanding stock of any class.

**SECTION 8-13-700. Use of official position or office for financial gain; disclosure of potential conflict of interest.**

(B) No public official, public member, or public employee may make, participate in making, or in any way attempt to use his office, membership, or employment 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, public member, or public employee 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

Investigator: Caldwell

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;

**EXECUTIVE DIRECTOR:**

On February 17, 2021, Executive Director Meghan L. Walker reviewed the complaint, determined it contained facts sufficient, and ordered an investigation.

**INVESTIGATION:**

The investigation consisted of a review of relevant documents and video, to include Lex-Rich 5 meeting minutes and recordings of meetings. Respondent submitted a written response via his attorney, Butch Bowers. The following is a summary:

1. Investigator Caldwell confirmed Respondent was a member of the Lexington-Richland 5 (Lex-Rich 5) Board of Trustees via the district's website, which states Respondent's term ends in 2022. Per scvotes.org, Respondent was elected to the Lex-Rich 5 Board in 2018.
2. A review of Lex-Rich 5 records revealed on September 18, 2018, Contract Construction was awarded the Construction Manager at Risk contract to build Elementary School 13 (ES 13) via a public bid process. ES 13, later named Piney Woods Elementary School, opened to students for the 2021-2022 school year, and the Construction Closeout Final Report was presented on March 28, 2022 by Mead & Hunt, a third-party inspection company.
3. A review of SC Secretary of State records revealed Respondent is the incorporator, president, and registered agent of Loveless Commercial Contracting, Inc (Loveless Contracting). According to its website, Loveless Contracting was founded in 1986 and specializes in "design build, commercial, industrial and institutional construction as well as large scale concrete."
4. On February 11, 2020, Loveless Commercial Contracting entered into a contract with Contract Construction, Inc. The contract named Loveless Contracting as a subcontractor for Contract Construction on the SLED Forensic Services Laboratory project. A signed copy was date-stamped as received by Loveless Contracting on March 12, 2020.
5. Investigator Caldwell reviewed minutes and video recordings of Lex-Rich 5 board meetings from February 2020 through February 2021, which revealed the Respondent participated in discussions regarding the progress of work performed on ES 13 (Piney Woods Elementary) by Contract Construction. Respondent's participation in discussions at board meetings occurred as follows:

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| Date                                      | Description  |
|---|--|
| 6/15/2020<br><br>Lex-Rich 5 Board meeting | <p>Superintendent's Report agenda item –</p> <p>Greg Hughes, President of Contract Construction, gave an update on construction progress at ES 13. Dan Neal, consultant for Lex-Rich 5 on this project, also participated. At the end of the presentation, Respondent asked questions about owner's and contractor's contingencies which was answered by Dan Neal. Board Member White then has the floor and asks about two points in the 3/24/2020 letter Respondent submitted to Dr. Melton (illumination during night work and proper trench depth), to which Hughes responds that illumination and trench depth were both proper and up to code. Board Member Hammond then asks Neal to reiterate road safety/traffic light issues, which he did. Board Member White then asks about item #3 in Respondent's 3/24/2020 letter regarding the strength and testing of curb and gutter concrete which Hughes addressed briefly. Dr. Melton interrupts and says staff did not anticipate such detailed questions and Hughes and Neal were not given materials in their packets, but instead were relying on memory to answer questions. Discussion regarding</p> <p>Respondent was recognized and he discussed the project deficiencies he identified in the letter to Superintendent Melton dated 3/24/2020. Respondent said he felt the deficiencies should be discussed, and had tried to sit down to discuss them, but not in a forum like the board meeting. Respondent expressed his displeasure that he did not receive responses to certain issues raised in his letter.</p> |
| 7/13/2020<br><br>Lex-Rich 5 Board meeting | <p>Approval of Minutes &amp; Public Participation agenda item –</p> <p>During the motion to approve minutes from the 6/15/2020 board meeting, Respondent asked that his entire letter dated 3/24/2020 to Dr. Melton with 32 attachments regarding construction at ES 13 be added to the meeting minutes. The 3/24/2020 letter was originally added by Board Member Ed White. Chairman Cates rules this out of order and says Respondent cannot amend what another board member has added to meeting minutes. Respondent subsequently voted against approval of the 6/15/2020 meeting minutes.</p>  |
| 9/14/2020<br><br>Lex-Rich 5 Board meeting | <p>Discussion Agenda &amp; Adjournment agenda item –</p> <p>Update on ES 13/Piney Woods Elementary School provided by Dan Neal, consultant, and Greg Hughes, President of Contract Construction. During the discussion which lasted one hour and forty-five minutes, Respondent questioned Hughes directly several times about issues at ES 13, to include testing of concrete curbing, concrete in a duct bank, and masonry issues all identified by Respondent.</p>  |

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Several times during the discussion, the contractual relationship between Respondent and Contract Construction was mentioned. Board Member Hutchinson expressed concern about this relationship in possible violation of the Ethics Act. Respondent asked Hughes if Respondent ever used his official position or influence to obtain a contract with Contract Construction, and Hughes said no. Respondent said the subcontract between Loveless Contracting and Contract Construction was negotiated by Trey McDaniel, which Hughes confirmed. Respondent said the bid was made by McDaniel and Respondent did not have any knowledge of the job nor had he even been to the job site. In response to Board Member White's question if Respondent asked in his official capacity for more work with Contract Construction, Hughes said at the end of the tour of ES 13, Respondent said he would like to work with Contract Construction again, but Hughes did not feel like it was in Respondent's official capacity. Respondent asked Hughes if Loveless Contracting did anything to be awarded the bid other than be the low bidder on the SLED project, to which Hughes responded no.

6. A review of Lex-Rich 5 Board Meeting Minutes revealed that on March 24, 2020, Respondent submitted a letter to Superintendent Melton regarding ES 13. This letter was attached to the June 15, 2020 meeting minutes by Board Member Ed White. In the letter, Respondent states he is reporting items that "have bearing upon contractor safety and quality of construction." Respondent identifies concerns brought to the board's attention about work performed on ES 13 at night and presented questions on project safety, concrete testing requirements, and soils testing. Respondent requested a response within two weeks. The June 15, 2020 meeting minutes also included as attachments letters from consultant Dan Neal, Contract Construction, and ADC Engineering addressing all questions Respondent raised in his March 24, 2020 letter. A copy of the March 24, 2020 letter from Respondent to Dr. Melton is attached.
7. Investigator Caldwell interviewed Michael Cates, former chairman of Lex-Rich 5 School Board, regarding the site visit by Lex-Rich 5 board members to ES 13/Piney Woods Elementary School in June 2020. Cates said he scheduled the site visit after receiving some pressure and requests from Loveless to do so. Cates said he extended the invitation to all board members, but he made clear to the public that this was not an official board meeting and no business would be discussed. Cates said not all board members attended the site visit; however, to the best of his recollection the Respondent, Jan Hammond, and one or two other board members attended in addition to Cates. Cates said Superintendent Christina Melton also attended. Cates also said Greg Hughes, president of Contract Construction, conducted the visit and other members of the design and construction team were present to include the architect and construction site supervisor/superintendent. Cates said the site was an active site under construction and work was taking place during the visit. When asked if the purpose of the visit was a progress update or an opportunity for

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review and critique of work, Cates said both. Cates said the Respondent remained close to Mr. Hughes for the majority of the visit discussing progress on the project.

8. On September 21, 2020, the Respondent requested an informal advisory opinion from the Commission's general counsel. Respondent specifically asked what actions he should take on matters involving a general contractor working with Lex-Rich 5 if Respondent's business also subcontracts with the same general contractor on other projects. On September 25, 2020, General Counsel Courtney Laster issued an informal opinion to Respondent advising that §8-13-700(A) prohibited Respondent from taking any action in which the general contractor had an economic interest because the general contractor was a business with which Respondent was associated as a subcontractor. Respondent was also advised of the recusal requirements per §8-13-700(B). A copy of this informal opinion is attached to this summary.
9. A review of the video recording of the February 8, 2021 Lex-Rich 5 Board Meeting revealed the Respondent submitted a letter of recusal from matters involving Contract Construction which was read into the record by Board Chair Jan Hammond. Respondent also read a statement into the record. Copies of Respondent's letter to Chair Hammond and the statement he read into the record are attached to this summary.
10. On February 18, 2021, the Respondent requested a second informal advisory opinion requesting further clarification of recusal requirements. On February 22, 2021, General Counsel Courtney Laster issued an opinion again advising Respondent that he should refrain from participation in any action regarding a business with which he was associated, to include site visits to Piney Woods Elementary school and/or review of invoices or other documents related to the project. A copy of this informal opinion is attached.
11. A review of the Commission's advisory opinions revealed several opinions advising public officials/members/employees to refrain from participating in any matters involving businesses with which they are associated and to follow the recusal requirements of §8-13-700(B). In AO2000-004, the Commission addressed potential violations of §8-13-700(A) and (B) "by public members who participate in, and vote on matters before their board or commission involving the economic interest of a business with which the public member has an ongoing client relationship." The Commission defined compensated agent and opined that a "public member should disqualify himself from all matters in which a business with which he has an ongoing client relationship has an economic interest." In this opinion, the Commission noted that "[a]gents also have a duty not to adversely affect the interest of their principal" and board members with ongoing relationships with a client appearing before that board are "caught between a duty not to act adversely with regard to the principal and a duty to the public to act in its best interest." In AO92-237, the Commission advised that a Commissioner on the Mount Pleasant Waterworks and Sewer Commission who was also a part-time, hourly employee of an engineering firm must recuse himself from any matter involving the firm's economic interests. Copies of these opinions are attached to this summary.

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12. Respondent provided a written response through his attorney, Karl S. "Butch" Bowers, Jr. A copy of this written response and the advisory opinions referenced therein are attached to this summary.

**STAFF COMMENTS:**

The investigation revealed Respondent was a public official via his position as a member of the Lex-Rich 5 Board of Trustees as of 2018. The investigation revealed Respondent is also the president and employee of Loveless Commercial Contracting. Loveless Contracting was awarded a subcontract with Contract Construction on February 11, 2020 for work on the SLED Forensic Lab construction project, making Contract Construction a business with which Respondent was associated.

Contract Construction was awarded the Construction Manager at Risk contract to build ES 13/Piney Woods Elementary School on September 18, 2018 after a public bid process. A review of video-recorded board meetings revealed after February 11, 2020, Respondent failed to recuse himself and participated in discussions at two board meetings, specifically June 15, 2020 and September 14, 2020, at which Contract Construction made presentations regarding the progress of ES 13.

The investigation revealed Respondent submitted a letter to Dr. Melton on March 24, 2020 requesting information on multiple aspects of work either performed by or overseen by Contract Construction. The investigation also revealed that Respondent participated in a site visit to ES 13/Piney Woods Elementary School in June 2020 during construction. The investigation further revealed Respondent requested an informal opinion from the Ethics Commission on September 21, 2020, at which time Commission staff advised Respondent that he should recuse himself from any discussions involving Contract Construction as a business with which he was associated.

Respondent subsequently provided a written letter of recusal regarding any matters involving Contract Construction to Board Chair Jan Hammond at the February 8, 2021 meeting and it was included with the meeting minutes. The Respondent requested a second informal opinion on February 18, 2021, and Commission staff again advised Respondent to refrain from participating in any action involving a business with which he was associated, to include site visits and/or review of invoices or other documents.

**STAFF RECOMMENDATION:**

Staff recommends the Commission find probable cause is present and charge Respondent with the following:

Four (4) counts of violating §8-13-700(B) for participating in discussions and/or site visits involving a business with which Respondent is associated (Contract Construction) specifically at the 6/15/2020 and 9/14/2020 board meetings

Investigator: Caldwell

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND ) BEFORE THE STATE ETHICS COMMISSION  
) )  
IN THE MATTER OF: )  
COMPLAINT 2021-016 )  
) )  
Kim Benson ) **DECISION AND ORDER**  
Complainant. )  
) )  
Kenneth Loveless )  
Respondent. )  
\_\_\_\_\_ )

Pursuant to Section 8-13-320(10) of the South Carolina Ethics, Government Accountability, and Campaign Reform Act of 1991 (Ethics Act), the State Ethics Commission (Commission) reviewed the above-captioned complaint and found probable cause to charge Kenneth Loveless (Respondent) with four (4) counts of violating Section 8-13-700(B). Present at the hearing held on February 16, 2023, were Commissioners AJ Holloway, Scott E. Frick, and F. Xavier Starkes, Hearing Panel Chair. Respondent was represented by Desa Ballard and the Commission was represented by Courtney M. Laster. The following charges were considered:

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

That Kenneth Loveless, Lexington-Richland School District Five Board Member, did in Richland County, write a letter dated March 24, 2020 inquiring about construction work of a district facility by Contract Construction, Inc., a business with which he was associated, in violation of Section 8-13-700(B).

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

That Kenneth Loveless, Lexington-Richland School District Five Board Member, did in Richland County, on June 15, 2020, participate in discussion about construction of a district facility by

Contract Construction, Inc., a business with which he was associated, in violation of Section 8-13-700(B).

**COUNT THREE**

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

That Kenneth Loveless, Lexington-Richland School District Five Board Member, did in Richland County, on September 14, 2020, participate in discussion about construction of a district facility by Contract Construction, Inc., a business with which he was associated, in violation of Section 8-13-700(B).

**COUNT FOUR**

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

That Kenneth Loveless, Lexington-Richland School District Five Board Member, did in Richland County, in June of 2020, participate in a site visit of a district facility being constructed by Contract Construction, Inc., a business with which he was associated, in violation of Section 8-13-700(B).

**FINDINGS OF FACT**

Having carefully reviewed the evidence presented, the Panel finds as fact:

1. Respondent served on the Lexington Richland School District Five (District) Board of Trustees (Board) from 2018-2022.
2. Respondent has owned and operated Loveless Commercial Contracting, Inc. (Loveless) for approximately thirty-six (36) years. He serves as President and personally carries the line of credit for Loveless.
3. Contract Construction, Inc. (Contract Construction) is a general contractor located in South Carolina. Greg Hughes (Hughes) is the President of Contract Construction.

4. On December 19, 2018, the District retained Contract Construction as its Construction Manager for the building of Piney Woods Elementary School (PWES).
5. Contract Construction subsequently hired Loveless to perform work as a subcontractor on a State Law Enforcement Division (SLED) Forensic Services Laboratory in Columbia, SC. The agreement was signed by Respondent and was fully executed no later than March 12, 2020.
6. On March 24, 2020, Respondent submitted a letter to District Superintendent Christina Melton (Melton) raising perceived problems with the construction of PWES and criticizing terms of the District's contract with Contract Construction. Respondent requested "action and a reply on these matters within the next two weeks."
7. During a June 15, 2020, District Board meeting, Hughes provided an update on PWES to the Board. Following the update, Respondent questioned Hughes and District representative Dan Neal (Neal) about contract change orders and owner/contractor contingencies. Board member Ed White (White) then questioned Hughes and Neal about the issues raised in Respondent's March 24, 2020 letter to Melton. Respondent engaged in discussions with White and made additional comments to the Board noting he had received unsatisfactory answers to his letter and stating, "I'm a contractor, I know things like this."
8. In June of 2020, Melton, Hughes, and several Board members, to include Respondent, visited the PWES construction site to review progress and provide feedback. According to then Board Chair Michael Cates (Cates), Respondent and Hughes spoke to each other during the site visit.
9. During a September 14, 2020 District Board meeting, Hughes provided an additional update on PWES to the Board. Board member White questioned Hughes about the issues raised in Respondent's March 24, 2020 letter. White also addressed Loveless's subcontract with Contract Construction and questioned whether it was proper. Respondent engaged in discussion with Hughes and other PWES subcontractors about the cost of specific soil and concrete work at PWES.

Hughes replied, in relevant part, as follows:

. . . I don't have any problem with the questions. And we're going to give you the best facility you've had, and it will be under budget. And I do want to speak to Mr. Loveless's abilities as a contractor. He is doing a fantastic job on the project we're working together on. He was selected for his qualifications and doing a fantastic job. And there's similar type issues out there, but they're minor in the scheme of things. And we're pleased with what he's doing for us.

Respondent subsequently stated, in relevant part:

By the way, when I was on the job site just that one time I've been on the job site for us to be out there. I talked to Ryan, I pointed out to him three things to do with masonry. Because I know masonry. I used to be a masonry contractor. I pointed out three things to him that would make the project better. Okay. And there's nothing wrong with having a team approach. I didn't tell him to do something. I just said, have you thought about doing this? Because I've got 45 years' experience doing this.

10. Also during the September 14, 2020 District Board meeting, Respondent questioned Hughes about

Loveless's contract with Contract Construction as follows:

Respondent: Did I ever contact you or talk to you or do anything about the job at SLED?

Hughes: No, sir.

Respondent: Did Ken Loveless ever use his influence with you? Did he ever ask you anything about the job at SLED?

Hughes: No, sir.

Respondent: The fact is we've never talked about that, have we?

Hughes: Only on June 18.

Respondent: We saw – when you were on the job site out there, I said I was going to come by the job site and see you.

Hughes: And I told you that you were doing a good job.

11. During the February 8, 2021 District Board meeting, Respondent submitted a letter to the Board

Chair acknowledging his affiliation with Contract Construction and vowing to “recuse [him]self

from any and all votes, deliberations, and other actions on any matter that comes before the Board of Trustees relating to Contract Construction, Inc.”

### **CONCLUSIONS OF LAW**

Based upon the Findings of Fact, the Panel concludes, as a matter of law:

1. At all times relevant, Respondent was a public official as defined by Section 8-13-100(27).

Accordingly, the Commission has personal and subject matter jurisdiction.

2. Section 8-13-100(4) defines “business with which he is associated” as:

a business of which the person or a member of his immediate family is a director, an officer, owner, employee, a compensated agent, or holder of stock worth one hundred thousand dollars or more at fair market value and which constitutes five percent or more of the total outstanding stock of any class.

3. Upon execution of the agreement between Contract Construction and Loveless, Respondent became a compensated agent of Contract Construction. See SEC AO2000-004 (defining “compensated agent” as “any ongoing client relationship in which the [public official] receives compensation for services rendered.”). Accordingly, Contract Construction was a “business with which [Respondent was] associated” pursuant to Section 8-13-100(4).

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

(B) No [public official] may make, participate in making, or in any way attempt to use his [public 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.
5. Sections 8-13-130 and 8-13-320(10) allow the Panel to levy an administrative fee and to require payment of a civil penalty of up to \$2,000 for each violation of the Ethics Act.

### **DECISION**

NOW, THEREFORE, based on the foregoing Findings of Fact and Conclusions of Law, the Panel has determined, based on a preponderance of the evidence, that Respondent Kenneth Loveless is in violation of the four (4) counts of Section 8-13-700(B) outlined in the Notice of Hearing. Specifically, the Panel finds that Respondent's (1) March 24, 2020 letter to Melton; (2) participation in the June 15, 2020 District Board meeting discussion regarding PWES; (3) June 2020 site visit to PWES; and (4) participation in the September 14, 2020 District Board meeting discussion regarding PWES were matters that required recusal pursuant to Section 8-13-700(B).

Regarding conflicts of interest, the Commission has long held that recusal is required in any matter that implicates the economic interest of a business with which a public official is associated. See SEC AO92-072 (advising public servants to disqualify from all matters affecting the economic interest of a business with which he is associated); SEC AO2000-004 (same); SEC AO2000-011 (same); see also SEC AO96-003 ("it is clear that the restrictions on the activities of a public official are broader than merely prohibiting a vote on a matter which affects the official's economic interest"). Here, Respondent owns, operates, and personally carries the line of credit for Loveless. Accordingly,

when Loveless and Contract Construction entered into a subcontractor agreement, Respondent became a compensated agent of Contract Construction. From that moment forward, Respondent was bound to recuse himself from any matter in which Contract Construction had an economic interest, to include its contract with the District for the construction of PWES.

The Panel notes that Respondent, once he improperly inserted himself into this matter, appeared to be critical of Contract Construction. However, the Panel finds that where there is opportunity for harm, the opportunity for benefit also exists. To that end, “the prohibitions contained in Section 8-13-700(A) and (B) serve the public interest in objective, impartial, and effective government by preventing the creation of situations which would tend to impair the objectivity and impartiality, and therefore, the effectiveness of the public member.” SEC AO2000-004. Finally, the Panel calls attention to the Preamble of the Ethics Act, which provides, in relevant part, as follows:

Whereas, one of the most important functions of any law aimed at making public servants more accountable is that of complete and effective disclosure. Since many public officials serve on a part-time basis, it is inevitable that conflicts of interest and appearances of impropriety will occur. Often these conflicts are unintentional and slight, but at every turn those who represent the people of this State must be certain that it is the interests of the people, and not their own, that are being served. Officials should be prepared to remove themselves immediately from a decision, vote, or process that even appears to be a conflict of interest.

THEREFORE, pursuant to Section 8-13-320(1)(i), Respondent is hereby assessed a total civil penalty of \$8,000.00 (\$2,000.00 per count);

AND, pursuant to Section 8-13-130 and in addition to the aforementioned amount owed, the Panel hereby orders Respondent to pay an administrative fee of \$900.00, making Respondent’s total amount owed to the Commission \$8,900.00.

AND, pursuant to Section 8-13-320 of the Ethics Act, if the \$8,900.00 is not paid within six (6) months from Respondent’s receipt of this Order, a judgment in the amount of \$8,900.00 shall be

entered against Respondent. In the event of a failure to pay, upon the Commission's filing of said Judgment with the Clerk of Court in the County of Respondent's last known residence, the Clerk of Court shall enter this Order in the amount of \$8,900.00 in its Judgment Rolls, without cost to the Commission.

FINALLY, Respondent Kenneth Loveless, has ten (10) days from receipt of this Order to appeal this Decision and Order to the full Commission.

AND IT IS SO ORDERED THIS \_\_\_\_ DAY OF \_\_\_\_\_ 2023.

STATE ETHICS COMMISSION

\_\_\_\_\_  
F. XAVIER STARKES, HEARING CHAIR

Columbia, South Carolina

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )  
IN THE MATTER OF: )  
Complaint C2021-016 )  
Kim Benson, )  
Complainant. )  
Kenneth Loveless, )  
Respondent. )  
\_\_\_\_\_ )

BEFORE THE STATE ETHICS COMMISSION

**RESPONDENT’S REQUEST  
FOR REVIEW OF DECISION  
AND ORDER**

Pursuant to Reg. 52-801 and 52-805, Respondent Kenneth Loveless submits this request for review of the hearing panel’s Decision and Order dated March 24, 2023, by the full Commission. It is respectfully asserted that the hearing panel erred in its decision in the following respects. He urges that the decision of the hearing Panel be vacated and the charges against him be dismissed.

1. The Panel erred in failing to address the scope of the Commission’s statutory authority. As argued in Respondent’s Motion to Dismiss, and in Respondent’s proposed order, the Commission’s “historical interpretation” of the statutes expand on the clear language of unambiguous statutes and constitute the imposition of sanctions for conduct that is not prohibited by the State Ethics Act. Respondent incorporates his Motion to Dismiss, as more fully addressed in Respondent’s Request for Review filed October 17, 2022, which is incorporated herein as fully as if repeated verbatim.
2. The Panel erred in finding that the Commission established by a preponderance of the evidence that Respondent violated three counts of § 8-13-700(B) when the evidence presented clearly established that Respondent did not “make, participate in making, or in any way attempt to use his office...to influence a governmental decision...” of any kind. The evidence established without dispute that Respondent did not “make, participate in making or in any way attempt to

use his office” in any way as it related to the construction contracts between District 5 and Contract Construction Inc.

3. The Panel erred in finding that Respondent’s March 24, 2020 letter to District Superintendent Christina Melton inquiring about construction work of a district facility by Contract Construction, Inc. constitutes a violation of § 8-13-700(B) when Melton’s own employment contract with the District required that any questions Respondent had regarding the District must be addressed to the Superintendent.
4. The Panel erred in concluding that Respondent’s participation in District Board meeting discussions regarding the construction of Piney Woods Elementary School by Contract Construction Inc. violate S.C. Code § 8-13-700(B) when the Commission did not identify or present evidence of any government decisions which Respondent attempted to or did influence.
5. The Panel erred in failing to recognize that it was Contract Construction Inc., and not Respondent, that created the contractual relationship which formed the basis of these charges. The undisputed testimony is that Respondent personally had nothing to do with bidding the SLED job, and knew nothing about it until the competitive bid process was concluded and the subcontract awarded to Loveless Commercial Contracting Inc.
6. The Commission erred in failing to recognize that the contract between Loveless Commercial Contracting Inc. and Contract Construction Inc. was exempt from the State Ethics Act because it was the subject of a competitive bid process. S.C. Code § 8-13-775.
7. The Panel erred in recommending the assessment of a fine against Respondent, because the Commission lacks the statutory authority levy a fine on someone unless they are a “public officer, public member or public employee to pay a civil penalty. . .” at the time the fine is assessed. S.C. Code § 8-13-320 (L)(i). It is undisputed that Respondent ceased being a public officer in

November, 2022, which deprived the Commission of any statutory authority to fine him after that date. Had the Commission expedited the hearing as Respondent had requested earlier, he would have remained a public official at the time of the hearing in this matter.

8. The Panel erred in finding that Respondent was required to recuse himself, pursuant to § 8-13-700(B), from discussions regarding the construction of Piney Woods Elementary School by Contract Construction Inc when S.C. Code § 8-13-775 expressly permits Board members to participate in discussion of vendors with which they have unrelated contracts, as long as the Board member does not “perform[] an official function” regarding the contract. SEC AO93-054.
9. The Panel erred in finding that Respondent’s conduct violated § 8-13-700(B) when there was no evidence presented that Respondent performed any official function regarding the district’s contract with Contract Construction Inc. or Respondent’s own company’s contract with Contract Construction Inc. on the SLED project.
10. The Panel erred in finding that Respondent’s conduct violated 8-13-700(B) when it was undisputed that Respondent did not take action or vote on anything regarding Contract Construction at any time during his service on the Board.
11. The Commission’s recommendation violates Respondent’s First Amendment rights to speak on issues of public concern regarding District 5 when he is a sitting member of the Board. The logic that a professional with expertise in a field must leave his expertise behind when carrying out his duties as a public official is perverting the entire purposes of the State Ethics Act.

For the reasons set forth above, Respondent respectfully requests an order finding the recommendations of the Panel dated March 24, 2023 to be in error, and a decision by the full Commission vacating the Panel’s findings and recommendations and dismissing the charges against Respondent.

Respondent requests a public hearing before the Full Commission, after full briefing, to present arguments on the errors committed by the Hearing Panel.

Respectfully submitted,

s/ Desa Ballard

Desa Ballard (S.C. Bar No. 498)

Harvey M. Watson III (S.C. Bar No. 74053)

Haley Hubbard (S.C. Bar No. 103195)

**BALLARD & WATSON**

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ATTORNEYS FOR RESPONDENT

April 3, 2023

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )  
IN THE MATTER OF: )  
Complaint C2021-016 )  
Kim Benson, )  
APPELLATE. )  
Kenneth Loveless, )  
APPELLANT. )

BEFORE THE STATE ETHICS COMMISSION

**NOTICE OF APPELLATE HEARING**

Desa Ballard, Attorney for Appellant Kenneth Loveless, served a Request for Review of Decision and Order on the State Ethics Commission on April 3, 2023. The State Ethics Commission will, therefore, convene a formal appellate hearing into the matter, in accordance with State Ethics Commission Regulations, 52 S.C. Code Ann. Regs. 802 (2013 Cum. Supp.) on January 18, 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.

Pursuant to 52 S.C. Code Ann. Regs. 803, the Appellant shall file any additional briefs within ten (10) days of the date of service of this notice. In the event the Appellant fails to appear, he will have waived his hearing and judgment will stand.

  
\_\_\_\_\_  
Meghan Walker Dayson  
Executive Director

Dated this 30<sup>th</sup> day,  
of October 2023.