

1 STATE OF SOUTH CAROLINA

2 BEFORE THE STATE ETHICS COMMISSION

3 COUNTY OF RICHLAND

4 **RECEIVED**

5 **Nov 24 2025**

6 IN THE MATTER OF:

7 **SC Court of Appeals**

8 Complaints C2021-078/C2023-129

9 Shirley Etheredge Mitchell

10 Stephen D. Cain,

11 Complainants,

12 Lancer Shull,

13 Respondent.

14 \_\_\_\_\_  
15  
16 February 20, 2025 Ethics Hearing  
17  
18

19 Commissioners in Attendance:

20 Scott E. Frick, Hearing Panel Chair

21 Brandolyn T. Pinkston (Appearing via Zoom)

22 A. J. Holloway (Appearing via Zoom)  
23  
24  
25

26 Representing the Respondent:

27 James Randall Davis, Esquire  
28

29 Representing the Commission:

30 Courtney M. Laster, Esquire  
31  
32

EXHIBITS

(Exhibits Admitted Into Evidence)

- Commission’s 1            Respondent’s JMWSC 1099s
- Commission’s 2            Town of Batesburg-Leesville January 13, 2020, minutes
- Commission’s 3            Town of Batesburg-Leesville January 21, 2020, minutes
- Commission’s 4            Town of Batesburg-Leesville December 11, 2024, minutes
- Commission’s 5            Decision and Order for SEC vs. LCJMWSC (C2008-112)

Witnesses:

- Kevin Hinson
- John “Jay” Nicholson
- Lancer Shull

TRANSCRIPT

Scott Frick:

...the Chair presiding over the panel today. Hearing the matter along with me are Commissioners A.J. Holloway and Brandolyn Thomas Pinkston. Let me say a few words about the role and the purpose of the hearing. We're here today to hear the allegations of the Commission and to allow the Respondent to present any evidence that they have in response to the allegations. This hearing panel is a neutral body. Our job is to hear both sides of the matter and to make a determination of whether there has been a violation of the ethics laws and if so, to make determination of what penalties should be imposed. A few words about the process of the hearing today. Each side will have an opportunity to make an opening statement. Opening statements are not evidence but they give an overview of your side of the case. Each side will have the opportunity to present testimony and other evidence under oath. Presenting on behalf of the Commission will be the Commission's general counsel attorney, Courtney Laster and Commission's assistant general counsel, Renique Brabham. They will present the Commission's case first and you, the Respondent or Respondent's counsel, will be allowed to ask questions of the witnesses. Each witness will enter sworn testimony into the record. You are limited to asking questions only of the witnesses. You will have an opportunity to respond to anything they've said when you are sworn in and testify under oath if you choose to do so.

Once Miss Laster or Brabham have concluded, you will have an opportunity to present your side of the matter and can testify yourself and call any witnesses that you may wish to call. Miss Laster or Miss Brabham will then be given an opportunity to ask questions of you and your witnesses if they choose. After testimony of any witness, members of this panel may ask any questions they may have as well.

1 Each side will then have the opportunity to make closing statements  
2 and the hearing will be concluded. Please be aware that the  
3 proceedings are being recorded, so it is important to keep your voices  
4 up and give verbal answers to the questions rather than nods of the  
5 head or uh-uhs and uh-huhs as we do in general conversation so that  
6 we can ensure that we have an accurate record of today's proceedings.  
7 So I think we can begin, Miss Laster.

8  
9 Courtney Laster: Thank you. Good morning, Commissioners. The first matter for the  
10 Panel's consideration today is going to be the second matter on the  
11 agenda actually. It is 2021078 and 2023129, both in the matter of  
12 Lancer Shull.

13  
14 Scott Frick: Okay. Please proceed.

15  
16 Courtney Laster: Thank you. Before we begin, opposing counsel and I have entered into  
17 some stipulations of fact. I believe that staff has given Commissioner  
18 Frick, you, a physical copy of this and then I believe that the  
19 commissioners that are attending virtually have also received this copy  
20 of the stipulation. In addition, Respondent's counsel did submit an  
21 additional reply yesterday afternoon and I believe that, Commissioner  
22 Frick, you have a physical copy of that and the commissioners that are  
23 appearing virtually both have an electronic copy of that that has been  
24 sent to you. Again, this is 2021078 and 2023129 in the matter of  
25 Lancer Shull. Mr. Shull is the mayor of the Town of Batesburg-  
26 Leesville and he is also a commissioner on the Lexington County Joint  
27 Municipal Water and Sewer Commission. The matters that are being  
28 presented to the Panel today are the 6-count combined notice of  
29 hearing, each of the counts relating to Respondent's participation in  
30 votes to place himself on the Joint Water and Sewer Commission  
31 during duly-called meetings of the Town Council. So I believe the  
32 evidence today will show that the Respondent has served as both

1 mayor of Batesburg-Leesville and also as a commissioner of the Joint  
2 Water and Sewer Commission since 2018. I believe the evidence will  
3 also show that members or commissioners of the Joint Water and  
4 Sewer Commission are placed onto that body by either vote or  
5 resolution of their own governmental entity, so in this case, the Town  
6 of Batesburg-Leesville Town Council would have done that.

7  
8 And finally, I believe that the evidence will show that the Respondent  
9 on January 13, 2020, January 21, 2020, and December 11, 2023, did  
10 vote to place himself on this commission for which there is a \$250  
11 monthly payment that accompanies the service on the Commission. I  
12 would also like to clarify that today's hearing is not about whether or  
13 not Respondent is permitted to participate in matters related to one  
14 governmental entity when he is in the service of the other. The  
15 complaint alleges many allegations that there is some improper  
16 conduct for participating in matters related to the Joint Water and  
17 Sewer Commission while there is a service on Town Council and the  
18 Commission did not find probable cause as to that. The only thing that  
19 we are here for today are these three meetings where the Respondent  
20 voted in relation to his appointment to this Commission for which  
21 there is money tied to the position. And that is all I have by way of  
22 opening.

23  
24 Scott Frick:

Thank you, Miss Laster. Does the Respondent have an opening  
statement?

25  
26  
27 James Davis:

Yes, Mr. Chairman. James Randall Davis. I practice law in Lexington  
and represent Mr. Shull, who's the respondent here. Mr. Shull is  
presently the mayor of Batesburg-Leesville, which is a town in  
Lexington County and has been serving in that capacity since 2017.  
And he also serves, as Miss Laster said, on the Lexington County Joint  
Water and Sewer Commission Board, which is a governmental entity

1 that handles water and sewer utilities in the unincorporated areas of  
2 Lexington County. He has served on that board since twenty s-...

3  
4 Lancer Shull: 2018.

5  
6 James Davis. ...2018. The appointment to that board is by state statute and under that  
7 statute, the cities and the county and the public works entities would  
8 be the board members of the Commission and each town or county  
9 selects a representative to appear on that board as a commissioner to  
10 make decisions for the Commission. That Commission has been in  
11 existence for some time and again, it services the water and sewer in  
12 the unincorporated areas of Lexington County. It is correct that Mr.  
13 Shull, in his capacity as the mayor and on Council in Batesburg-  
14 Leesville, voted three votes, two in January of 2020, dealing with – the  
15 specific vote was the reappointment of the Town of Batesburg-  
16 Leesville's representative on the Joint Water and Sewer Commission.  
17 There were two votes, one in January 13 of 2021 and January 21. The  
18 first vote was 5 to 4 for someone else to be named the commissioner.  
19 A few days – a week later, there was a second vote where he was  
20 reappointed to the Commission Board by either a 6 to 2 or a 7 to 2  
21 vote. Then there was a third vote in December of 2023 where he  
22 participated in the voting where he was reappointed to the  
23 Commission. The issue here is whether there is – Miss Laster indicated  
24 there was a payment of \$250 paid to the commissioners on a monthly  
25 basis.

26  
27 What is under the statute for the Commission, there's a specific statute  
28 and that statute indicates this language that, "There shall be no  
29 compensation paid to commissioners, comma, but there can be a per  
30 diem payment made," and the language says, "per diem, comma,  
31 mileage, comma, subsistence". That is a specific provision in our  
32 statute which allows a per diem. It is my belief that the complaint here

1 is that for – is that the – that payment of \$250 per month is a economic  
2 interest under the Ethics Statute, is I believe what the position the  
3 complainant is takin' here. And the Commission here is to decide that  
4 matter. The – we do not – but we do not believe that per diem set by  
5 our statute, which was passed by the legislation and signed by the  
6 governor, indi-, it clearly indicates no compensation but it allows  
7 specifically a per diem payment, which is being made and is received  
8 by each commissioner in the same figure, except for the board  
9 chairman and vice chairman get a bigger figure. So our position is that  
10 per diem is not a economic interest. He did not vote on anything  
11 involvin' any property he owns or any services he renders himself or  
12 by business. And we believe that the issue here is that is not a  
13 economic benefit to him. That's a per diem, which is an expense or  
14 reimbursement for expenses which are allowed by our statute and  
15 should not be classified as economic benefit.

16  
17 To conclude, we believe there are other provisions in your statute that  
18 say that he could vote. There is a clause in your statute that – which  
19 indicates that incidental matters involving him in his capacity on that  
20 commission is okay. Our belief is that language in our statute could  
21 fall very well under that language in the code. Also, you have  
22 exceptions as to the refusal statutes, which deal with being of a certain  
23 class of individuals and also dealing with – there's interconnection  
24 between the town councils, the county and the board, which you have  
25 an exception as a refusal dealing with being an arm of each other. So  
26 w-, but I won't – but I will deal with that later in the closing  
27 arguments. But our point is, we do not believe that is a economic  
28 benefit but is a reimbursement for expenses and for the  
29 commissioners. And they do receive that \$250 per month. Thank you  
30 very much.

1 Scott Frick: Thank you, Mr. Davis. Miss Laster, will you call your first witness,  
2 please?  
3  
4 Courtney Laster: Certainly. With the Panel's permission, at this time I would like to call  
5 Investigator Kevin Hinson to the stand.  
6  
7 Kevin Hinson: Yes, ma'am.  
8  
9 Scott Frick: Investigator Hinson, please raise your right hand. Do you swear or  
10 affirm that the testimony you are about to give is the truth and nothing  
11 but the truth, so help you God?  
12  
13 Kevin Hinson: I do.  
14  
15 Scott Frick: Please be seated and state your full name for the record.  
16  
17 Kevin Hinson: Kevin Hinson.  
18  
19 Courtney Laster: Morning, Investigator Hinson.  
20  
21 Kevin Hinson: Morning.  
22  
23 Courtney Laster: Are you currently employed with the Commission?  
24  
25 Kevin Hinson: Yes, ma'am.  
26  
27 Courtney Laster: And what is your job title?  
28  
29 Kevin Hinson: Chief over investigations and enforcement.  
30  
31 Courtney Laster: What is your job as the chief over investigations and enforcement?  
32

1 Kevin Hinson: To oversee and – the investigations and enforcement division and  
2 investigate those matters assigned.  
3  
4 Courtney Laster: And who assigns the matters for you to investigate?  
5  
6 Kevin Hinson: The executive director.  
7  
8 Courtney Laster: Are you familiar with the matters that are currently being presented to  
9 the Panel?  
10  
11 Kevin Hinson: Yes, ma'am.  
12  
13 Courtney Laster: And were these matters assigned to you by the executive director for...  
14  
15 Kevin Hinson: Yes...  
16  
17 Courtney Laster: ...investigation?  
18  
19 Kevin Hinson: ...ma'am.  
20  
21 Courtney Laster: Investigator Hinson, to your knowledge, is the Respondent a public  
22 official?  
23  
24 Kevin Hinson: Yes, ma'am.  
25  
26 Courtney Laster: And what position does he hold?  
27  
28 Kevin Hinson: Mayor for the Batesburg Town – Town of Batesburg-Leesville.  
29  
30 Courtney Laster: Okay. Do you know when he was first elected as mayor?  
31  
32 Kevin Hinson: I believe that was in November 2017.

1  
2 Courtney Laster: Okay. To your knowledge, does the Respondent serve in any other  
3 government roles?  
4  
5 Kevin Hinson: He also serves as a commissioner for the Lexington Joint Municipal  
6 Water and Sewer Commission.  
7  
8 Courtney Laster: And to your knowledge, is that a governmental entity?  
9  
10 Kevin Hinson: Yes, ma'am.  
11  
12 Courtney Laster: Okay. What is your understanding of how the commissioners come to  
13 serve on the Joint Municipal Sewer and Water Commission?  
14  
15 Kevin Hinson: They are appointed by their existing body, so they're appointed by the  
16 Town Council.  
17  
18 Courtney Laster: Okay. Do you know when the Respondent first began serving on the  
19 Commission?  
20  
21 Kevin Hinson: I believe that was January of 2018.  
22  
23 Courtney Laster: As far as these complaints go, what did the first complaint, 2021078,  
24 what did it allege as it relates to the charges that are being presented to  
25 the Panel?  
26  
27 Kevin Hinson: Improper voting for those two meetings, so January 13 and the January  
28 21.  
29  
30 Courtney Laster: Of what year?  
31  
32 Kevin Hinson: 2020.

1  
2 Courtney Laster: Okay. Did you happen to review the meeting minutes, those...  
3  
4 Kevin Hinson: Yes...  
5  
6 Courtney Laster: ...meeting...  
7  
8 Kevin Hinson: ...ma'am.  
9  
10 Courtney Laster: ...minutes you just referred...  
11  
12 Kevin Hinson: Yes...  
13  
14 Courtney Laster: ...to...  
15  
16 Kevin Hinson: ...ma'am.  
17  
18 Courtney Laster: ...from January 13, 2020, and January 1, 2020?  
19  
20 Kevin Hinson: Yes, ma'am.  
21  
22 Courtney Laster: Commissioner Frick, at this time and with the Panel's permission, I  
23 would like to move what has been marked as Commission Exhibit 2  
24 and 3 into the record. These are the meeting minutes from the dates  
25 just described by Investigator Hinson and they have been shared with  
26 opposing counsel and I don't believe he has any objection to them, so  
27 I...  
28  
29 Scott Frick: Okay.  
30  
31 Courtney Laster: ...would [inaudible 14:43].  
32

1 Scott Frick: They'll be admitted without objection.  
2  
3 James Davis: No objection.  
4  
5 Courtney Laster: Thank you. Investigator Hinson, if we could look at Commission  
6 Exhibit 2, that would be the January 13, 2020, town meeting minutes,  
7 can you describe what occurred during that meeting as it relates to  
8 Respondent in his appointment to the Joint Water and Sewer  
9 Commission? And if you could refer us by page, please.  
10  
11 Kevin Hinson: Let me get to that page. I believe it's on Page 7. A motion was made  
12 by Councilman Cain with a second by Council Member Mitchell to  
13 place Council Member Cain on the Commission.  
14  
15 Courtney Laster: You said that was on Page 7?  
16  
17 Kevin Hinson: Yes, ma'am.  
18  
19 Courtney Laster: Okay. As of the date of this meeting, what...  
20  
21 James Davis: Mr. Chairman, excuse me, what – which exhibit was that? I'm sorry.  
22  
23 Courtney Laster: This is C2.  
24  
25 James Davis: Okay. Very good.  
26  
27 Courtney Laster: Investigator Hinson, at this time on January 13, 2020, was the  
28 Respondent serving on the Commission and on Town Council?  
29  
30 Kevin Hinson: Yes, ma'am.  
31  
32 Courtney Laster: Okay. So can you again restate what was going on in this meeting?

1  
2 Kevin Hinson: So Council Member Cain nominated himself to be on the Commission  
3 and then a vote ensued and the Respondent voted in the negative.  
4  
5 Courtney Laster: What was the effect of Respondent's vote?  
6  
7 Kevin Hinson: The effect of the Respondent's vote is he voted to object to the removal  
8 of himself from the Commission in lieu of Council Member Cain bein'  
9 appointed to it.  
10  
11 Courtney Laster: Okay. Did the vote to replace the Respondent pass?  
12  
13 Kevin Hinson: Yes, ma'am.  
14  
15 Courtney Laster: What was the vote total?  
16  
17 Kevin Hinson: I believe that was 5 to 4.  
18  
19 Courtney Laster: Okay. Did you find any evidence that Respondent submitted any kind  
20 of written recusal in conjunction with this agenda item?  
21  
22 Kevin Hinson: No, ma'am.  
23  
24 Courtney Laster: Thank you. If we could also, Investigator Hinson, turn to Commission  
25 Exhibit 3, this is the January 21, 2020, meeting minutes. Can you  
26 describe what occurred herein as it relates to the Respondent and his  
27 appointment to the Joint Water and Sewer Commission? By page  
28 number, if possible.  
29  
30 Kevin Hinson: It's Page 1 and 2. At the bottom of Page 1, the Respondent gave  
31 Councilman Hall the floor. Councilman Hall made a motion that  
32 would reconsider a previous appointment to the Joint Municipal Water

1 and Sewer Commission and executed by Council Member Etheredge.  
2 And a vote ensued and it was a vote of 7 to 2.  
3  
4 Courtney Laster: Okay. So was this a reconsideration of the vote they took in the  
5 previous meeting?  
6  
7 Kevin Hinson: Yes, ma'am.  
8  
9 Courtney Laster: And what was the effect of this vote?  
10  
11 Kevin Hinson: That the Respondent was reappointed to the Commission.  
12  
13 Courtney Laster: And did the motion pass?  
14  
15 Kevin Hinson: Yes, ma'am.  
16  
17 Courtney Laster: What was the count?  
18  
19 Kevin Hinson: It was 7 to 2.  
20  
21 Courtney Laster: And how did Respondent vote again?  
22  
23 Kevin Hinson: He voted in the affirmative.  
24  
25 Courtney Laster: Okay. Did you find any evidence that there was a written statement of  
26 recusal in conjunction with this agenda item?  
27  
28 Kevin Hinson: No, ma'am.  
29  
30 Courtney Laster: Thank you, Investigator Hinson. Turning to the second complaint,  
31 2023129, what were the allegations in that complaint as it relates to  
32 what's being presented to the Panel?

1  
2 Kevin Hinson: I'm sorry. Restate the question?  
3  
4 Courtney Laster: Yeah. What did you find in the 2023129 complaint? What were those  
5 – the allegations contained therein as they relate to what's being  
6 presented today?  
7  
8 Kevin Hinson: It was improper voting. He voted to reappoint himself, the Respondent  
9 did, back to the Commission, which...  
10  
11 Courtney Laster: Okay.  
12  
13 Kevin Hinson: ...he was currently holding.  
14  
15 Courtney Laster: And the allegations were it was a separate meeting, not these two  
16 we've just discussed.  
17  
18 Kevin Hinson: Correct.  
19  
20 Courtney Laster: Okay. Do you know the date that was alleged to have occurred?  
21  
22 Kevin Hinson: December 11, I believe, 2023.  
23  
24 Courtney Laster: Okay. And did you review the meeting minutes from December 11,  
25 2023, the...  
26  
27 Kevin Hinson: Yes...  
28  
29 Courtney Laster: ...Town...  
30  
31 Kevin Hinson: ...ma'am.  
32

1 Courtney Laster: ...Council meeting minutes? Mr. Chair, at this time, I would like to  
2 introduce the December 11, 2023 meeting minutes of Town Council as  
3 Commission Exhibit 4. I don't believe opposing council has any  
4 objection.  
5

6 James Davis: [Inaudible 19:02].  
7

8 Scott Frick: Without objection.  
9

10 Courtney Laster: Thank you. Investigator Hinson, can you describe what occurred  
11 during the December 11, 2023 council meeting as it relates to  
12 Respondent's appointment to the Joint Water and Sewer Commission?  
13 By page, if possible.  
14

15 Kevin Hinson: It's Page 6. Motion was made by Council Member Prouse, seconded  
16 by Council Member Bouknight to reappoint the Respondent to the  
17 position.  
18

19 Courtney Laster: And did Respondent participate in that vote?  
20

21 Kevin Hinson: Yes, ma'am. He voted...  
22

23 Courtney Laster: [Inaudible 19:39].  
24

25 Kevin Hinson: ...in the affirmative.  
26

27 Courtney Laster: I'm sorry?  
28

29 Kevin Hinson: He voted in the affirmative.  
30

31 Courtney Laster: Did you find any evidence that the Respondent submitted a written  
32 recusal in conjunction with this agenda item?

1  
2 Kevin Hinson: No, ma'am.  
3  
4 Courtney Laster: Investigator Hinson, did your investigation reveal whether or not the  
5 Joint Water and Sewer Commissioners receive payment?  
6  
7 Kevin Hinson: Yes.  
8  
9 Courtney Laster: And how much payment do they receive?  
10  
11 Kevin Hinson: Well, in the Respondent's case, they receive \$250 per month.  
12  
13 Courtney Laster: I'm sorry, can you repeat that?  
14  
15 Kevin Hinson: They receive \$250 per month...  
16  
17 Courtney Laster: Okay.  
18  
19 Kevin Hinson: ...for the year.  
20  
21 Courtney Laster: Investigator Hinson, is there an administrative fee associated with  
22 these complaints?  
23  
24 Kevin Hinson: Yes, ma'am.  
25  
26 Courtney Laster: What is that?  
27  
28 Kevin Hinson: It's \$1,000 in cumulus for both a these matters and that involves  
29 investigative hours, prep hours and the work done to arrive here today.  
30  
31 Courtney Laster: Okay. I don't believe I have any additional question for Investigator  
32 Hinson.

1  
2 Scott Frick: Any questions, Mr. Davis?  
3  
4 James Davis: Yes, Mr. Chairman. Mr. Hinson?  
5  
6 Kevin Hinson: Yes, sir.  
7  
8 James Davis: Okay. The first vote on the – January 20 – January 13...  
9  
10 Kevin Hinson: Yes, sir.  
11  
12 James Davis: ...that's the one that was a 5 to 4 vote.  
13  
14 Kevin Hinson: I believe so. Yes, sir.  
15  
16 James Davis: Okay. And the – Mr. Shull did not vote – he voted – he did not vote  
17 for the person who was nominated. Is that correct?  
18  
19 Kevin Hinson: Yes. He voted against Mr. Cain.  
20  
21 James Davis: Okay. All right. On the – but Mr. Cain voted for himself.  
22  
23 Kevin Hinson: Yes, sir.  
24  
25 James Davis: Okay. All right. On the January 21 vote, was there any discussion at  
26 the time that vote was taken on the January 21 meeting? It – do the  
27 minutes reflect any discussion?  
28  
29 Kevin Hinson: It doesn't appear to. No...  
30  
31 James Davis: Okay.  
32

1 Kevin Hinson: ...sir.  
2  
3 James Davis: On the December vote in 2023, I...  
4  
5 Kevin Hinson: Yes...  
6  
7 James Davis: ...ask...  
8  
9 Kevin Hinson: ...sir.  
10  
11 James Davis: ...the same question. Is there any evidence of any discussion at that  
12 time?  
13  
14 Kevin Hinson: I don't believe so.  
15  
16 James Davis: Would you check and see?  
17  
18 Kevin Hinson: Yeah, sure. No, sir.  
19  
20 James Davis: None. Okay. And the vote on January 21 was – what was the total  
21 vote, the count?  
22  
23 Kevin Hinson: It was 7 to 2.  
24  
25 James Davis: For Mr. Shull?  
26  
27 Kevin Hinson: Yes, sir.  
28  
29 James Davis: Okay. And the December 11, 2023, what was the count there?  
30  
31 Kevin Hinson: I believe that was a 6 to 2.  
32

1 James Davis: For Mr. Shull...  
2  
3 Kevin Hinson: Yep.  
4  
5 James Davis: ...to be reappointed.  
6  
7 Kevin Hinson: Yes, sir.  
8  
9 James Davis: Okay. All right. You – on your direct testimony for Miss Laster, you  
10 indicated that there was improper voting by Mr. Shull at these  
11 meetings. What is the improper nature of that voting?  
12  
13 Courtney Laster: Oh.  
14  
15 Kevin Hinson: That was the allegation.  
16  
17 Courtney Laster: Commissioner, I'm sorry, I would object to that. I believe on the direct  
18 it was what were the allegations in the...  
19  
20 James Davis: Okay.  
21  
22 Courtney Laster: ...complaint.  
23  
24 James Davis: What...  
25  
26 Scott Frick: Yeah. I'll sustain...  
27  
28 James Davis: And...  
29  
30 Scott Frick: ...that.  
31

1 James Davis: ...you testified that there was improper voting by Mr. Shull. Am I  
2 correct about that?  
3  
4 Courtney Laster: Objection.  
5  
6 Kevin Hinson: Not...  
7  
8 Courtney Laster: Objection. I think that's a mischaracterization of the testimony.  
9  
10 James Davis: All right. Well...  
11  
12 Scott Frick: Sustained.  
13  
14 James Davis: ...let me rephrase it so we'll have it. What was the – what – in  
15 reference, was there any improper voting by Mr. Shull, you think?  
16  
17 Courtney Laster: Objection. Calls for a legal conclusion. I think that's the province of  
18 the Panel to determine.  
19  
20 Scott Frick: [Inaudible 23:44] sustained.  
21  
22 James Davis: Okay. If you'd give me just a second, Mr. Chairman. You indicated  
23 that a payment was being received by Mr. Shull for \$250.  
24  
25 Kevin Hinson: Yes, sir.  
26  
27 James Davis: All right. Are you in any way familiar with the statute that involves the  
28 Joint Water and Sewer Commission where a per diem can be paid to  
29 the board members?  
30  
31 Kevin Hinson: That language is – appears to be in the statute.  
32

1 James Davis: Okay.  
2  
3 Kevin Hinson: Yes.  
4  
5 James Davis: Do you know what the definition is of per diem?  
6  
7 Kevin Hinson: That's a per...  
8  
9 Courtney Laster: Objection...  
10  
11 Kevin Hinson: ...day...  
12  
13 Courtney Laster: ...as to relevance.  
14  
15 Scott Frick: I'll overrule the objection.  
16  
17 James Davis: Yeah. [Inaudible 24:29].  
18  
19 Kevin Hinson: Per diem is per day.  
20  
21 James Davis: Excuse me. I'm sorry. [Inaudible 24:31].  
22  
23 Kevin Hinson: Okay.  
24  
25 James Davis: Do you know what the definition is of per diem?  
26  
27 Kevin Hinson: It's – per diem is per day and it's money, compensation given for travel  
28 – generally for travel and food expenses.  
29  
30 James Davis: Okay. So are – so you're classifying it for travel expenses and things of  
31 that nature. Is that correct?  
32

1 Kevin Hinson: In regards to this matter and how it's – you're d-, you're bringing it to  
2 me, per diem and what the statute says is per day.  
3  
4 James Davis: Okay.  
5  
6 Kevin Hinson: That's what it's typically used for.  
7  
8 James Davis: Yeah.  
9  
10 Kevin Hinson: Travel expenses and food.  
11  
12 James Davis: Would it be fair to say it is a reimbursement of expenses that a board  
13 member incurs in his capacity as a public official?  
14  
15 Kevin Hinson: I don't think I can answer that because that would be speculative. I  
16 can't determine what someone's intention is about whether it's per diem  
17 or whether it's not, how they intended it. What I looked at was this was  
18 money, income received by the Respondent for the meetings.  
19  
20 James Davis: Okay. The specific language in the statute refers to the words "per  
21 diem, comma, mileage and subsistence". Using that language, I ask the  
22 question again. Do you feel like that language as to the per diem is  
23 referring to reimbursement of expenses for that board member – he  
24 incurs in his public capacity?  
25  
26 Courtney Laster: Objection as to relevance.  
27  
28 Scott Frick: I'll sustain that objection.  
29  
30 James Davis: Thank you, Your Honor – Mr. Chairman.  
31  
32 Scott Frick: Thank you. Any further questions, Miss Laster?

1  
2 Courtney Laster: No, sir.  
3  
4 Scott Frick: Okay. Investigator Hinson, for the first vote, which I believe was  
5 January 13, 2020. Correct?  
6  
7 Kevin Hinson: Yes, sir.  
8  
9 Scott Frick: Was the Respondent's term on the Water and Sewer Commission, was  
10 it coming to a close? Was that term ending or was he just simply being  
11 replaced in that first vote?  
12  
13 Kevin Hinson: I believe they run on 2-year cycles but in this particular matter, it was  
14 – 'cause it uses the language, "Motion was made for – to place Council  
15 Member Cain on the Commission," which means it would be to  
16 replace the Respondent.  
17  
18 Scott Frick: Right. And what I'm trying to figure out is whether that term was  
19 ending for the Respondent at that point anyway or whether he was  
20 actually being removed and replaced with somebody else in the middle  
21 of a term, if you know.  
22  
23 Kevin Hinson: I didn't dive into that in terms of whether it was a replacement or it  
24 was a reappointment to it. What I looked at was it was an action taken  
25 by Councilman Cain and the Respondent at the time.  
26  
27 Scott Frick: Okay. Thank you. Any questions from the other commissioners on the  
28 Panel?  
29  
30 Brandolyn Pinkston: I have one, Mr. Chair.  
31  
32 Scott Frick: Please go ahead, Commissioner Pinkston.

1  
2 Brandolyn Pinkston: I'd like to understand the – how often does the – that Commission  
3 meet? Do they meet monthly or are they meeting weekly? How often  
4 do they meet?  
5  
6 Kevin Hinson: It appears they would meet monthly, if that question was for me.  
7  
8 Brandolyn Pinkston: Yes. And most of the persons affiliated with the Water and Sewer  
9 Commission live in the Batesburg-Leesville area?  
10  
11 Kevin Hinson: I wouldn't be able to speak to that, Commissioner Pinkston. I just  
12 know it's from a broad area of ones that are appointed to those roles.  
13  
14 Brandolyn Pinkston: Oh, because I was trying to understand the amount set for per diem  
15 regarding travel, lodging and food expenses, so I will – I wasn't – as I  
16 reviewed this the other day, I was looking for an answer to that  
17 because I was trying to understand the basic workings of that Water  
18 Commission and how they were reimbursed for food, travel and  
19 lodging expenses. So I'll continue to listen. Thank you, Investigator  
20 Hinson.  
21  
22 Kevin Hinson: Yes, ma'am.  
23  
24 Scott Frick: Any questions, Commissioner Holloway?  
25  
26 A.J. Holloway: Yes. If I can get just a little bit of clarification, along the same lines of  
27 Commissioner Pinkston. As far as my understanding of looking at the  
28 information here and the testimony, is that the – or as far as the per  
29 diems go, there's just a – is there a level for the chairman and then like  
30 – it was like \$300 and something below \$250 or something along those  
31 lines? I need to see what those numbers were. But were there two  
32 different levels of per diems?

1  
2 Kevin Hinson: Yes. The chair would – as I understand it from Mr. Nicholson, the  
3 general manager/CEO for the Joint Municipal Water and Sewer  
4 Commission, the chair would receive X amount, commissioners would  
5 receive a lower amount and then if there was an alternate or someone  
6 that couldn't be there and an alternate went into that place, then the  
7 alternate would receive a split amount with the existing commissioner  
8 that was supposed to be there.  
9  
10 A.J. Holloway: All right. And there's, from what I've seen, no explanation as in why  
11 there'd be a higher expense for food for a chairman versus a  
12 commissioner, anything like that?  
13  
14 Kevin Hinson: I don't have any. No, sir.  
15  
16 A.J. Holloway: Okay. I just wanted to make sure. I'm just trying to understand, again,  
17 if this is reimbursements for just travel, for mileage and food, why  
18 there would be different levels for that, if they're not basing it off of  
19 the distance that someone's traveling and it's just off of the position  
20 that they have. So I was just tryin' to get clarification on that.  
21  
22 Kevin Hinson: Yes, sir.  
23  
24 A.J. Holloway: And that's it for me. Sorry. Thank you.  
25  
26 Scott Frick: Thank you, Commissioner Holloway. Thank you, Investigator Hinson.  
27 Miss Laster, are you calling any additional witnesses?  
28  
29 Courtney Laster: Yes, sir. At this time, with the Panel's permission, I would like to call  
30 Jay Nicholson to the stand.  
31

1 Scott Frick: Yes, ma'am. If you could please raise your right hand. Do you swear  
2 or affirm that the testimony you are about to give is the truth and  
3 nothing but the truth, so help you God?  
4  
5 Jay Nicholson: I do.  
6  
7 Scott Frick: Please be seated and state your full name for the record.  
8  
9 Jay Nicholson: John Clark Nicholson.  
10  
11 Scott Frick: Go ahead, Miss Laster.  
12  
13 Courtney Laster: Thank you. Mr. Nicholson, good morning.  
14  
15 Jay Nicholson: Good morning.  
16  
17 Courtney Laster: Mr. Nicholson, can you tell the pel-, the Panel where you are currently  
18 employed?  
19  
20 Jay Nicholson: Joint Municipal Water and Sewer Commission in Lexington County.  
21  
22 Courtney Laster: And what do you do there?  
23  
24 Jay Nicholson: I'm the general manager and chief executive officer.  
25  
26 Courtney Laster: Okay. Oh. Mr. Chair, i-, with your permission, can the investigator be  
27 excused from the proceedings?  
28  
29 Scott Frick: Yes, absolutely.  
30  
31 Courtney Laster: Thank you.  
32

1 James Davis: No objection.  
2  
3 Courtney Laster: Mr. Nicholson, how long have you been employed with the  
4 Commission?  
5  
6 Jay Nicholson: Twenty seven years and 1½ months.  
7  
8 Courtney Laster: Know – who's counting, though?  
9  
10 Jay Nicholson: Nope.  
11  
12 Courtney Laster: Have you always been the general manager?  
13  
14 Jay Nicholson: No.  
15  
16 Courtney Laster: What other titles have you held there?  
17  
18 Jay Nicholson: Engineering and construction technician and operations manager.  
19  
20 Courtney Laster: Okay. How long have you been the general manager?  
21  
22 Jay Nicholson: Eleven years.  
23  
24 Courtney Laster: Eleven years. Can you briefly describe to the Panel what the  
25 Commission does – what your Commission does?  
26  
27 Jay Nicholson: We were established under the – if you'll give me just a little bit of  
28 leeway here – under the Joint Municipal Water Systems Act, there are  
29 a lot – there are about 10 or 12 of these type of organizations in the  
30 State of South Carolina. All of us are – have a very similar charge.  
31 None of us are exactly the same. In our case, we took over assets of  
32 what was Lexington County Public Works, the utility division under

1 the Public Works Department. There were some financial challenges  
2 because of public bonding abilities and some a those constraints. It  
3 was identified as a separate entity. A public entity needed to be  
4 established. The Commission was established under the statute. The  
5 assets were transferred in the early 90s. We began operation in the  
6 summer of '93. The idea at the time was the public entities,  
7 municipalities within Lexington County that had an interest in the  
8 unincorporated areas of Lexington County and a water and sewer  
9 service interest, could apply for membership, appoint a representative  
10 where you could have a collective board where those decisions could  
11 be made so that everyone's interests are protected. And so that's the  
12 charge. We've since evolved a little bit where we are actually a  
13 wholesale provider of water to several of our members and we actually  
14 contract operate for a couple of our members.

15  
16 Courtney Laster: Okay. How many commissioners do you have on your commission?

17  
18 Jay Nicholson: Eleven. That's statutorily limited.

19  
20 Courtney Laster: And those are all from different municipalities and governmental  
21 entities?

22  
23 Jay Nicholson: The – all our municipalities, with exception of two. One is the County  
24 of Lexington and one is the only special purpose district represented,  
25 which is the Gilbert-Summit Rural Water District.

26  
27 Courtney Laster: Okay. Thank you. Does Mr. Shull currently serve on the Commission?

28  
29 Jay Nicholson: Yes, ma'am.

30  
31 Courtney Laster: And do you know how long he has served on that Commission?

32

1 Jay Nicholson: Since January of '18.  
2  
3 Courtney Laster: How do the Commissioners get to the Commission?  
4  
5 Jay Nicholson: The member body votes by resolution to appoint their member.  
6  
7 Courtney Laster: Okay. So if it was a town, is it safe to say that the town would get  
8 together and vote to appoint whoever they wanted their  
9 representative...  
10  
11 Jay Nicholson: Correct.  
12  
13 Courtney Laster: ...to be? Okay. How often does your commission meet?  
14  
15 Jay Nicholson: Monthly.  
16  
17 Courtney Laster: Monthly.  
18  
19 Jay Nicholson: Typically. We don't always meet monthly but for the most part, we do.  
20  
21 Courtney Laster: Okay. And how do commissioners attend meetings, meaning virtually  
22 or physically or a combination, perhaps?  
23  
24 Jay Nicholson: Physically, exce-, with exception of the COVID period. Those were  
25 emergency protocols. But yeah. In person at our main office.  
26  
27 Courtney Laster: And where is your office located?  
28  
29 Jay Nicholson: 2546 Two Notch Road in Lexington.  
30  
31 Courtney Laster: Okay. Thank you. In terms of money, what do the commissioners  
32 receive?

1  
2 Jay Nicholson: The commissioners receive a per diem as prescribed by the Ethics  
3 Commission, \$250 per month for all commissioners with exception of  
4 the vice chair and the chair. The vice chair gets \$350, the chair gets  
5 \$400. And that's because they tend – those positions, those leadership  
6 positions, excuse me, tend to be more of a command performance and  
7 they do more travel during the month for s-, different events to  
8 represent the Commission.  
9  
10 Courtney Laster: Thank you. If a commi-, well, let me back up. So when you say they're  
11 paid monthly, is that a check they're receiving monthly...  
12  
13 Jay Nicholson: It is...  
14  
15 Courtney Laster: ...from...  
16  
17 Jay Nicholson: ...a check.  
18  
19 Courtney Laster: ...the Commission?  
20  
21 Jay Nicholson: Mm-hm.  
22  
23 Courtney Laster: Okay. Is there a certain date that the check is issued every month?  
24  
25 Jay Nicholson: I thi-, in my brain, it's just the first check [inaudible 36:22] because it's  
26 – the second Wednesday of the month is our designated meeting  
27 time...  
28  
29 Courtney Laster: Okay.  
30  
31 Jay Nicholson: ...so whenever that is.  
32

1 Courtney Laster: Thank you.  
2  
3 Jay Nicholson: It's handed out at the meeting.  
4  
5 Courtney Laster: And are there tax forms that the Commission issues at the end of each  
6 year to the commissioners?  
7  
8 Jay Nicholson: The ta-, well, there's a 1099 because it is – because that's IRS required.  
9  
10 Courtney Laster: Sure.  
11  
12 Jay Nicholson: Correct.  
13  
14 Courtney Laster: Okay. With the Panel's permission, I'd like to show Mr. Nicholson  
15 what has been pre-marked as Commission Exhibit 1. Opposing  
16 counsel has stated no objection to these. These are the 1099s we're  
17 referencing.  
18  
19 Scott Frick: Without objection.  
20  
21 James Davis: No objection.  
22  
23 Jay Nicholson: You're not gonna make me do math, are ya?  
24  
25 Courtney Laster: No. Certainly not. Mr. Nicholson, can you look through those  
26 documents and just give me a general description of what they appear  
27 to be or what they are?  
28  
29 Jay Nicholson: This is the cumulative annual non-employee compensation marker for  
30 1099 Miscellaneous Income.  
31  
32 Courtney Laster: And who are those 1099s issued to?

1  
2 Jay Nicholson: Commissioners.  
3  
4 Courtney Laster: Those specific ones.  
5  
6 Jay Nicholson: These specific – oh, this stack here is to Lancer Shull.  
7  
8 Courtney Laster: Okay. Can you tell the Panel, based on those forms, how much Mr.  
9 Shull received each year?  
10  
11 Jay Nicholson: \$3,000...  
12  
13 Courtney Laster: Okay.  
14  
15 Jay Nicholson: ...with exception – yeah. Well, yes. For these, \$3,000.  
16  
17 Courtney Laster: Okay. And that's 2018 through 2023.  
18  
19 Jay Nicholson: Correct.  
20  
21 Courtney Laster: I don't have any additional questions for Mr. Nicholson.  
22  
23 Scott Frick: Any questions?  
24  
25 James Davis: Yes, Mr. Chairman. One of the commissioners on Zoom asked the  
26 question about what areas do the commissioners come from. If you  
27 would explain that – we have the number of board members and they  
28 come specific towns in their location as – in reference to where the  
29 headquarters is in Lexington...  
30  
31 Jay Nicholson: Okay.  
32

1 James Davis: ...if I'm stating that properly.  
2  
3 Jay Nicholson: Yes. So most of this, it would be if you – just to help explain this, if  
4 you understand the geography of Lexington County, the bulk of the  
5 land part of Lexington County is south of Lake Murray. You do have a  
6 municipality that's north. You have Irmo that sort of bridges Lexington  
7 and Richland and some on the north side of Lake Murray. We're  
8 dealin' primarily with public entities south of Lake Murray, what I  
9 would call the bulk of the land part a the county. Almost – most a the  
10 larger municipalities are members. There are a few minor exceptions.  
11 But the – our members are currently – and again, statutorily limited at  
12 11 but they are the Town of Pelion, the Town of Swansea, the County  
13 of Lexington, the City of Cayce, the City of West Columbia, the Town  
14 of Lexington, the Town a Springdale, the Town of South Congaree,  
15 the Gilbert-Summit Rural Water District, the Town a Gaston and of  
16 course the Town of Batesburg-Leesville. So it's a broad swath that  
17 represents the entire southern region of Lexington County south of  
18 Lake Murray.  
19  
20 James Davis: What would be the distance, say, from Batesburg-Leesville, where the  
21 mayor comes from, to the headquarters? What's that distance?  
22  
23 Jay Nicholson: Greater than 10 miles. I couldn't – I know that the...  
24  
25 James Davis: Just...  
26  
27 Jay Nicholson: Roughly...  
28  
29 James Davis: ...roughly.  
30  
31 Jay Nicholson: ...10 to 12 miles.  
32

1 James Davis: How 'bout the commissioner from the Swansea area?  
2  
3 Jay Nicholson: Oh, 15 to 20 miles.  
4  
5 James Davis: How 'bout West Columbia and Cayce?  
6  
7 Jay Nicholson: Probably another 10 to 15 miles.  
8  
9 James Davis: This is an active board as to participation?  
10  
11 Jay Nicholson: Very active.  
12  
13 James Davis: The – and the purpose, the main purpose of the Commission is what?  
14  
15 Jay Nicholson: Is to serve safe drinkin' water and clean, sanitary sewer services to the  
16 d-, to the citizens of Lexington County.  
17  
18 James Davis: Is there a constant flow of matters that come up involvin' that  
19 particular purpose?  
20  
21 Jay Nicholson: Yes.  
22  
23 James Davis: Okay. And the board participates – besides board meetings,  
24 participates in those resolution in those matters?  
25  
26 Jay Nicholson: Yes.  
27  
28 James Davis: And you consider it an active board?  
29  
30 Jay Nicholson: Yes.  
31

1 James Davis: Okay. Is it correct – we have – our statute is a state statute passed by  
2 the legislature and there is a specific provision in that statute dealing  
3 with having per diem payments paid to the commissioners?  
4

5 Jay Nicholson: That is my...

6

7 James Davis: It is in the statute that we have.  
8

9 Jay Nicholson: That is my understanding. Yes, sir.  
10

11 James Davis: Okay. And that per diem is paid to the commissioners ex-, it's \$250  
12 except for the board chairman and vice chairman, you said?  
13

14 Jay Nicholson: Yes, sir.  
15

16 James Davis: Okay. And one a the commissioners asked wh-, asked the question  
17 about as to the higher figure. I think you answered it. Was – they have  
18 a more...  
19

20 Jay Nicholson: Th-...

21

22 James Davis: ...probably because of that increased role, more activity and that's why  
23 that's authorized there.  
24

25 Jay Nicholson: That is correct. They...  
26

27 James Davis: Okay.  
28

29 Jay Nicholson: ...are also signatories at – on the bank and so there are some other  
30 activities that do involve those official positions. We have since tried  
31 to adjust some policies to relieve that but it's – I would – it is

1 absolutely the truth that the vice chair and the chair are by designation  
2 more active than the rest a the board.  
3  
4 James Davis: Okay. Let me ask you this question. In regards to – I use the word a  
5 class of commissioners. Is it a correct statement in this case that there  
6 is a class of commissioners that receive the same figure of \$250 a  
7 month and that's all the commissioners for the board except the board  
8 chairman and the vice chairman?  
9  
10 Jay Nicholson: That's correct.  
11  
12 James Davis: Okay. And durin' the time that Mr. Shull, the mayor, has received his  
13 check, that – what I just said is a true statement?  
14  
15 Jay Nicholson: That is correct.  
16  
17 James Davis: Okay. You testified to the fact that the board members by statute come  
18 from the cities that you named and the county.  
19  
20 Jay Nicholson: The member entity. That's correct.  
21  
22 James Davis: That's the only place the commissioners can come from. The statute  
23 may say public works or whatever but the appointment for those  
24 commissioners would be from those cities and the county. Is that  
25 correct?  
26  
27 Jay Nicholson: That is correct.  
28  
29 James Davis: All right.  
30  
31 Jay Nicholson: That could be a l-, that elected body can appoint whomever they want  
32 to represent them on the Commission.

1  
2 James Davis: So the individual members of the Commission solely resolve the issue  
3 of who gets appointed to the Water and Sewer Commission.  
4  
5 Jay Nicholson: That is correct.  
6  
7 James Davis: If there was a dissolution of that Water and Sewer Commission where  
8 it was closed down for some reason, the vote would have to be by the  
9 commissioners and by the town and the county involved.  
10  
11 Jay Nicholson: That is correct.  
12  
13 James Davis: So if there's any relationship here between the towns, the County and  
14 the Commission.  
15  
16 Jay Nicholson: That is correct. [Inaudible 43:52].  
17  
18 James Davis: [Okay 43:52]. And that's by statute.  
19  
20 Jay Nicholson: That is correct.  
21  
22 James Davis: Is it a fair statement that the Commission hired a law firm in  
23 Columbia, Nexsen Pruet, what are called Nexsen Pruet law firm or an  
24 accou-, an attorney there named – I believe the last name is  
25 Brittingham – that had a – the Commission got an IRS ruling, which is  
26 a qualified per diem ruling, which says that the expenses that you have  
27 would be excluded from any income because of what was obtained  
28 from the IRS. Is that a true statement?  
29  
30 Jay Nicholson: That is...  
31  
32 Courtney Laster: Objection...

1  
2 Jay Nicholson: ...true.  
3  
4 Courtney Laster: ...as to relevance and also hearsay.  
5  
6 Scott Frick: I'll overrule the objection.  
7  
8 James Davis: Just one second, Mr. Chairman. Do you have knowledge of the  
9 attendance record of Mr. Shull at board meetings?  
10  
11 Jay Nicholson: I do.  
12  
13 James Davis: And what is that?  
14  
15 Jay Nicholson: Since de-, for all the called meetings since his appointment in January  
16 of 2018, Mr. Shull has perfect attendance with the exception of two  
17 meetings.  
18  
19 James Davis: And do you know the reason for those two non-attended...  
20  
21 Jay Nicholson: Those were family-related...  
22  
23 James Davis: Health issues.  
24  
25 Jay Nicholson: ...health issues and fatherly duties, the things that rank higher than all  
26 the things that we try to do.  
27  
28 James Davis: That's all I have, Mr. Chairman.  
29  
30 Scott Frick: Any redirect, Ms. Laster?  
31

1 Courtney Laster: Yes, sir. Just briefly. Mr. Nicholson, I just wanted to clarify. Your  
2 commissioners receive the \$250 or whatever tier of per diem they are  
3 entitled to, regardless of whether they attend a meeting.  
4

5 Jay Nicholson: Yes. That is a correct statement. I would – it's a little more  
6 complicated than that but I will answer that yes, affirmative.  
7

8 Courtney Laster: Okay. During COVID when the meetings were held electronically,  
9 they still received the payments. Correct?  
10

11 Jay Nicholson: That is correct.  
12

13 Courtney Laster: Okay. And during those meetings you just referenced where Mr. Shull  
14 was not present due to some other obligations, he was still paid for  
15 those meetings.  
16

17 Jay Nicholson: That's correct.  
18

19 Courtney Laster: And you stated you're familiar with the Respondent's attendance  
20 records. You're also – are you also familiar with the Commission's  
21 record of just whether or not they held or did not hold a meeting?  
22

23 Jay Nicholson: Yes.  
24

25 Courtney Laster: And is it accurate to say that, again, not every month a meeting is  
26 held?  
27

28 Jay Nicholson: That's correct.  
29

30 Courtney Laster: Okay. Thank you, Mr. Nicholson. I don't have any additional  
31 questions, Commissioner Frick.  
32

1 Scott Frick: Okay. Thank you, Miss Laster. I think I have a few. Mr. Nicholson,  
2 the documents we see in Exhibit 1, it looks like all of them that I've  
3 scrolled through here look like they are in the amount of \$3,000. Is  
4 that correct?  
5  
6 Jay Nicholson: That's correct.  
7  
8 Scott Frick: Okay. And that would seem to be a straightforward application of the  
9 \$250 per monthly meeting times 12 months. Is...  
10  
11 Jay Nicholson: That...  
12  
13 Scott Frick: ...that right?  
14  
15 Jay Nicholson: That is correct.  
16  
17 Scott Frick: You were just asked by Miss Laster about payments being made even  
18 if there was no meeting.  
19  
20 Jay Nicholson: Mm-hm.  
21  
22 Scott Frick: Can you explain why payments are made if a commissioner does not  
23 attend the meeting?  
24  
25 Jay Nicholson: The per diem, as we were advised by an investigator at Ethics in  
26 2008...  
27  
28 Scott Frick: Objection as to hearsay.  
29  
30 Jay Nicholson: ...I believe...  
31

1 Scott Frick: Can you give that answer without reporting on what someone else  
2 said?  
3

4 Jay Nicholson: The per diem is not just a one-day payment, in my mind. This is a  
5 general manager discretion. This is not somethin' the board has voted  
6 on. This is not a written policy. This is somethin' that applies to IRS  
7 tax law. And I am trying to follow those laws. And there is time and  
8 effort and travel that – throughout the month that is not associated with  
9 the monthly designated meeting on the second Wednesday of each  
10 month that the commissioners give their time and travel and expense  
11 for. And so in my mind, this is a monthly, comprehensive per diem  
12 because it's an unaccountable plan. We're not taking it as a  
13 reimbursement. We're taking it as this is an unaccountable plan as  
14 prescribed by the IRS and how they handle that is just a blanket.  
15 Sometimes it covers it. Sometimes it doesn't. That's not something that  
16 we get into as a commission. That's up to the commissioners to handle  
17 their – with their tax burden.  
18

19 Scott Frick: Can you give an example of the type a travel that would be required  
20 other than the meeting?  
21

22 Jay Nicholson: Well, if you're workin' on a specific tr-, project that you need a  
23 commissioner to be involved in or if their entity is involved in, it – that  
24 would be the type of travel that would be involved. If you're going to a  
25 meeting venue, goin' to a – wherever that wou-, a consulting firm, an  
26 attorney's office, that type a travel.  
27

28 Scott Frick: Do you know if Mr. Shull attended any meeting like that, made any  
29 travel in those months when he did not attend the monthly meeting?  
30 Do you have that kind of information in front of you?  
31

32 Jay Nicholson: Those two meetings?

1  
2 Scott Frick: Right.  
3  
4 Jay Nicholson: Yes.  
5  
6 Scott Frick: Okay.  
7  
8 Jay Nicholson: I don't have it in front of me but I'm certain there were. I don't know –  
9 well, you know what? That's not fair. I don't know what – those dates  
10 off the top of my head. I know what the record is, so if you told me the  
11 dates, I could tell you probably based on projects that we've got goin'  
12 on the extent of what his travel was.  
13  
14 Scott Frick: Okay. If I understand you correctly, you're not able to tell me the  
15 specific months he missed, sitting here right now.  
16  
17 Jay Nicholson: Not right now. I didn't write that down. I just know he missed two.  
18  
19 Scott Frick: I don't have any further questions. Do any of the...  
20  
21 Brandolyn Pinkston: I have...  
22  
23 Scott Frick: ...commissioners...  
24  
25 Brandolyn Pinkston: ...one.  
26  
27 Scott Frick: Please go ahead, Commissioner Pinkston.  
28  
29 Brandolyn Pinkston: Yes. I'm a little confused. I'm sorry. The person that's testifying, please  
30 state your name. I'd like to call you by name. Would...  
31  
32 Jay Nicholson: Jay Nicholson.

1  
2 Brandolyn Pinkston: Mr. Nicholson, are you familiar with the General Services  
3 Administration for the State a South Carolina?  
4  
5 Jay Nicholson: Vaguely. I can't say I'm an expert by any stretch.  
6  
7 Brandolyn Pinkston: Okay. And to follow up on a question asked by Attorney Laster, your  
8 commissioners were p-, received reimbursement during COVID, when  
9 they were attending virtually. Is that correct?  
10  
11 Jay Nicholson: That's correct.  
12  
13 Brandolyn Pinkston: And they were not – well and do you have a record of any lodging for  
14 any of the commissioners? Because per diem is based on lodging,  
15 meals and travel, so I'm having a little trouble understanding why  
16 people were given payment on a monthly basis when they were  
17 meeting virtually. Can you explain that, please?  
18  
19 Jay Nicholson: Because in my mind, this is not a – just the one [meeting 52:12].  
20  
21 Brandolyn Pinkston: No. I don't wanna know your mind. I wanna know what did you –  
22 what was that based on?  
23  
24 Jay Nicholson: Well, because as the general manager discretion, it is my mind that this  
25 is more than just a one-meeting per diem. This is a monthly [inaudible  
26 52:27].  
27  
28 Brandolyn Pinkston: So it wasn't based on a statute or any – this is something that you did.  
29  
30 Jay Nicholson: No. We're – I'm tryin' to follow the statute but it's a nonaccountable  
31 plan, so we're not asking for receipts for lodging or travel. We are  
32 providing a per diem to cover expenses.

1  
2 Brandolyn Pinkston: Okay. Expenses virtually? What virtual expense was there?  
3  
4 Jay Nicholson: I can't speak to what each commissioner's virtual expense was.  
5  
6 Brandolyn Pinkston: But they still received the \$250.  
7  
8 Jay Nicholson: That's correct.  
9  
10 Brandolyn Pinkston: And so there was no form that listed the breakout of – when [inaudible  
11 53:11] there was a form and you listed where you stayed with receipts,  
12 your travel was set by the General Services Administration and your  
13 per diem for meals. So do you have an accounting of those, a record or  
14 documentation or you just pay the \$250, \$150?  
15  
16 Jay Nicholson: You're talk – yes. What you're referrin' to is an accountable plan. Thi-,  
17 the Commission oper-, is issuing these per diems on an unaccountable  
18 plan, which is provided...  
19  
20 Brandolyn Pinkston: Please explain an unaccountable – I believe in accountability, so I'm  
21 not familiar with unaccountable.  
22  
23 Jay Nicholson: That – I'm not an IRS expert. I know that tho-, that is available through  
24 the IRS as a designation and that's the way we handle this.  
25  
26 Brandolyn Pinkston: And so that designation, under your testimony, in your testimony, that  
27 in an unaccountable plan, funds can be allocated whether you attend  
28 virtually or in-person.  
29  
30 Jay Nicholson: Well, the virtual meetings were only an emergency protocol but yes.  
31 The – on – in an unaccountable plan, we have issued the monthly per  
32 diem of \$250 for that class of commissioner.

1  
2 Brandolyn Pinkston: I'm just surprised that the IRS has a provision in that manner and I'll  
3 check on that. But Mr. Chair, those are my questions for right now  
4 'cause I'm a little confused as to what's happening with the per diem.  
5  
6 Scott Frick: Thank you, Commissioner Pinkston. Commissioner Holloway, do you  
7 have any questions?  
8  
9 A.J. Holloway: Yes. I know we've talked a little bit here about the lack of meeting in  
10 person during – for example, during COVID. Do you have with you  
11 the information today of when you stopped meeting in person? Say it  
12 was March 2020 until – and didn't go back to meeting in person until  
13 March of 2021 or anything like that?  
14  
15 Jay Nicholson: I did – if I'd have known this was gonna be about COVID per diem, I  
16 would've been more prepared. I do not have that in front of me. I'm  
17 sorry.  
18  
19 A.J. Holloway: And I'm not sayin' this is about just COVID per diem. I just thought  
20 that would be an easy example...  
21  
22 Jay Nicholson: Yeah.  
23  
24 A.J. Holloway: ...when you have the tax statement from 2020...  
25  
26 Jay Nicholson: I...  
27  
28 A.J. Holloway: ...of receiving \$3,000 and – what was that?  
29  
30 Jay Nicholson: I'm sorry. I didn't mean to r-, I – it wasn't every meeting but it was the  
31 bulk a the meetings in 2020 and I wanna say that – anything I tell you,

1 I can't confirm but it was not – I don't think it lasted the entire year but  
2 I cannot say for certain exactly how many of those were.

3  
4 A.J. Holloway: Okay. And I assume – or is there any – whenever you're talkin' about  
5 the amount of travel that is goin' on for commissioners outside of just  
6 goin' to the meetings – and I understand from Miss – or Commissioner  
7 Pinkston's questions that there's not something that's given to you guys  
8 where you're accounting the amount a miles traveled and stuff like  
9 that. But is there any type of record showing where commissioners are  
10 asked to go do certain things for these projects? Is there some type of a  
11 log that includes anything like that, information like that?

12  
13 Jay Nicholson: We – no, sir. We don't track any of that. The point of the  
14 nonaccountable plan would be to shift that burden to the  
15 commissioners but to make sure those costs are covered. And how  
16 they handle that with their tax person is their business.

17  
18 A.J. Holloway: Okay. And I just meant more so along the lines of meeting minutes as  
19 you would expect from other boards that meet and say, "Okay, I  
20 went..."

21  
22 Jay Nicholson: Oh.

23  
24 A.J. Holloway: "I'm goin' to go meet with this person about X, Y, Z."

25  
26 Jay Nicholson: No. We wouldn't – I don't have records of those. I do – I see what you  
27 mean, though. We would have records if there was – if it was an  
28 official called meeting or a work session or if you had the  
29 commensurate number of commissioners there that required the  
30 majority type a thing. Anything that would ha-, that would need to be  
31 publicly posted, we would certainly have records of and have minutes  
32 of. But if it's not an official meeting, I wouldn't have that. Maybe some

1 follow-up correspondence on what the results a those meetings. And if  
2 it's specific to a project, we would have project notes and we would  
3 have the people that were in attendance but not as a function of  
4 tracking the per diem.

5  
6 A.J. Holloway: Yeah. I – and again, I wasn't thinking it would be a function of  
7 tracking per diem. I just wondered if there's some other way to get  
8 some circumstantial information about the amount of activities going  
9 on. Thank you for answering my questions.

10  
11 Brandolyn Pinkston: Commissioner Frick, I have one additional question, please.

12  
13 Scott Frick: Please go ahead, Commissioner Pinkston.

14  
15 Brandolyn Pinkston: Mr. Nicholson, can you tell me where I'd find this nonaccountable plan  
16 in an IRS statute or provision?

17  
18 Jay Nicholson: I have to depend on my CPA finance manager for that information. I  
19 myself had to be educated [inaudible 58:43].

20  
21 Brandolyn Pinkston: So you took somebody's word for that. You've not seen that in –  
22 yourself.

23  
24 Jay Nicholson: Oh, he showed me. I just couldn't – I can't tell you where it is.

25  
26 Brandolyn Pinkston: Uh-huh. Okay. And I'm just concerned about accountability. So at the  
27 end of every Commission meeting – at the end of every month, a  
28 check is sent, but there's no documentation sent regarding the per diem  
29 spent. Correct? That's automatically paid.

30  
31 Jay Nicholson: Correct.

32

1 Brandolyn Pinkston: So there's no accountability as to what occurred. That \$250 is paid  
2 monthly.  
3

4 Jay Nicholson: The – correct. The accounta-, the idea is the accountability is shifted to  
5 the recipient of the per diem.  
6

7 Brandolyn Pinkston: So – but your office or your CPA has – is – I'm looking for the  
8 accountability. I'm looking for how this is handled because if there – if  
9 it's a blank \$250, that sounds like an economic interest to me. And if  
10 there's no record of spending or how it was spent or where it was  
11 spent, that flies in the face of per diem to me. So do you have any  
12 comments regarding this practice?  
13

14 Jay Nicholson: Yes, ma'am. In the late aughts of 2000, we had a – in 2008, I believe,  
15 we had a legal opinion from an attorney, Mike Brittingham with  
16 Nexsen Pruet, about exactly how to handle the per diem. And I believe  
17 that was following an investigation where we had an Investigator  
18 Choate from the Ethics Commission who came in to look at how we  
19 handled per diem and made some recommendations specifically to  
20 refer to it as a per diem. And then we got an opinion from Mr.  
21 Brittingham on how to handle that from a tax standpoint. And we tried  
22 to approach it in those – in that manner so that we were doin' things  
23 the right way. So we...  
24

25 Brandolyn Pinkston: Okay. And finally, the General – did you ever speak with someone  
26 from the General Services Administration regarding per diem?  
27 Because they set rates for per diem.  
28

29 Jay Nicholson: Not...  
30

31 Brandolyn Pinkston: Or did you ever have an opinion from the Ethics Commission  
32 regarding this? I know you spoke with someone from a law firm.

1  
2 Jay Nicholson: We...  
3  
4 Brandolyn Pinkston: But I wanna know if you spoke with someone from GSA or the Ethics  
5 Commission or asked for an opinion from either of those entities?  
6  
7 Jay Nicholson: We did have an opinion from an investigator from the Ethics  
8 Commission that advised us to refer to the payment as a per diem. And  
9 then we had a legal opinion that advised us on how to handle it from a  
10 tax standpoint. So the effort was made to make sure that we were doin'  
11 things the right way and the way that would not be viewed as  
12 compensation because that is not allowed by law or the statute.  
13  
14 Brandolyn Pinkston: So each commission member received a 1099. Correct?  
15  
16 Jay Nicholson: That's correct.  
17  
18 Brandolyn Pinkston: And as you testified, you left it up to them as to how they handled that.  
19 Correct?  
20  
21 Jay Nicholson: That's correct.  
22  
23 Brandolyn Pinkston: Thank you.  
24  
25 James Davis: Follow-up? Or...  
26  
27 Scott Frick: Okay. I'll allow it. Go ahead, please.  
28  
29 James Davis: Would it be fair to say that the contact the Commission made with the  
30 Ethics Commission was in the year 2008, 2009, with a Mr. Choate...  
31  
32 Jay Nicholson: Yes.

1  
2 James Davis: ...on this issue? So they should have the internal records of that  
3 particular matter as to the per diem plan.  
4  
5 Jay Nicholson: That's correct. That was an investigation from another complaint  
6 about...  
7  
8 James Davis: Okay.  
9  
10 Jay Nicholson: ...the per diem.  
11  
12 James Davis: All right. And the – but last question is this. In regards to the  
13 Commissioner's questions about the per diem, the – that was – that per  
14 diem issue was reviewed with the tax attorney or CPA to get approval  
15 from IRS as to it being a qualified per diem plan that excludes any  
16 income.  
17  
18 Jay Nicholson: That is correct.  
19  
20 James Davis: Thank you. Thank you, Mr. Chairman.  
21  
22 Scott Frick: Miss Laster, any follow-up?  
23  
24 Courtney Laster: Commissioner Frick, I think this might be appropriate. There is a  
25 complaint in the Commission's files, Mr. Davis is correct, from – it's a  
26 complaint from 2008 against the Lexington County Joint Municipal  
27 Water and Sewer Commission. I believe that is what they are referring  
28 to and I would enter that into the record if Mr. Davis believes it's  
29 appropriate.  
30  
31 James Davis: [Inaudible 1:04:03]. Mr. Chairman, may I speak on that matter?  
32

1 Scott Frick: You wanna speak with Miss Laster?  
2  
3 James Davis: No. Just – I can speak publicly...  
4  
5 Scott Frick: Okay.  
6  
7 James Davis: ...in...  
8  
9 Scott Frick: Go...  
10  
11 James Davis: ...response...  
12  
13 Scott Frick: ...ahead.  
14  
15 James Davis: ...to...  
16  
17 Scott Frick: Go ahead.  
18  
19 James Davis: That particular matter deals with – oh, yeah. That particular matter  
20 deals with a matter that was dismissed against the Commission,  
21 dealing with authorization of payments and that was the matter dis-, as  
22 I read that order, there was a dismissal where whatever was brought  
23 against the Commission was dismissed by the Commission, where  
24 there was no violation.  
25  
26 Scott Frick: Is that the matter that you've been referring to?  
27  
28 James Davis: No, sir.  
29  
30 Scott Frick: You're – okay. So...  
31  
32 James Davis: No, sir.

1  
2 Scott Frick: ...your questions have been premised on something that you...  
3  
4 James Davis: That's...  
5  
6 Scott Frick: ...say...  
7  
8 James Davis: ...something...  
9  
10 Scott Frick: ...is a...  
11  
12 James Davis: ...else.  
13  
14 Scott Frick: ...different...  
15  
16 James Davis: Yeah.  
17  
18 Scott Frick: ...a different matter.  
19  
20 James Davis: Yes. Yes, Your Honor. I mean yes, Mr. Chairman. Yes. A different – it  
21 is not that order that I've been talkin' about as to the contact between  
22 the Joint Water and Sewer Commission at this commission. That  
23 [there 1:05:22] was a Mr. Choate, who was employed here in 2008 or  
24 '09, dealing with per diem.  
25  
26 Scott Frick: Do you have any response to that, Miss Laster?  
27  
28 Courtney Laster: Other than to say that Mr. Choate was the assigned investigator of  
29 record in this case, which is why I think it is what they have been  
30 referring to. But if it's not, then that's fine.  
31

1 Scott Frick: Okay. This is what I would suggest. I think we should take a break and  
2 allow the two of you to confer.  
3  
4 James Davis: Okay.  
5  
6 Scott Frick: If you can't come to any sort of agreement, then I will take a look at...  
7  
8 James Davis: Okay.  
9  
10 Scott Frick: ...the complaint and we'll figure out where to go from there. But why  
11 don't we take a break so that [you all 1:06:01] can...  
12  
13 James Davis: Okay.  
14  
15 Scott Frick: ...confer.  
16  
17 James Davis: Okay.  
18  
19 Courtney Laster: Thank you.  
20  
21 Scott Frick: All right.  
22  
23 James Davis: Mm-hm.  
24  
25 Scott Frick: Thank you.  
26  
27 Male: Do you ha-, Mr. Chairman, can I s-...  
28  
29 Scott Frick: Commissioner Holloway, do we have you here?  
30  
31 Brandolyn Pinkston: Can you hear me?  
32

1 Scott Frick: Yes, ma'am. We can hear you, Commissioner Pinkston. I wanted to  
2 see if Commissioner Holloway is back.  
3

4 Female: He should be joining shortly.  
5

6 Scott Frick: Okay. All right. I believe we're ready to start again. Have the parties  
7 been able to come to an agreement?  
8

9 Courtney Laster: Chairman Frick, Mr. Davis and I have discussed this complaint – the  
10 decision and order resulting from a previous complaint against the  
11 Commission and we both agree that it can be admitted into the record.  
12 I think where we disagree are about perhaps conversations that were –  
13 that accompanied the investigation in this complaint, to which I would  
14 object because these people are not here with us today. But the  
15 decision and order itself does reference a compensation payment to the  
16 Commissioners. However, that was not a dispositive issue in the case.  
17

18 Scott Frick: Okay. All right. I-, without any objections, I would be inclined to  
19 admit that into evidence.  
20

21 James Davis: And Mr. Chairman, just one comment. I have no objection to the  
22 introduction of that order. There were – in reference to the – any  
23 disagreement about the discussions and her objection as to those  
24 discussions comin' to the record, I would present to you, Mr.  
25 Chairman, that should not be a problem because those were the  
26 internal records this Commission would have and not some outside  
27 third party's records. Your own records would reflect what was  
28 discussed at that time and what – that would – should be somethin' that  
29 should be allowable as evidence in the case because it involves  
30 internal communications by your Commission.  
31

1 Scott Frick: Miss Laster, can you give me a sense of what these com-, what types  
2 of communications we're talking about here?  
3  
4 Courtney Laster: No, sir. I cannot. As I said, this complaint is from 2008 and so the only  
5 public documents that w-, are left from this complaint would be the  
6 complaint, the notice of hearing and the disposition.  
7  
8 Scott Frick: Okay.  
9  
10 Courtney Laster: Because it's more than 5 years old, I don't believe the Commission  
11 retains any of those things.  
12  
13 Scott Frick: Okay. But as to those specific documents, there's no objectionable  
14 language in those particular documents?  
15  
16 Courtney Laster: In this decision and order?  
17  
18 Scott Frick: In the decision and order.  
19  
20 Courtney Laster: Not to me. No, sir.  
21  
22 Scott Frick: Okay. You're just saying that anything broader than the decision and  
23 order, you would...  
24  
25 Courtney Laster: Yes...  
26  
27 Scott Frick: ...object...  
28  
29 Courtney Laster: ...sir.  
30  
31 Scott Frick: ...to. But I don't hear you, Mr. Davis, saying you want to ob-, enter  
32 into evidence anything else. Is there – do we need to decide that?

1  
2 James Davis: Your Honor, I'm s-, not – what I'm saying is the – her objections for  
3 the other matters that were discussed I think can be made part of the  
4 record because there would be internal records of the Commission.  
5 Now if you don't have'm, then we can provide if the Court – I mean if  
6 the Commission will allow me to pro-, to give those to the  
7 Commission and to her, we'll do so, since they now say they don't have  
8 those records goin' back more than five years [inaudible 1:09:52].  
9  
10 Scott Frick: Okay. I don't think that I can make any determinations as to whether to  
11 admit...  
12  
13 James Davis: Okay.  
14  
15 Scott Frick: ...a document that is not in front of the Commission right now. So I  
16 would suggest that if you want to introduce anything else into  
17 evidence, I think that would need to be done by some sort of briefing  
18 after we are finished here...  
19  
20 James Davis: Okay.  
21  
22 Scott Frick: ...today.  
23  
24 James Davis: Okay.  
25  
26 Scott Frick: I'm not inclined to try to make any ruling on a document that I can't  
27 see.  
28  
29 James Davis: Okay.  
30

1 Scott Frick: So I would – without anything in front of me, I would not allow  
2 anything else into the record. But as to the agreed-upon complaint, I  
3 would go ahead and enter that into evidence.  
4  
5 Courtney Laster: Okay.  
6  
7 James Davis: All right. [Inaudible 1:10:40].  
8  
9 Jay Nicholson: Mr. Chairman, can I make one comment to that?  
10  
11 Scott Frick: Well, there's no pending question right now. Okay. Now that – what  
12 exhibit number is that?  
13  
14 Courtney Laster: That would be C5.  
15  
16 Scott Frick: Okay. That is admitted. Is there a copy of that that can be provided to  
17 the commissioners now that that's in the record?  
18  
19 Courtney Laster: Yes, sir.  
20  
21 Scott Frick: Is that something we could do now or...  
22  
23 Courtney Laster: Yes, sir.  
24  
25 Scott Frick: Okay. I'm sorry but I think we just need to wait until we have the  
26 documents circulated before proceeding. Commissioners Pinkston and  
27 Holloway, we are in the process of emailing this document to you.  
28  
29 Brandolyn Pinkston: Thank you.  
30  
31 Scott Frick: Have the commissioners received the document?  
32

1 A.J. Holloway: Received it. Thank you.  
2  
3 Brandolyn Pinkston: Mm, yes. Thank you.  
4  
5 Scott Frick: All right. Thank you. Okay. I think we can move ahead with that. That  
6 document has now been admitted as C5 and I think it is fair at this  
7 point to allow the parties to ask the witness any questions that may  
8 arise out of this document.  
9  
10 James Davis: [Inaudible 1:14:57]. Mr...  
11  
12 Scott Frick: Go ahead.  
13  
14 James Davis: ...Chairman.  
15  
16 Scott Frick: Go ahead.  
17  
18 James Davis: Mr. Nicholson, let me show you this. You said the evidence number is  
19 C5?  
20  
21 Scott Frick: C5. That's correct.  
22  
23 James Davis: Give you a chance to look at that.  
24  
25 Scott Frick: Hold on one second. Miss Laster, you're the one that introduced this  
26 document, right? Is – wasn't this your...  
27  
28 Courtney Laster: I think we just both agreed that it would be admitted given...  
29  
30 Scott Frick: Okay.  
31

1 Courtney Laster: ...the questioning that has arisen about 2008 communication with the  
2 Commission.  
3  
4 Scott Frick: Yeah. If it's your exhibit, I would think you would be entitled to ask  
5 the questions first but if you're happy with Mr. Davis [inaudible  
6 1:15:31].  
7  
8 Courtney Laster: Yeah. I am.  
9  
10 Scott Frick: Okay. Please proceed, Mr. Davis.  
11  
12 James Davis: You had a chance to review it or you're still lookin' at it?  
13  
14 Jay Nicholson: I'm still looking at it.  
15  
16 James Davis: Okay.  
17  
18 Jay Nicholson: I'm a slow reader. I'm sorry. Yes.  
19  
20 James Davis: All right. You've read that. Do you have any comments in regards to  
21 that document as to the discussions that were held with the Co-, Ethics  
22 Commission back in 2008 or 2009?  
23  
24 Courtney Laster: Objection as to hearsay.  
25  
26 Scott Frick: That's sustained. If you can answer the question without repeating a –  
27 what someone said to you, you may.  
28  
29 Jay Nicholson: I'm familiar in the context – I was not general manager at this time. I  
30 was operations manager. I'm familiar with the fact that it occurred.  
31 And then in my capacity as a general manager and CEO, I reviewed  
32 the record. And during the investigation, I sent Investigator Hinson all

1 documentation that we have, including this – that was relative to the  
2 per diem discussion, including the attorney's opinion in the previous  
3 Ethics ruling or dismissal and the advice of Investigator Choate. So I  
4 gave all that information to Mr. Hinson at that time.  
5  
6 James Davis: That's the only question I have.  
7  
8 Scott Frick: Miss Laster?  
9  
10 Courtney Laster: I don't have any questions.  
11  
12 Scott Frick: Do any of the other commissioners have any questions?  
13  
14 Brandolyn Pinkston: I have one question and I wanna thank Mr. Nicholson for making  
15 reference to an accountable – nonaccountable plan because I think  
16 with the accountable plan, receipts are required. But with the  
17 nonaccountable plan – and now I understand why a 1099 is issued  
18 because that – those funds are taxable. So that becomes income and  
19 that becomes an economic interest.  
20  
21 Scott Frick: Do you have any further questions, Commissioner Pinkston?  
22  
23 Brandolyn Pinkston: No. That – I wanted to – him to – Mr. Nicholson to just clarify what I  
24 stated, is that – if that's the correct assessment of what I stated.  
25  
26 Jay Nicholson: I'm not qualified as a tax specialist on that. My understanding would  
27 be that expenses can be deducted and anything not deducted may  
28 become taxable. But that's for a tax specialist to answer how that 1099  
29 is handled. That's my general understanding.  
30  
31 Brandolyn Pinkston: But you do issue a 1099. Correct?  
32

1 Jay Nicholson: Correct.  
2  
3 Brandolyn Pinkston: And you stated that it's up to the commissioners to deal with that tax  
4 issue, whether they report it or pay taxes on that or they submit that on  
5 their IRS 1040 or whatever they're submitting.  
6  
7 Jay Nicholson: [Inaudible 1:18:50].  
8  
9 Brandolyn Pinkston: Correct?  
10  
11 Jay Nicholson: That is correct.  
12  
13 Brandolyn Pinkston: Yeah. Mm-hm. So would think, say that that becomes income if it's a  
14 nonaccountable?  
15  
16 Jay Nicholson: I..  
17  
18 James Davis: Objection as to the question in regards to the – you've got – you're  
19 dealing with a – you need a tax attorney or CPA...  
20  
21 Jay Nicholson: I..  
22  
23 James Davis: ...to answer that question...  
24  
25 Jay Nicholson: Yeah. I..  
26  
27 James Davis: ...clearly.  
28  
29 Jay Nicholson: ...can only – yeah. I can only...  
30  
31 Brandolyn Pinkston: Well, I'm a layperson and I understand it, so – but you move right on.  
32

1 Scott Frick: Okay. Commissioner Holloway, any questions?  
2  
3 A.J. Holloway: No, sir.  
4  
5 Scott Frick: Let me ask this follow-up, Mr. Nicholson. The amounts in Exhibit 1,  
6 that are including in Exhibit 1, those are required to be reported on a  
7 statement of economic interests. Correct?  
8  
9 Jay Nicholson: My understanding, yes, by each commissioner. That's correct.  
10  
11 Scott Frick: Okay. I do not have anything further. Thank you for your testimony,  
12 Mr. Nicholson.  
13  
14 Jay Nicholson: Thank you. [Inaudible 1:20:00].  
15  
16 Scott Frick: You may sit down.  
17  
18 Jay Nicholson: Okay.  
19  
20 Scott Frick: Miss Laster, do you have any additional witnesses?  
21  
22 Courtney Laster: Commissioner Frick, I do not have any additional witnesses in this  
23 matter.  
24  
25 Scott Frick: Thank you. Okay. Mr. Davis, do you have any witnesses?  
26  
27 James Davis: One witness, Mr. Shull.  
28  
29 Scott Frick: Okay, Mr. Shull. Please raise your right hand. Do you swear or affirm  
30 that the testimony you're about to give is the truth and nothing but the  
31 truth, so help you God?  
32

1 Lancer Shull: Yes, sir.  
2  
3 Scott Frick: Okay. Please be seated right there and state your full name for the  
4 record.  
5  
6 Lancer Shull: Good morning. My name is Lancer Dean Shull.  
7  
8 James Davis: And your present address is what?  
9  
10 Lancer Shull: 533 East Columbia Avenue, Batesburg-Leesville, South Carolina,  
11 29070.  
12  
13 James Davis: How long have you lived there?  
14  
15 Lancer Shull: July 2009.  
16  
17 James Davis: Okay. And you – are you presently the mayor of the Town of  
18 Batesburg-Leesville?  
19  
20 Lancer Shull: Yes, sir.  
21  
22 James Davis: And how long have you held that particular position?  
23  
24 Lancer Shull: This would be since December – I was sworn in December 2017.  
25  
26 James Davis: 2017?  
27  
28 Lancer Shull: Yes, sir.  
29  
30 James Davis: All right. And are you presently a member of the Lexington County  
31 Joint Water and Sewer Commission?  
32

1 Lancer Shull: Yes. I am a commissioner.  
2  
3 James Davis: Okay. And how long have you been on that commission?  
4  
5 Lancer Shull: I was – that would be either December or January. It was January 2018  
6 when we took the vote. Yes, sir.  
7  
8 James Davis: Okay. And you've served on that commission since that date?  
9  
10 Lancer Shull: Yeah. There was a brief 7-day period where I was not on there.  
11  
12 James Davis: All right. And your appointment to that commission would've been  
13 appointment by vote from the Town Council of Batesburg-Leesville. Is  
14 that correct?  
15  
16 Lancer Shull: Yes, sir.  
17  
18 James Davis: Okay. You heard the testimony today through Mr. C-, Hinson about  
19 the votes that were taken in January of 2020...  
20  
21 Lancer Shull: Mm-hm.  
22  
23 James Davis: ...and the vote in December of 2023. Is that correct?  
24  
25 Lancer Shull: Mm-hm.  
26  
27 James Davis: Okay. And the...  
28  
29 Lancer Shull: Yes, sir.  
30  
31 James Davis: ...way the vote was taken as to the number of votes and the count was  
32 accurate?

1  
2 Lancer Shull: Yes, sir.  
3  
4 James Davis: Okay. And you do indicate or would be testifyin' that you did vote as  
5 those minutes reflect. Is that correct?  
6  
7 Lancer Shull: Absolutely.  
8  
9 James Davis: Okay. And why did you vote in those particular matters and the issue  
10 before you at that time was reappointment – the issue before you on  
11 that vote was the reappointment by you to the board, the Joint Water  
12 and Sewer Commission Board. Is that correct?  
13  
14 Lancer Shull: That's correct, sir.  
15  
16 James Davis: That's the specific language in the motion that was made, the  
17 reappointment to the Joint Water and Sewer Commission Board,  
18 without usin' the exact words but essence of the motion was  
19 reappointment.  
20  
21 Lancer Shull: That was – I believe that was in the January 21, yes.  
22  
23 James Davis: Okay. And...  
24  
25 Lancer Shull: Twenty...  
26  
27 James Davis: ...2013?  
28  
29 Lancer Shull: 2020.  
30  
31 James Davis: 2013 was reappointment.  
32

1 Lancer Shull: 2020 – January 21, 2020, was a reappointment...  
2  
3 James Davis: Yep.  
4  
5 Lancer Shull: ...motion. But either way, the result is the same.  
6  
7 James Davis: Okay. My point is, the actual matter before the Town Council at the  
8 time was the reappointment to the Commission Board on the vote.  
9  
10 Lancer Shull: Yeah. It would be a reappointment because I was appointed in January  
11 2018.  
12  
13 James Davis: Okay.  
14  
15 Lancer Shull: So anything after that would be a reappointment.  
16  
17 James Davis: Why did you vote on those matters?  
18  
19 Courtney Laster: Objection as to relevance.  
20  
21 Scott Frick: I'll overrule the objection.  
22  
23 Lancer Shull: Okay. When I became mayor of Batesburg-Leesville, the Town of  
24 Batesburg-Leesville was under a DHEC Consent Order to find a new  
25 source of water, so that is my number one objective in being mayor.  
26 And so in taking that on, we looked at – we did a study. We looked at  
27 several different directions to go to find a new source of water for our  
28 town. Being appointed to Joint Municipal first year mayor, I took the  
29 appointment. I had no idea really what the Commission was about or  
30 that it – we would end up being in a contract with the Commission for  
31 water for the Town of Batesburg-Leesville. So I went to serve. After  
32 being on there for some time, after doing a study where we looked at

1 several different methods of removing this DHEC consent order, the  
2 Council voted that we would go with Joint Municipal Water and  
3 Sewer Commission. So that was my number one drive. Now I have –  
4 not everybody votes for this. Mr. Cain, who notarized this first  
5 complaint and filed the second complaint, who also ran against me for  
6 mayor, voted no on almost everything to do with this water project. It's  
7 incredibly important and I would vote it again and again and again to  
8 put myself on there because it's the most important thing to this town,  
9 was to get rid of this DHEC Consent Order. So I had no idea – when  
10 Mr. Cain filed this complaint against me, he sent the same complaint  
11 to SLED that he sent to you guys. SLED pulled me in immediately and  
12 interviewed me and...

13  
14 Courtney Laster: Mr...

15  
16 Lancer Shull: ...then...

17  
18 Courtney Laster: ...Chair...

19  
20 Lancer Shull: ...they...

21  
22 Courtney Laster: ...I...

23  
24 Lancer Shull: ...they...

25  
26 Courtney Laster: ...would object to this line of testimony...

27  
28 Scott Frick: Yeah. I think this is starting to get [inaudible 1:25:38].

29  
30 Courtney Laster: ...as to relevance.

31

1 Scott Frick: I would – we don't need to get into anything else, other than your vote  
2 on this particular matter.  
3

4 Lancer Shull: Well, I – it's – it – the water for Batesburg-Leesville is the most  
5 important thing that I've done in my tenure. Absolutely.  
6

7 James Davis: And that's the reason...  
8

9 Lancer Shull: It has nothin' to do with any – I don't care. I would've done it for free.  
10 I've been serving my community for free in many different capacities.  
11 So...  
12

13 James Davis: Your vote was related to your desire for an issue that's before the  
14 Town of Batesburg-Leesville as to water and sewer. Is that correct?  
15

16 Lancer Shull: Absolutely.  
17

18 James Davis: And each vote you took – what – the main on your – main thing on  
19 your mind was that you thought you would be the best person to serve  
20 in that capacity at that time for the Town as to the problem they had  
21 with DHEC.  
22

23 Lancer Shull: For certain. This is a joi-, this is a regional project done with a rural  
24 water authority and it takes a certain person to make sure that you have  
25 all the votes from the commissioners for all those mayors and people  
26 to go along with a \$32 million project.  
27

28 James Davis: All right.  
29

30 Lancer Shull: So that can get blown up real easy if the wrong person from  
31 Batesburg-Leesville is sitting on that commission.  
32

1 James Davis: Have you ever voted as a public official for anything that was of  
2 economic benefit to you involving property or any services you do  
3 yourself as a profession or any business?  
4

5 Courtney Laster: Objection as to relevance. I think that's for the Panel to decide.  
6

7 Scott Frick: Yeah. That objection is sustained.  
8

9 James Davis: Mr. Chairman, the basic – just my argument on that matter. The basic  
10 issue here is whether there's an economic benefit on that vote. So I'm  
11 askin' him the question. Based on your – on the Commission's statute,  
12 it says economic benefit, economic interest has to deal with property  
13 or services that's been rendered by this party. And the vote was for  
14 reappointment. So I would ask again, is that – are you – is the – are  
15 you sayin' that would be a improper question?  
16

17 Scott Frick: I'm asking you to rephrase that question.  
18

19 James Davis: Okay.  
20

21 Scott Frick: You're really calling for a legal conclusion. That's what we're here to  
22 decide about. So I'd ask for you to rephrase...  
23

24 James Davis: Okay.  
25

26 Scott Frick: ...that question.  
27

28 James Davis: Have you – Mr. Mayor, have you voted on anything, on any property  
29 the public body was obtaining, voted in favor or against anything  
30 involving property that you own?  
31

32 Lancer Shull: No, sir.

1  
2 James Davis: Have you voted for any public body to use your business or yourself in  
3 a capacity for that public body?  
4  
5 Lancer Shull: No, sir.  
6  
7 James Davis: Okay. All right. Have you served on other public bodies? I [inaudible  
8 1:28:37] just a question. Have you served on other public bodies?  
9  
10 Lancer Shull: Well, since moving to Batesburg-Leesville in 2009, I've served on the  
11 Rotary Club. I was president two times. I've served on the – for  
12 Lexington School Board District 3. I've served on the  
13 Accommodations Tax Board for Lexington County. I have served and  
14 I currently serve on the Municipal Association of South Carolina's  
15 Board and have – and am actually sitting in the executive committee at  
16 this time. I'm serving on both of those.  
17  
18 James Davis: [Inaudible 1:29:13].  
19  
20 Lancer Shull: And the Chamber of Commerce, I've served on that board and I deliver  
21 a report to them monthly. I've served on there since 2011 and chaired  
22 those meetings as well. I've served my community thoroughly since  
23 July 2009, moving to the State of South Carolina.  
24  
25 James Davis: All right. Have you accepted a reduced dollar figure as mayor of your  
26 town?  
27  
28 Lancer Shull: There was a period in time where yes, my council members wanted  
29 \$400 and I disagreed with them and so they set – the vote was mine  
30 would be \$200 and they would make \$400.  
31

1 James Davis: Okay. What's been stipulated to is that you have attended all of the  
2 Joint Water and Sewer Commission board meetings except two...  
3  
4 Lancer Shull: Mm-hm.  
5  
6 James Davis: ...since 2018. And the reason for the nonattendance on those two was  
7 what reason?  
8  
9 Lancer Shull: Well, the first one was my son had a concert. He's a clarinetist and so  
10 he had his concert in – when he – his junior year. And the second one  
11 was recently as my sister is...  
12  
13 James Davis: You had a health problem. She had a health problem. All right.  
14 Otherwise, you've been in attendance at the board meetings...  
15  
16 Lancer Shull: Yes, sir.  
17  
18 James Davis: ...and have been – have participated in those board meetings.  
19  
20 Lancer Shull: Yes, sir. Before meetings, after meetings, during meetings. All through  
21 the month. Yes, sir.  
22  
23 James Davis: Presently, how much time are you spending in regard, do you think, on  
24 issues that are before the Commission on a weekly or monthly basis?  
25  
26 Lancer Shull: Probably 3 to 4 hours a week. During the height of negotiations on the  
27 water contract with Joint Municipal, I would spend upwards of 15  
28 hours per week driving to various – either meeting with architects,  
29 meeting with engineers, meeting with Mr. Nicholson, meeting with  
30 other mayors. So there was a lot of time spent, sir.  
31  
32 James Davis: Okay. All right. Did Mr. Hinson interview you on these?

1  
2 Lancer Shull: No. No, sir.  
3  
4 James Davis: Okay. Mr. Chairman, just give me a second here. Thank you. Answer  
5 any questions that Miss Laster may have.  
6  
7 Scott Frick: Miss Laster.  
8  
9 Courtney Laster: Thank you. Mr. Shull, you would agree that you are paid \$250 per  
10 month.  
11  
12 Lancer Shull: Yes, ma'am.  
13  
14 Courtney Laster: Okay. And you would agree that you are paid that regardless of  
15 whether you attend the meeting.  
16  
17 Lancer Shull: Yeah. My understanding is as it was described, that it was a per diem  
18 to tr-, not just for meetings but travels anywhere during the month.  
19  
20 Courtney Laster: Okay.  
21  
22 Lancer Shull: Yeah.  
23  
24 Courtney Laster: And I understood your testimony to be and the stipulations to reflect  
25 that when a meeting has been held by the Commission, you have been  
26 in attendance in all but two of those meetings.  
27  
28 Lancer Shull: Yes, ma'am.  
29  
30 Courtney Laster: But you would also agree – and the stipulations would reflect – that  
31 the Commission does not hold meetings every month.  
32

1 Lancer Shull: Yeah. Not – yeah. For sure. There's been months when – I don't know  
2 which ones but there have been months when we didn't have a meeting  
3 but still business is conducted by commissioners.  
4  
5 Courtney Laster: Okay. So for instance, if I told you that the stipulations agreed to by  
6 myself and your counsel showed that in 2020, the Commission only  
7 met six times?  
8  
9 Lancer Shull: I don't know.  
10  
11 Courtney Laster: Okay.  
12  
13 Lancer Shull: Maybe. In person.  
14  
15 Courtney Laster: Okay.  
16  
17 Lancer Shull: During pandemic?  
18  
19 Courtney Laster: Yes.  
20  
21 Lancer Shull: In person, probably. But we still conducted business.  
22  
23 Courtney Laster: Okay.  
24  
25 Lancer Shull: Yeah.  
26  
27 Courtney Laster: And you don't dispute that you voted in each of these instances.  
28  
29 Lancer Shull: No, ma'am. I had to be on that commission.  
30  
31 Courtney Laster: Okay. Do you consider what you do for the Commission to be a  
32 service?

1  
2 Lancer Shull: Certainly. I would do it for free.  
3  
4 Courtney Laster: Okay. Are you doing it for free?  
5  
6 Lancer Shull: Currently, yes.  
7  
8 Courtney Laster: Okay. But you didn't during 2018 to 2023.  
9  
10 Lancer Shull: Yeah. No. I mean, it was a per diem that I understood that there was no  
11 issue with. And when SLED threw it out, I understood that – I just  
12 assumed that there was no problem.  
13  
14 Courtney Laster: Okay.  
15  
16 Scott Frick: I'm sorry. Could you clarify that answer. I heard a yeah and I heard a  
17 no in there. If you could just please answer that question again.  
18  
19 James Davis. What was the [question 1:33:58]?  
20  
21 Lancer Shull: Yeah. Give me the question again.  
22  
23 Courtney Laster: I asked if you were doing it for free and you said you currently are.  
24 And then...  
25  
26 Lancer Shull: Yes.  
27  
28 Courtney Laster: ...the second question was but you did not do it for free from 2018 to  
29 2023. I was looking for a clarification as to whether you were paid for  
30 those years.  
31  
32 Lancer Shull: Yeah. For – yeah. As far as I know, yes. Yeah.

1  
2 Courtney Laster: Okay. You testified that you spend roughly 15 hours per week. Is that  
3 what you said?  
4  
5 Lancer Shull: Not currently but during the height of the water project, yes, ma'am.  
6 Probably that much.  
7  
8 Courtney Laster: Okay.  
9  
10 Lancer Shull: Maybe a little less, a little more. I do not have an accounting of that.  
11  
12 Courtney Laster: Okay.  
13  
14 Lancer Shull: It wasn't required.  
15  
16 Courtney Laster: And if you spent 0 hours per week, what would your monthly payment  
17 have been?  
18  
19 Lancer Shull: I'm assuming it is – the per diem is the per diem. That's the way that  
20 the – it's at their discretion. I don't – I didn't ask for it. I didn't vote for  
21 it.  
22  
23 Courtney Laster: Okay. Thank you, Mr. Shull.  
24  
25 Lancer Shull: Thank you.  
26  
27 Scott Frick: Any redirect?  
28  
29 James Davis: No, Your Honor. No, Mr. Chairman.  
30  
31 Scott Frick: Mr. Shull, thank you for being here today.  
32

1 Lancer Shull: You're welcome.  
2  
3 Scott Frick: Let me ask you a question I asked Investigator Hinson early on. At the  
4 first meeting, the first vote, I should say. Let me make sure I've got the  
5 date correct here. The January 13, 2020, meeting.  
6  
7 Lancer Shull: Yes, sir.  
8  
9 Scott Frick: I wanna understand how your terms worked at that point. Was your  
10 term coming to an end at that point or were you being – was your –  
11 were you being replaced by someone else, Mr. Cain I think, to fill out  
12 the remainder of your term?  
13  
14 Lancer Shull: No. What happens is there's an election – the election cycle's every  
15 two years for Batesburg-Leesville. We're on a odd year cycle, so on  
16 the odd years, you have the odd districts and the mayor being elected  
17 in the election. And then in two more years, you have the evens. That  
18 way, you don't have a full swap-out of your council at any given time.  
19 So with new potential council members coming on every two years,  
20 those appointments are voted on every two years. So there is an  
21 opportunity for someone else to be voted onto the Commission or any  
22 of the other committees that we have.  
23  
24 Scott Frick: Okay. So...  
25  
26 Lancer Shull: Yeah.  
27  
28 Scott Frick: ...in that January 13 meeting, you were voting for the term that began  
29 in early 2020 to 2022? Is that correct?  
30  
31 Lancer Shull: Yes, sir.  
32

1 Scott Frick: Okay. That – the vote at the first meeting, were you – let me see if I  
2 understand this correctly. You voted against Mr. Cain.  
3  
4 Lancer Shull: Sh-, yes, sir.  
5  
6 Scott Frick: Is that the only vote you took at that particular meeting?  
7  
8 Lancer Shull: To my recollection – you mean – I think we just voted one time at that  
9 meeting for [inaudible 1:37:07].  
10  
11 Scott Frick: That's what I was [inaudible 1:37:07].  
12  
13 Lancer Shull: Yes, sir. Yes...  
14  
15 Scott Frick: So...  
16  
17 Lancer Shull: ...sir.  
18  
19 Scott Frick: ...at the January 13, 2020, meeting, you had one vote and that was  
20 against Mr. Cain.  
21  
22 Lancer Shull: Yes, sir.  
23  
24 Scott Frick: Is that right? Okay. [Inaudible 1:37:17].  
25  
26 Lancer Shull: And he voted for himself.  
27  
28 Scott Frick: I understand that.  
29  
30 Lancer Shull: Correct.  
31  
32 Scott Frick: You took no other...

1  
2 Lancer Shull: He...  
3  
4 Scott Frick: ...votes at that meeting.  
5  
6 Lancer Shull: No other votes for...  
7  
8 Scott Frick: At that particular meeting on...  
9  
10 Lancer Shull: You mean the other business on the agenda?  
11  
12 Scott Frick: No. For this position on the Joint Water and Sewer Commission.  
13  
14 Lancer Shull: No, sir. Because the vote passed. Yeah. Yes, sir.  
15  
16 Scott Frick: All right. Any questions by Commissioners Pinkston or Holloway?  
17  
18 Brandolyn Pinkston: I have one for Mr. Shull. What – why – I wanna understand why did  
19 DHEC place the...  
20  
21 Lancer Shull: Consent...  
22  
23 Brandolyn Pinkston: ...issue...  
24  
25 Lancer Shull: ...Order.  
26  
27 Brandolyn Pinkston: ...with your...  
28  
29 Lancer Shull: Yes.  
30  
31 Brandolyn Pinkston: I can't hear – say – please say that again, please?  
32

1 Lancer Shull: Yes, ma'am. It's a Consent Order.  
2  
3 Brandolyn Pinkston: Mm-hm.  
4  
5 Lancer Shull: Yes, ma'am. It was placed on in 2012 because there was a capacity  
6 issue. At that time, we also provided and made the water for Ridge  
7 Spring and we were having a capacity issue with addition of several  
8 large farms that moved into the area of Ridge Spring, so we were put  
9 under a DHEC Consent Order – again, this is 2012, before my time as  
10 mayor – to get a new source of water besides – right now, we process  
11 water out of a reservoir, a town reservoir. And that's what we've done  
12 since 80-some years as long as that plant's been there, our current  
13 water plant.  
14  
15 Brandolyn Pinkston: And you have a local Batesburg-Leesville water source. Correct?  
16  
17 Lancer Shull: Yes, ma'am.  
18  
19 Brandolyn Pinkston: Okay. And then how many complaints come to you, whether citizen  
20 complaints or DHEC or this was a random visit to your water source  
21 and they saw that there was something that was insufficient there or  
22 unsafe?  
23  
24 Lancer Shull: I'm not – because this was before my time as mayor, I'm not 100  
25 percent sure how the DHEC consent order but I think there were more  
26 than one violation. Most of it had to do s-, part of it was capacity and  
27 the other part of it is the water plant looks like a 1941 submarine  
28 movie.  
29  
30 Brandolyn Pinkston: Mm-hm.  
31  
32 Lancer Shull: It's just – it's time is – was coming to an end.

1  
2 Brandolyn Pinkston: Okay. Thank you.  
3  
4 Lancer Shull: Yes, ma'am.  
5  
6 Scott Frick: Mr. Holloway?  
7  
8 A.J. Holloway: No questions from me. Thank you.  
9  
10 Scott Frick: All right. just one more follow-up from me.  
11  
12 Lancer Shull: Yes, sir.  
13  
14 Scott Frick: The Exhibit 1 documents there, the \$3,000 that we've seen...  
15  
16 Lancer Shull: Yes, sir.  
17  
18 Scott Frick: ...did you report that in your statement of economic interests?  
19  
20 Lancer Shull: Yes, sir. I did.  
21  
22 Scott Frick: Okay.  
23  
24 Lancer Shull: Yeah.  
25  
26 Scott Frick: Nothing further from me.  
27  
28 Lancer Shull: Mm-hm.  
29  
30 Scott Frick: Thank you very much for being here, Mr. Shull.  
31  
32 Lancer Shull: Thank you, Commission. I appreciate it.

1  
2  
3  
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Scott Frick: I believe, Mr. Davis, you said that was your only witness.

James Davis: Yes, Your Honor.

Scott Frick: Okay. I believe we can now move to the closing statements. Miss Laster.

Courtney Laster: Thank you. Commissioners, Section 813700 of the Ethics Act prohibits public officials from participating in matters in which they have an economic interest. Economic interest is defined, of course, in the Ethics Act to mean an interest that is distinct from that of the general public, in a purchase, sale, lease, contract option, other transaction or arrangement involving property or services in which the public official may gain more than \$50. Here I would submit to you that Mr. Shull, by his own testimony, is providing a service for the Water and Sewer Commission and he is receiving money in exchange for that. And so I do think that the definition of economic interest is met. There has been some discussion about the permissibility of a per diem for these commissioners and Mr. Davis was kind enough to provide everyone the statute. It's in – found in Title 6. That allows the per diem to be given to these commissioners. Title 6 allows it. Title 8, the Ethics Act, says how you can get it, in my opinion. So for – I'm a public employee. I'm entitled to a bonus sometimes. But I can't give it to myself, which I think is what Mr. Shull has done here by voting to appoint himself on the board. I would submit to you that regardless of what we call it, compensation, end comm, per diem, it is clear from the testimony that these payments are being made regardless of what amount of work is done.

It could be 100 hours and it could be 0 hours and the same payment is being made. It's being made whether or not meetings are being held.

1 It's being made whether or not persons are in attendance. The  
2 stipulations do outline and there has been testimony about Mr. Shull's  
3 attendance at these board meetings, all accurate to my recollection.  
4 And I think it's important to keep in mind that although he only missed  
5 two meetings of the Commission in his tenure thus far, the  
6 Commission has not met approximately half the time it is supposed to  
7 have met. And so even in those months, payments are being made. I  
8 would like to address some of the Respondent's arguments that have  
9 been made thus far. Of course, there is an argument regarding  
10 economic interest, that he – that there is no benefit to him. I believe I  
11 have spoken to that. There has been another argument raised by the  
12 Respondent, of course, that this is an allowable per diem. And again,  
13 that is not – the Commission's position is not that this is not  
14 permissible. It is that you cannot vote to award it to yourself. Though I  
15 – we don't have a problem with the per diem. I think that is dealt with  
16 under a totally separate section of law, perhaps some tax codes maybe.  
17 The permissibility of it is not at issue here. It is simply was the vote  
18 that Mr. Shull took, which was accompanied with these payments,  
19 permissible under the Ethics Act?

20  
21 There has been some mention of perhaps a large class exception  
22 applying here. The large class exception, as you all know, is found in  
23 the definition of economic interest and it states that, "Where the  
24 benefit would accrue to a large group of people, then there is no  
25 economic interest for the public official." And I think the fact that has  
26 been accompanied with that argument is all the commissioners receive  
27 some kind of payment. But when we're looking at what the actions of  
28 Mr. Shull were, he was voting in his capacity as a town council  
29 member on Batesburg-Leesville Town Council and all of those  
30 members are not entitled to that payment. It is only the member who  
31 gets appointed to the body. So I don't believe that the large class

1 exception applies here. For all of those reasons, staff is asking that you  
2 find Mr. Shull in violation as outlined in the Notice of Hearing.

3  
4 Scott Frick: Thank you, Miss Laster.

5  
6 Courtney Laster: Thank you.

7  
8 Scott Frick: Mr. Davis.

9  
10 James Davis: Thank you, Mr. Chairman. And I thank the Commission for listening  
11 to us. The first thing in regards to the definition under your Ethics  
12 statute dealing with economic interest, it does indicate that a public  
13 official cannot have a economic interest. But that's the – on the first  
14 part of what this statute says for this commission. The second part says  
15 that economic interest has to deal with either property or services that  
16 public official has been involved in. On his vote that he took on those  
17 occasions did not involve any property of this party, this public  
18 official, did not involve any services. So the actual definition of what  
19 economic s-, interest is, your statute refers to property, purchases and  
20 services. Here, the – this vote was a vote for reappointment. It was not  
21 a specific vote as to anything else besides reappointed the board, so I  
22 know not think this is a economic interest violation. That's number  
23 one. The sa-, the second think is that we have – our commission has a  
24 statute that was passed by the legislature, just like your statute, the  
25 Ethics Commission, was passed. Well, the legislature did this and the  
26 governor signed both a these statutes. There's case law in this state  
27 which deals when you have statutes that may apply to the same  
28 situation, you have to look at both statutes and see if they can't fit  
29 together. And I submit to you it's crystal clear that under the laws a  
30 this state, you can have a per diem provision for this commission,  
31 based on a state statute.  
32

1 And your Ethics Commission is already protected under our statute  
2 'cause the first thing that our statute says is, "There shall be no  
3 compensation paid, comma, but there can be a per diem." And per  
4 diem, that – if you wanna get down to the brass tacks as to legal  
5 definition, per diem is by the day and it deals with daily allowance,  
6 daily for your activities, which may vary from one day or week to the  
7 next. But it is something that statute is allowed. So you have an issue  
8 of can you override another statute, another state, another political  
9 body has? I submit to you that would be improper and you have to  
10 recognize the fact that you – that this commission can have a per diem  
11 provision because it's allowed by our statute and these statutes have to  
12 be read together. The other – just as a side matter, y'all have a revision  
13 in your statute that says incide-, when you're in your position as a  
14 public official, the economic benefit cannot involve – it doesn't  
15 involve incidental matters. That's what your statute says, incidental. It  
16 doesn't define that. But if you look at the word – definition of  
17 incidental, look at the definition, what it deal – when you actually look  
18 at the definition, it deals with incidental and gives as an example  
19 expenses. And this per diem is actually an expense reimbursement.  
20 What y'all – the Commission has to be concerned about is, is there  
21 economic gain?

22  
23 Reimbursement of expenses is not an economic gain and that's what  
24 per diem is, so it's not really a direct issue as to economic gain  
25 situation. The other matter is this. I re-, we could – we have researched  
26 – I submit to you I don't know of any case in South Carolina that says  
27 that per diem is an economic gain. I submit to you I don't know of a  
28 case that says that. But we have looked in every state in the United  
29 States that has a ethics statute. We find no case law, no advisory  
30 opinion, saying that per diem is a economic gain. And we have three  
31 states, Kentucky, Indiana and Kansas, that have a statute similar to us.  
32 There were no cases there. This is based on research that I've looked at

1 and we – obviously, mistakes can be made. But we find nothing that  
2 says by law, that a per diem is a economic gain, I submit to you.  
3 Finally, they – the Commission has exclusions from refusal. One of'm  
4 is class – a larger class. Y'all have a case that y'all decided years ago,  
5 dealing with the school board. There were people on the County  
6 Council that either on the school board or the spouses were. And they  
7 – what the Commission said was that what those councilmen were  
8 getting or their spouses were getting was nor-, what all of those people  
9 in that class. Where I would disagree with Miss Laster is the class is  
10 not the Town of Batesburg Council.

11  
12 The class are the Commissioners on this Joint Water and Sewer  
13 Commission. That's the class you look at because in the school board  
14 case, they say specifically the class you look at is the people who were  
15 the school employees. They weren't lookin' at a County Council. They  
16 were lookin' at the school employees. And here, you have to look at  
17 the Commissioners and they're the class of commissioners. They get  
18 the same figure, the same he got and I say the rule – that exclusion  
19 applies. The other exclusion deals with if the two entities, the Town of  
20 Batesburg and the Joint Water and Sewer Commission, they're  
21 governmental entities and they – one is, in a way, a arm of the other.  
22 It's a arm of the other, meaning here, the only people that can be on the  
23 commission, town council and county people. The only people that can  
24 close down operation is the commissioners and the town council and  
25 county people. Only those people. And because of that  
26 interconnection, you have an exclusion for refusal because of that  
27 situation. So in conclusion, I've – I don't see the per diem, which is a  
28 daily allowance for work they do which can vary, as a economic  
29 interest that the Commission be – that fits under the definition of  
30 economic interest for this – for the Commission. Thank you.

31

1 Scott Frick: Thank you, Mr. Davis. Thank you all for appearing here today. We  
2 will take this matter under advisement and will consider all testimony  
3 and other evidence presented and will issue a written decision  
4 generally within a few weeks of the hearing.  
5

6 Courtney Laster: Thank you.  
7

8 James Davis: Thank you.  
9

10  
11 /es