

STATE OF SOUTH CAROLINA
RECEIVED STATE ETHICS COMMISSION

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STATE ETHICS
COMMISSION

COMPLAINT FORM

FOR COMMISSION USE ONLY:

CASE NUMBER

C 2021-065

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

RESPONDENT: Frank McClary
ADDRESS: [REDACTED]
TELEPHONE NUMBER: [REDACTED]
TITLE: Mayor - City of Andrews

Section 8-13-1120, SC Code Ann., 1976, as amended, requires certain officials to file a Statement of Economic Interests prior to assuming the duties of the office, and Section 8-13-1140, SC Code Ann., 1976, as amended, requires the filing of an updated Statement of Economic Interests for the previous calendar year annually thereafter prior to March 30. Records in the State Ethics Commission indicate that the Respondent was required to file the 2018, 2020, and 2021 Statement of Economic Interests.

Respondent was reminded of the filing requirement by a certified letter dated February 17, 2021 as described in the attached. In addition, an email reminder was sent thirty days prior to the deadline. To date, no properly completed 2018, 2020, or 2021 Statement of Economic Interests has been received. All in violation of Section 8-13-1140, SC Code Ann., 1976, as amended.

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

STATE OF SOUTH CAROLINA
COUNTY OF Richland

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

Sworn to and subscribed before me this

12th day of August, 2021

[REDACTED]
Meghan L. Walker, Executive Director

Notary Public for South Carolina

My Commission expires 8-11-2025

SEC-7 (Revised 8/2019)

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

FAXED COPIES WILL NOT BE ACCEPTED

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STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
IN THE MATTER OF:)
Complaint C2021-065)
Frank McClary)
Respondent.)
State Ethics Commission)
Complainant.)

BEFORE THE STATE ETHICS COMMISSION

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 Commission will convene a formal hearing into the matter in accordance with Section 8-13-320(10)(i) & (j), Code of Laws, South Carolina, 1976, as amended, and State Ethics Commission Regulations, S.C. Code Ann. Regs. 52-707 (1997 Cum. Supp.) on Thursday, February 17, 2022 at 9:30 a.m. at the Commission Hearing Room located at: 201 Executive Center Drive, Suite 150, Columbia, South Carolina 29210.

The following allegations will be heard:

COUNT ONE
FAILURE TO FILE A STATEMENT OF ECONOMIC INTERESTS REPORT
SECTION 8-13-1140 S.C. CODE ANN., 1976, AS AMENDED

That Frank McClary, Mayor of the City of Andrews, did in Richland County, fail to timely file a 2018 Statement of Economic Interests report, in violation of Section 8-13-1140.

COUNT TWO
FAILURE TO FILE A STATEMENT OF ECONOMIC INTERESTS REPORT
SECTION 8-13-1140 S.C. CODE ANN., 1976, AS AMENDED


That Frank McClary, Mayor of the City of Andrews, did in Richland County, fail to timely file a 2020 Statement of Economic Interests report, in violation of Section 8-13-1140.

COUNT THREE
FAILURE TO FILE A STATEMENT OF ECONOMIC INTERESTS REPORT
SECTION 8-13-1140 S.C. CODE ANN., 1976, AS AMENDED

That Frank McClary, Mayor of the City of Andrews, did in Richland County, fail to timely file a 2021 Statement of Economic Interests report, in violation of Section 8-13-1140.

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

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


Meghan Walker, Executive Director
State Ethics Commission

Dated this 7th day,
of October 2021.

Certificate of Service by Certified Mail

I hereby certify that a copy of this **NOTICE OF HEARING** was duly served on the RESPONDENT Frank McClary, 109 North Farr Ave, Andrews, SC 29510 by depositing said **NOTICE OF HEARING** in the United States mail, Columbia, South Carolina on this 24 day of October 2021, by CERTIFIED MAIL, E-RETURN RECEIPT REQUESTED, appropriate postage affixed, and a return address clearly indicated on said envelope.



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

Columbia, South Carolina

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JAN 07 2022

STATE ETHICS
COMMISSION

BEFORE THE STATE ETHICS COMMISSION

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE MATTER OF:)
COMPLAINT C2021-065)

State Ethics Commission,)
Complainant,)

Frank McClary,)
Respondent.)

CONSENT ORDER

This matter comes before the State Ethics Commission (Commission) by way of a Complaint filed on August 12, 2021. Pursuant to Section 8-13-320(10)(i) of the South Carolina Ethics, Government Accountability, and Campaign Reform Act (Ethics Act), the Complaint against Frank McClary (Respondent) was considered by the Commission and probable cause was found to warrant an evidentiary hearing on three (3) counts of violating Section 8-13-1140 for failure to timely file a 2018, 2020, or 2021 Statement of Economic Interests (SEI). Prior to the call of the case, Respondent agreed to entry of the following:

STATEMENTS OF FACT

1. Respondent has served as Mayor in the Town of Andrews since 2016.
2. In each year since 2016, the Commission has emailed Respondent a reminder to file his SEI thirty (30) days prior to the March 30 annual deadline.
3. Respondent filed a 2016 SEI on May 13, 2016.¹
4. Respondent filed a 2017 SEI on March 29, 2017.
5. Respondent failed to file a 2018 SEI on or before March 30, 2018.
6. Respondent filed a 2019 SEI on October 15, 2019.²

¹ This SEI was not timely filed, but Respondent has already been penalized for this SEI and it is not included in the current complaint.

² This SEI was not timely filed, but Respondent has already been penalized for this SEI and it is not included in the current complaint.

7. Respondent failed to file a 2020 SEI on or before March 30, 2020.
8. In a certified letter dated February 17, 2021, the Commission notified Respondent of his failure to timely file a 2018 SEI and a 2020 SEI. The Commission assessed a \$100 late-filing penalty for each SEI and informed the Respondent that additional late-filing penalties would accrue if Respondent failed to come into compliance.
9. According to the United States Postal Service, the certified letter was delivered to Respondent's address of record on February 20, 2021 at 11:39 a.m.
10. On March 2, 2021, late-filing penalties began to accrue at \$20 per day (\$10 per SEI).
11. On March 12, 2021, late-filing penalties began to accrue at \$200 per day (\$100 per SEI).
12. Respondent failed to file a 2021 SEI on or before March 30, 2021.
13. The Complaint was filed on August 12, 2021.
14. On August 24, 2021, a Commission Investigator contacted Respondent and advised him to file his 2018, 2020, and 2021 SEIs. Respondent informed the Investigator that he had forgotten to do each of these filings but would file them as requested.
15. On August 26, 2021, Respondent came into compliance by filing his 2018, 2020, and 2021 SEIs.
16. At the time Respondent came into compliance, he had accrued \$5,000 in late-filing penalties on the 2018 SEI, \$5,000 in late-filing penalties on the 2020 SEI, and \$100 in late-filing penalties on the 2021 SEI,³ for a total of \$10,100.

CONCLUSIONS OF LAW

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

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

³ Respondent's 2021 SEI did not accrue any additional penalties because the Commission did not notify him of his failure to file via certified mail pursuant to Section 8-13-1510.

Therefore, the Commission has personal and subject matter jurisdiction.

2. Section 8-13-1140 provides, in relevant part:

A person required to file a [SEI] under this chapter annually shall file . . . an updated statement for the previous calendar year, no later than noon on March 30 of each calendar year.

3. Section 8-13-1510(A) provides:

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

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

DISCUSSION

The Commission found probable cause to charge Respondent with three (3) counts of violating Section 8-13-1110 for failing to timely file a 2018, 2020, and 2021 SEI. Through this Consent Order, Respondent acknowledges he violated the Ethics Act when he failed to timely file a 2018, 2020, or 2021 SEI. In exchange for this admission, the Commission waives \$9,000 in late-filing penalties, as discussed below.

DISPOSITION

1. The Commission hereby finds Respondent in violation of three (3) counts of Section 8-13-1110.
2. The Commission hereby adopts the Statements of Fact, Conclusions of Law, Discussion, and Disposition as agreed upon by the Respondent.

THEREFORE, the Commission hereby issues a written warning and orders the Respondent to pay the Commission, within one hundred and eighty (180) days from receipt of this Order, a reduced

late-filing penalty of \$500 for the 2018 SEI, a reduced late-filing penalty of \$500 for the 2020 SEI, a late-filing penalty of \$100 for the 2021 SEI, and an administrative fee of \$250, for a total of \$1,350. The remaining \$9,000 in accrued late-filing penalties is hereby waived.

By executing this Consent Order, Respondent understands that he is not only admitting to violations of the Ethics Act, but also confessing to a judgment of \$1,350 (less any money paid to the Commission) in the event he does not make full and timely payment as provided for in this Order. In that event, the Commission shall file a Judgment against Respondent in the Clerk of Court's Office in the County of Respondent's last known residence. Upon said filing, the Clerk of Court shall enter this Order in the amount of \$1,350 (less any money paid to the Commission) in its Judgment Rolls, without cost to the Commission.

AND IT IS SO ORDERED THIS 1 DAY OF June ~~2021~~ 2022

STATE ETHICS COMMISSION


CHILDS CANTEY THRASHER, CHAIR


FRANK MCCLARY
RESPONDENT