

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.)

RECEIVED

Apr 30 2025

SC Court of Appeals

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.¹ 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

¹ 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. Atty. 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 sufficient² to constitute a violation, an investigation may be conducted of the alleged violation.

² “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