

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

BEFORE THE STATE ETHICS COMMISSION

IN THE MATTER OF:)
COMPLAINT C2021-016)

Kim Benson,)
Complainant.)

Kenneth Loveless,)
Respondent.)

RECEIVED

Apr 30 2025

APPEAL ORDER

SC Court of Appeals

This matter comes before the State Ethics Commission (Commission) by way of a Request for Review of Decision and Order filed by Kenneth Loveless (Respondent) to appeal the Decision and Order (Decision) of the Commission Hearing Panel (Hearing Panel) issued March 24, 2023. Present at the Appeal Hearing held on January 16, 2025, were Commissioners Brandolyn Thomas Pinkston, Mary Hunter B. Tomlinson, Matthew N. Tyler, and Neal D. Truslow, Appellate Panel Chair.¹ The Commission was represented by Courtney M. Laster and Respondent Loveless was represented by Desa Ballard. The record before the Appellate Panel was extensive, encompassing all prior proceedings before the Commission, as well as the full submissions of counsel. Both Attorney Laster and Attorney Ballard presented their arguments with clarity and diligence, demonstrating commendable advocacy in their respective positions.

RELEVANT PROCEDURAL HISTORY

The above-referenced Complaint was filed on February 17, 2021 alleging, *inter alia*, that Respondent, a former member of the Board of Trustees (Board) for School District Five of

¹ Pursuant to S.C. Code Ann. Regs. 52-805(A), the Appellate Panel is comprised of the full Commission, "excluding the original hearing Commissioners." Accordingly, Commissioners Scott E. Frick, F. Xavier Starks, and AJ Holloway did not participate because they served on the February 16, 2023 Hearing Panel. With regard to the Appellate Panel, Commissioner Pinkston appeared virtually. Commissioner Bryant S. Caldwell was not present during the Appeal Hearing held on January 16, 2025, but hereby joins in this Order pursuant to S.C. Code Ann. Regs. 52-805(D).

Lexington and Richland Counties (District), improperly participated in matters related to a District contract with Contract Construction, Inc. (Contract Construction), a business with which Respondent was associated, for the construction of Piney Woods Elementary School (PWES). The Commission subsequently found probable cause to believe Respondent violated the Ethics Act and a Notice of Hearing was issued on July 11, 2022, outlining the following charges:²

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).

On September 12, 2022, Respondent filed a Motion to Dismiss, which was denied on October 6, 2022. On February 16, 2023, a hearing was held before the Hearing Panel. On March 24, 2023, the Hearing Panel found Respondent violated Section 8-13-700(B) of the Ethics Act as

² The Notice of Hearing contained an additional violation of Section 8-13-700(B) related to an alleged site visit Respondent made to the PWES construction site. However, this charge was dismissed by the Hearing Panel and is therefore not at issue in this appeal.

outlined in Counts One (1) through Three (3) in the Notice of Hearing. Respondent appealed on April 3, 2023. The Appeal Hearing was originally scheduled for January 18, 2024, and was subsequently re-noticed for March 21, 2024.

On February 20, 2024, Respondent filed a Motion to Admit Additional Evidence and Motion to Stay Proceedings. This Motion was heard on March 21, 2024, the date of the previously scheduled Appeal Hearing. On June 3, 2024, Respondent's Motion was denied. On July 10, 2024, the Appeal Hearing was re-noticed for January 16, 2025.

FACTS

1. Respondent served on the District Board from 2018-2022.
2. Respondent has owned and operated Loveless Commercial Contracting, Inc. (LCC) for over thirty-five (35) years. Respondent serves as President, signs all contracts on LCC's behalf, and personally carries the line of credit for LCC.
3. At all times relevant, Contract Construction was a general contractor located in South Carolina and Greg Hughes (Hughes) was its President.
4. On December 19, 2018, the District entered into a contract with Contract Construction for the building of PWES.
5. Thereafter, Contract Construction hired LCC to perform work on an unrelated State Law Enforcement Division (SLED) Laboratory (SLED Lab). The agreement between LCC and Contract Construction was signed by Respondent no later than March 12, 2020.
6. On March 24, 2020, Respondent submitted a letter to the District Superintendent raising perceived problems with the construction of PWES and criticizing certain 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, Contract Construction provided a progress report on the PWES construction. Following the report, Respondent questioned Hughes and District consultant Dan Neal (Neal) regarding, in relevant part, contract change orders and owner/contractor contingencies. Another Board member, Ed White (White), questioned Hughes and Neal about the issues raised in Respondent's March 24, 2020 letter. Respondent engaged in additional discussion with White and the Board, noting he had received unsatisfactory answers to his March 24, 2020 letter.
8. During a September 14, 2020 District Board meeting, Contract Construction provided another progress report on the PWES construction. White again questioned Hughes about the issues raised in Respondent's March 24, 2020 letter. White also raised the issue of LCC's contract with Contract Construction with regard to the SLED Lab and questioned whether Respondent's participation in matters related to Contract Construction was proper. Respondent continued to question Hughes and others about the cost of materials and the work being performed 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' 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.

9. During the February 8, 2021 District Board meeting, Respondent submitted a letter to the Board acknowledging his affiliation with Contract Construction on the SLED Lab and stating that he would thereafter recuse himself from all matters related to Contract Construction.
10. As outlined in its Decision, the Hearing Panel found that Respondent violated Section 8-13-700(B) of the Ethics Act by (1) writing the March 24, 2020 letter to the District Superintendent

in which he demanded action be taken with regard to the PWES contract; (2) participating in the June 15, 2020 Board discussion regarding Contract Construction's progress and performance under the PWES contract; and (3) participating in the September 14, 2020 Board discussion regarding Contract Construction's progress and performance under the PWES contract. The Hearing Panel assessed a \$1,750.00 civil penalty for each violation of the Ethics Act and an administrative fee of \$900.00, for a total of \$6,150.00.

LAW/ANALYSIS

On appeal, Respondent argues (1) the Hearing Panel improperly applied Section 8-13-700(B) and (2) the complaint against Respondent was improperly opened. For reasons discussed below, the Appellate Panel disagrees and therefore affirms the decision of the Hearing Panel.

I. The Hearing Panel Properly Applied Section 8-13-700(B).

Respondent argues that Section 8-13-700(B)³ only prohibits public servants from taking "actions" and "decisions," such as votes. Respondent argues that he has not violated Section 8-13-700(B) because he merely wrote a letter and participated in Board discussions regarding Contract Construction's progress and performance during the PWES construction. Respondent further asserts that he was duty-bound by Board policies and Title 59 of the South Carolina Code of Laws to take these actions. The Appellate Panel disagrees.

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

³ Respondent raises Section 8-13-775 multiple times throughout his brief. However, these arguments are not addressed herein because Section 8-13-775 applies only when a public servant has a contract with his own governmental entity, which is not the case here. Moreover, even assuming Section 8-13-775 applied, the Commission has routinely held that the requirements of Section 8-13-700(B) must be adhered to in such circumstances. See SEC AO93-054.

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) 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.

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

(a) . . . 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.

The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. See Hodges v. Rainey, 341 S.C. 79, 533 S.E.2d 578 (2000). "Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." Rainey v. Haley, 404 S.C. 320, 745 S.E.2d 81 (2013). "All rules of statutory construction are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in the light of the intended purpose of the statute." Jones v. State Farm Mut. Auto Ins. Co., 364 S.C. 222, 612 S.E.2d 719 (Ct. App. 2005). "The language must also be read in a sense which harmonizes with its subject matter and accords with its general purpose." Id. at 230; 612 S.E.2d at 722. "Courts will reject a statutory interpretation which would lead to a result so plainly absurd that it could not have been intended by the legislature or would defeat the plain legislative intention." Id. at 232; 612 S.E.2d at 724.

Regarding conflicts of interest, the Commission has long held that recusal is required in *any matter*⁴ that implicates the economic interest of a business with which a public official is associated. See SEC AO92-072 (advising a public servant to disqualify from all matters affecting the economic interests of a business with which he is associated); see also SEC AO2000-004 (same). This interpretation is supported by the text of Section 8-13-700, which certainly references

⁴ Although the word "matter" is not defined by the Ethics Act, the Commission has defined it as "a judicial or other proceeding, application, request for a ruling or other determination, *contract*, controversy, investigation, charge, accusation, arrest, rulemaking, or legislation . . . a discrete identifiable transaction or conduct involving a particular situation and specific parties." SEC AO99-003.

“decisions” and “actions,” but also provides 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.” See Section 8-13-700(B)-(C). This interpretation is also supported by decades of guidance and enforcement actions, not only from the Commission, but from other entities responsible for interpreting and enforcing the Ethics Act.⁵

The governmental decision at the heart of this matter is the District’s 2018 contract with Contract Construction for the construction of PWES. It is undisputed that Respondent, who personally carries the line of credit for LCC and personally signs all its contracts, became a subcontractor for Contract Construction on March 12, 2020, on an unrelated SLED Lab, thereby making Contract Construction a business with which Respondent was associated. See Section 8-13-100(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”) (emphasis added).⁶ Accordingly, after March 12, 2020, Respondent was required to recuse himself

⁵ See e.g. SEC AO77-020 (“[i]f, in the discharge of your duties as President, a matter comes before you which would substantially affect directly the Bank, you would be required by the Act to prepare a written disclosure of this potential conflict of interest and submit same to the College Board. You would also be required to remove yourself from any control or influence over the matter.”); Op. S.C. Atty. Gen., 1983 WL 142684 (April 28, 1983) (advising a public official to abstain from discussion and voting on matters affecting his institution); SEC AO83-054 (“any matters coming before the county commissioners which would affect directly and substantially the financial interests of that person as a school employee, he would be required to follow those procedures.”); Op. S.C. Atty. Gen., 1984 WL 249858 (April 12, 1984) (prohibiting public officials from taking action “either indirectly or directly” which would involve “both taking part in any votes dealing with such practices *or any discussions and deliberations concerning such practices.*”) (emphasis added); SEC AO90-016 (advising a public official whose spouse is a subcontractor for a business which contracts with the official’s agency against participating in deliberations or votes on matters affecting such contract); Senate Ethics Committee, AO92-11 (finding it “clear that the restrictions on the activities of a member are much broader than merely prohibiting a vote on a matter”); House Ethics Committee, AO2018-12 (prohibiting a member from “advocating” for the legislative agenda of a business with which the member was associated).

⁶ Respondent argues the “large-class exception” found in Section 8-13-100(11)(b) applies here because Respondent’s interest was no different than that of all commercial contractors. This analysis is flawed. Section 8-13-700 prohibits public officials from participating in matters in which they, their family members, businesses

from any matter in which Contract Construction had an economic interest, to include the inner workings of its contract with the District. 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). It was therefore in violation of Section 8-13-700 for Respondent to insert himself into the inner workings of the contract between the District and Contract Construction by (1) writing the March 24, 2020 letter to the Superintendent demanding action with regard to Contract Construction's performance under the PWES contract; (2) participating in the June 15, 2020 Board discussion regarding Contract Construction's performance under the PWES contract; and (3) participating in the September 14, 2020 Board discussion regarding Contract Construction's performance under the PWES contract.

Any other interpretation of Section 8-13-700(B) would lead to an absurd result that would allow a public official to be involved in literally every aspect of a matter that implicated their own economic interests as long as they recused themselves when it came to a formal vote. This 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.

with which they are associated, or individuals with whom they are associated have an economic interest. The large class exception would apply only if the focus of the inquiry was limited to the economic interest of Respondent. However, because Contract Construction's interests are imputed to Respondent, the appropriate inquiry is whether Contract Construction has an economic interest in the PWES contract. See SEC AO2002-003 ("The economic interest of an immediate family member, an individual with whom associated and a business with which associated is imputed to the public official, public member, and public employee for purposes of Section 8-13-700 . . ."). The Appellate Panel finds that Contract Construction most certainly had an economic interest in the PWES contract.

Respondent contends that *Loper Bright Enterprises et al. v. Raimondo, Secretary of Commerce*, 603 U.S. 369, 144 S. Ct. 2244, 219 L. Ed. 2d 832 (2024), provides instructive guidance on agency interpretations of statutes. However, the Appellate Panel finds that Respondent has, by his own admission, violated Section 8-13-700(B). Respondent has stated in at least two (2) written submissions to the Commission that he wrote the March 24, 2020 letter and participated in the aforementioned Board discussions because he was obligated by District policy to “ensur[e] that optimal facilities and resources [were] provided for the proper functioning of schools.” He has also asserted that he was required by S.C. Code Ann. § 59-19-90 to “[p]rovide schoolhouses” and to “take care of, manage and control the school property of the district.” In addition, during the Hearing Panel, Respondent testified he was carrying out his duties as a Board member in questioning the PWES contract and the quality of Contract Construction’s work. It is difficult to imagine how Respondent can argue that he was engaged in these legal and policy mandated *actions* (ensuring, caring for, managing, and controlling) while also somehow arguing that he was not engaged in any “action” in his official capacity under Section 8-13-700(B). While the Appellate Panel acknowledges the dilemma Respondent believed he faced – namely, that he was required to act in the discharge of his official duties – his obligation under the Ethics Act was clear. He was required to recuse himself. By failing to do so, Respondent violated Section 8-13-700(B).

II. The Complaint Against Respondent Was Properly Opened and Investigated.

Respondent argues the Complaint was not properly opened because (1) the full Commission did not vote to open an investigation “after a majority vote of the total membership of the commission” pursuant to Section 8-13-320(9)(a); and (2) the Notice of Hearing was not provided within ten (10) days of the probable cause determination. The Appellate Panel disagrees and affirms the decision of the Hearing Panel.

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.” (emphasis added). In that regard, 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, 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 to constitute a violation, an investigation may be conducted of the alleged violation.
- (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.

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 by a member of the public, 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. Accordingly, the investigation into this matter was opened under the lawful authority given to the Executive Director by Section 8-13-320(10)(c) of the Ethics Act.

As to the ten (10) day notice requirement, Section 8-13-320(10)(a) and (d) require only that the Commission forward a copy of the complaint to the Respondent within ten (10) days, which was done in the present case – 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. There is no timeline set forth in the Ethics Act or the corresponding regulations regarding the issuance of 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.”

DECISION

NOW, based on the evidence in the record and oral arguments presented, the Appellate Panel affirms the Hearing Panel’s Decision and Order and finds that Respondent is in violation of three (3) counts of Section 8-13-700(B) as outlined in Count One (1), Count Two (2), and Count

Three (3) of the Notice of Hearing. Specifically, the Appellate Panel finds that Respondent's (1) March 24, 2020 letter; (2) participation in the June 15, 2020 District Board meeting discussion regarding PWES; and (3) participation in the September 14, 2020 District Board meeting discussion regarding PWES were matters that required recusal pursuant to Section 8-13-700(B). Therefore, pursuant to Section 8-13-320(1)(i) of the Ethics Act, the Appellate Panel hereby issues a Public Reprimand and orders Respondent to pay a reduced civil penalty of \$5,250.00 (\$1,750.00 for each count);

AND, pursuant to Section 8-13-130 of the Ethics Act, and in addition to the reduced civil penalty, the Appellate Panel hereby orders Respondent to pay an administrative fee of \$900.00, making Respondent's total amount owed to the Commission \$6,150.00.

Pursuant to Section 8-13-320 of the Ethics Act, if the \$6,150.00 is not paid within the specified time period, a judgment in the amount of \$6,150.00 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 Respondent's last known County of residence, the Clerk of Court shall enter this Order in the amount of \$6,150.00 in its Judgment Rolls, less any monies paid, without cost to the Commission.

FINALLY, in accordance with Section 8-13-320(10)(m) of the Ethics Act, this review is the final disposition of this matter before the Commission.

AND IT IS SO ORDERED THIS 31ST DAY OF MARCH 2025.

STATE ETHICS COMMISSION



NEAL D. TRUSLOW,
APPELLATE PANEL CHAIR

Columbia, South Carolina

