

1 STATE OF SOUTH CAROLINA

2 BEFORE THE STATE ETHICS COMMISSION

3 COUNTY OF RICHLAND

4  
5 **RECEIVED**

6 IN THE MATTER OF:

**Nov 24 2025**

7 Complaints C2021-078/C2023-12

8 Shirley Etheredge Mitchell

**SC Court of Appeals**

9 Stephen D. Cain,

10 Complainants,

11  
12 Lancer Shull,

13 Respondent.

14  
15  
16 July 17, 2025 Ethics Hearing

17  
18 Commissioners in Attendance:

19 F. Xavier Starkes, Appellate Panel Chair

20 Neal D. Truslow

21 Bryant S. Caldwell (Appearing via Zoom)

22 Helen Munnerlyn

23 Sara Parrish (Appearing via Zoom)

24 Mary Hunter B. Tomlinson (Appearing via Zoom)

25 Matthew N. Tyler (Appearing via Zoom)

26  
27 Representing the Respondent:

28 James Randall Davis, Esquire

29  
30 Representing the Commission:

31 Courtney M. Laster, Esquire

32

TRANSCRIPT

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4 F. Xavier Starkes: [Inaudible 0:00] that this commission meeting is called to order. Director  
5 Dayson, has the media been notified of today's meeting?  
6

7 Meghan Dayson: Yes, sir.  
8

9 F. Xavier Starkes: Okay.  
10

11 Bryant S. Caldwell: Commissioner Starkes, we can't see you if that is – I don't know [inaudible  
12 0:13] or not but we can't see you.  
13

14 F. Xavier Starkes: You can't see me?  
15

16 Male: Are we good?  
17

18 Bryant S. Caldwell: Now we can. Now we're now we're good.  
19

20 Matthew N. Tyler: Yeah. Thank you for letting us in.  
21

22 F. Xavier Starkes: Thank you. Thank you. The commission will now hear an appeal from the  
23 decision and order issued in Complaint C2021-078 and C2023-12, Shirley  
24 Etheredge Mitchell and Stephen D. Cain versus Lancer Shull. The appeal  
25 will be heard by the full commission with the exception of the original  
26 hearing panel members. The length of time for the appellate hearing is 30  
27 minutes, to include opening statements. The time allotted is 10 minutes for  
28 appellant argument, 10 minutes for the appellate argument, 5 minutes for  
29 appellant rebuttal, and 5 minutes for the appellate – initial 5 minutes for  
30 the appellate rebuttal. At the end of the hearing, the panel will take  
31 arguments under advisement and issue an order within 60 days. [All right  
32 1:15]. Any members of the original panel will now recuse themselves.

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Meghan Dayson: Commissioner Starkes, the original panel members have all rolled off of the commission at this point. They were Commissioners Pinkston, Frick, and Holloway, and so all sitting commissioners will be part of this appellate panel.

F. Xavier Starkes: Okay. Are we ready to proceed?

James Davis: Yes, Mr. Chairman.

Courney Laster: Yes, sir.

F. Xavier Starkes: Please proceed.

James Davis: Mr. Chairman, my name is James Randall Davis. I practice law in Lexington, SC, and represent Mr. Shull, who's next to me and his na-, his full name is Lancer D. Shull. He's the mayor of the Town of Batesburg-Leesville, which is a community on the western side of Lexington County. I also have here Mr. Jay Nicholson, who is not at the table with me but he is the general manager of the Lexington County Joint Municipal Water and Sewer Commission. Usually, I stand up when I speak but here, I'm sitting down, so some – I try to speak extemporaneously but it makes me close to paper, so I c-, if I look down, it's because I think I know what I'm gonna say but I wanna make sure because it's – I'm – it's right here in my face. The – as I mentioned, the mayor is the mayor of Batesburg-Leesville, which is a town in the – in our county. The commission is a governmental entity formed years ago, which services water and sewer com-, water utilities in Lexington County in the unincorporated area but on the Commission, by statute, which is State statute, there are board members that are appointed by the County itself and the towns that – some of the towns within the County of Lexington and they serve as the commissioners of that board. What that board does is provide water and

1 sewer utilities, again, in the unincorporated areas of Lexington County,  
2 which they've done for some time.

3  
4 The mayor in January of 2020, on two separate dates, voted to appoint –  
5 reappoint himself to – or appoint himself to the commission board. There  
6 was a – one vote and then there was a follow-up vote a-, but he voted to  
7 appoint himself to the board. And then in December of 2023, he did the  
8 same thing. And when I say the board, I'm talking about the Water and  
9 Sewer Commission, and obviously he was the mayor of Batesville-  
10 Leesville at that time. Complaints were filed with the commission against  
11 him for that – for voting by two of his fellow council members. And the  
12 initial vote was in January of 2020, and, as I said, the other was in  
13 December of 2023. The complaints were filed 17 or 18 months after the  
14 vote that was taken by the mayor. The – those complaints basically had  
15 things in them – had several things in them but the main thing was that  
16 they're saying he should not have voted and he was breaching the ethical  
17 statutes in doing so. The – a – there were two complaints. One got  
18 dismissed by the commission. The other one actually went to a hearing  
19 sometime back on the 3-member panel process and there was a decision  
20 there that – let me back up and just say this, that we obviously filed a  
21 response to those allegations and denied the same. We also filed an  
22 extensive brief on the subjects which were in that complaint as well as  
23 defenses to the matter but did – that's – one hearing went to the hearing  
24 and at the 3-panel decision dealt with saying that he should not have voted  
25 and should have recused himself and they indicated there were six counts  
26 of violations there and issued a public reprimand and a fine of \$50 for  
27 each violation.

28  
29 We appealed that decision with a notice of appeal, filed a brief on that and  
30 so we're before you today on that appeal. The mayor's position is this. The  
31 town – the c-, the Water and Sewer Commission has a per diem payment  
32 that's made to the members on the board or the commission of \$250 per

1 month and it's been that way for years. It's an administrative decision that  
2 was made there at the Water and Sewer Commission. We do not believe  
3 that that per diem is an economic interest and our belief is this. Ethics  
4 statutes originally were based on common law in this state before the  
5 legislature formed statutes but I think our statutes – ethics statutes follow  
6 the common law and the common law deals with a public official should  
7 not be voting on something that involves his private interest, like you were  
8 – if he were – if the commission was buying a piece of property he has  
9 interest, they shouldn't be voting. Or if he had a business where they were  
10 gonna – business was gonna do something for the commission, he  
11 shouldn't – should not be voting. Or if he personally was gonna do  
12 something with the business – with a business, you shouldn't vote but that  
13 deals with public officials not being in a conflict where something would  
14 influence his job and his duties to the public.

15  
16 In this case, he was not – there was no private interest involved here. This  
17 was a public vote to reappoint him to the board. It was – this was a vote  
18 for public service by the mayor of that town. Yes, it's true that on the  
19 commission, on a per diem that existed years ago, he gets that but his vote  
20 actually dealt with being – wanting to be on the town and there was a  
21 legitimate reason why he did it. His town was under DHEC orders to have  
22 some issues involving water and utilities completed and his theory and  
23 thought when he voted was, "I need to continue this. I'll need to be on this  
24 board because this board handles water and sewer problems and they have  
25 the expertise and we need to use them to resolve our problem," that the  
26 Town of Batesburg-Leesville had and that's the reason he voted at that  
27 time. But again, our first theory is you want to avoid voting on something  
28 of a private interest, not where you're trying to render a public service for  
29 your town.

30  
31 F. Xavier Starks: Mr. Davis, may I ask you a question?  
32

1 James Davis: Sure.  
2  
3 F. Xavier Starkes: The way I read the statute, it talks about an economic interest, not a  
4 private interest.  
5  
6 James Davis: Yes.  
7  
8 F. Xavier Starkes: How do you distinguish between the two?  
9  
10 James Davis: I distinguish the – it says it – did you say economic interest?  
11  
12 F. Xavier Starkes: Yes.  
13  
14 James Davis: The statute does...  
15  
16 F. Xavier Starkes: Yes, sir.  
17  
18 James Davis: ...say economic interest. When you look – your s-, ethics statute, my belief  
19 is obviously it was passed by the legislature. The ethics statutes in this  
20 state, in my opinion, were based on what the common law was and the  
21 common law was the public official could not vote on something that  
22 involved his private interest, not his public interest, which was to be on  
23 this board to help his town. That's a – that's where I draw the distinction. I  
24 also draw the distinction – on your statute it says it has to be an economic  
25 benefit. To me, that means there has to be something in his pocket that's  
26 money for him. There was a per diem but a per diem by legal definition is  
27 not money or compensation. It is reimbursement for expenses and also has  
28 been defined as a daily figure to him for reimbursement for work – for his  
29 time he spends with the agency, so we – I do not think that, under the  
30 statute, it has to be an economic benefit and I do not think – it is not an  
31 economic benefit because it wa-, by the very definition of per diem.  
32 Furthermore, our statute passed by the very same legislature that passed

1 your statute said in our statute you can't get compensation. They protected  
2 the Ethics Commission. They said you can't get compensation but in the  
3 same sentence they say, "But you can get a per diem mileage and  
4 subsistence pay." To me, that means yeah, you can – the – no  
5 compensation. That's what our law is supposed to be for public officials  
6 but you can get a per diem. So even when you look at our st-, our separate  
7 statute, it allows that per diem.

8  
9 The third thing is our per diem plan was approved through legal work, was  
10 an IRS qualified, approved per diem plan where because our per diem is  
11 so low, it falls way below the cap that the IRS has on allowances, so by  
12 just filing the form showing you have a per diem at 250, you qualify to be  
13 an IRS plan. Now in looking at this when we did, you always look to see  
14 where's the precedent for this? What do the cases say? And we researched  
15 and we knew nobody's perfect but w-, and we have filed a brief on this.  
16 We don't find any case from any state that we could find something on  
17 that indicated a per diem was an economic interest. That's number one.  
18 Number two, we didn't find any advisory opinions saying this. And  
19 number three, we saw three states that had almost the identical statute that  
20 we did that had no cases saying per diem is an economic interest or  
21 benefit. And the fourth thing, there were 10 states that had a per diem of  
22 250 as an allowable per diem. My point is, as we all know, courts look at  
23 where's the law – what does the case law show here? Here, it doesn't seem  
24 to be – I don't – my position is we – where's the law that says this?

25  
26 Finally, is this. As an exception under your statute as to a violation is this.  
27 If the entities involved – in this case it's the Water and Sewer Commission  
28 and the Town of Batesburg – if they're so interrelated, tied together,  
29 they're treated as one entity and one entity is not gonna have a conflict  
30 because it's one entity. In this case, we got two governmental entities, the  
31 board members of the Water and Sewer appointed by the County and the

1 Town that serve on that board and they – and nobody can dissolve that  
2 Water and Sewer Commission unless there is...  
3  
4 Helen Munnerlyn: I've got a question.  
5  
6 James Davis: This...  
7  
8 Helen Munnerlyn I'm sorry. I just have a quick question.  
9  
10 James Davis: Sure.  
11  
12 Helen Munnerlyn: Do I need to hit my thing?  
13  
14 Meghan Dayson: It's on.  
15  
16 F. Xavier Starkes: It's on.  
17  
18 Helen Munnerlyn: Okay.  
19  
20 Meghan Dayson: It's on. Your light's on.  
21  
22 Helen Munnerlyn: My question is this. Does the mayor actually live in the service area of this  
23 Water and Sewer Commission?  
24  
25 James Davis: He li-...  
26  
27 Helen Munnerlyn: Does he not? Does he or does he not? I – see, I'm thinking if you're gonna  
28 be benefitting from the actions of this Water and Sewer and you live in  
29 that particular area where you'll benefit, you may actually have a personal  
30 benefit in this action and so I just wanna know...  
31  
32 Lancer Shull: Would you like me to...

1  
2 Helen Munnerlyn: ...if...  
3  
4 Lancer Shull: ...answer that, ma'am?  
5  
6 Helen Munnerlyn: Yes. Uh-huh.  
7  
8 Lancer Shull: Okay. We have our own water utility and we have our own [inaudible  
9 13:59].  
10  
11 Courney Laster: Commissioner Starkes.  
12  
13 F. Xavier Starkes: Hold on. Hold on a sec. Yes?  
14  
15 Courney Laster: I have an objection to additional testimony being brought in. At this point,  
16 it's just an appellate argument on the record.  
17  
18 Helen Munnerlyn: Okay.  
19  
20 F. Xavier Starkes: That's sustained. If Mr. Davis can answer the question, that's fine. If not,  
21 we can proceed.  
22  
23 James Davis: Would you say the question again?  
24  
25 Helen Munnerlyn: I just wanted to know if he lives in that service area for the Water and  
26 Sewer district. That's all.  
27  
28 James Davis: The water – let me answer. The Water and Sewer district serves – is  
29 represented by entities in the c-, inside the boundaries of the County of  
30 Lexington. Batesburg-Leesville...  
31  
32 Female: Okay.

1  
2 James Davis: ...is inside that boundary and he's the mayor of Batesburg-Leesville. He  
3 has the...  
4  
5 Female: [Inaudible 14:36].  
6  
7 James Davis: This...  
8  
9 Helen Munnerlyn: Okay.  
10  
11 James Davis: ...is my answer.  
12  
13 Helen Munnerlyn: Okay. Thanks.  
14  
15 Lancer Shull: I don't.  
16  
17 James Davis: Don't what?  
18  
19 Lancer Shull: I don't live in the [inaudible 14:41].  
20  
21 Male: Was that a yes?  
22  
23 Lancer Shull: I do not pay the Joint Municipal [inaudible 14:43].  
24  
25 Male: [Inaudible 14:43].  
26  
27 F. Xavier Starkes: Hold on. Hold on a second, Mr. Shull.  
28  
29 James Davis: All right. Okay. I'm confused on the question, I'll be honest. Is – if you're  
30 saying that – is the – how is he personally involved? He's been personally  
31 involved because he's been elected mayor of the Town of Batesburg-  
32 Leesville.

1  
2 Helen Munnerlyn: No. I just wanted to know if he gets his water from the s-...  
3  
4 James Davis: Oh, I...  
5  
6 Helen Munnerlyn: ...this...  
7  
8 James Davis: ...see.  
9  
10 Helen Munnerlyn: ...entity.  
11  
12 James Davis: From the...  
13  
14 Helen Munnerlyn: That's all.  
15  
16 James Davis: I don't – you do not. You did not.  
17  
18 Helen Munnerlyn: So yeah.  
19  
20 James Davis: No.  
21  
22 Helen Munnerlyn: Okay.  
23  
24 James Davis: No.  
25  
26 Helen Munnerlyn: Thank you.  
27  
28 James Davis: Okay.  
29  
30 F. Xavier Starkes: How are we on time?  
31  
32 James Davis: Time?

1  
2 Meghan Dayson: If this – 10 minutes has been allotted but if you request, he can give – you  
3 are free to give him additional time just to wrap [up 15:22].  
4  
5 F. Xavier Starkes: Mr. Davis, please proceed.  
6  
7 James Davis: Okay. Okay. I was on the issue of..  
8  
9 Female: I just wanted [inaudible 15:30].  
10  
11 James Davis: ...the exception to the alleged violation dealing with the agencies being  
12 interrelated. Again, I think where I was is that both of them are  
13 governmental entities. The County and the Town appoints the board  
14 members or commission members of the Water and Sewer Commission  
15 and do so and serve based on the fact that they are appointed by the  
16 County and the Town and that the Water and Sewer Commission only –  
17 can only be dissolved based on the commission voting and the towns and  
18 county involved to dissolve the agency, so they're interrelated and we  
19 think based on your own cases – the cases that I've read, it indicates that  
20 because of that, they're not independent entities. They are one and the  
21 same and you can't have a conflict when it's – when the entity is treated,  
22 for y'all's purposes on your exception as one entity, so that he could vote  
23 on matters involving that entity, being the Water and Sewer Commission.  
24  
25 F. Xavier Starkes: Thank you.  
26  
27 James Davis: If I'm – if I can have one more minute, I will be finished.  
28  
29 F. Xavier Starkes: Yes, sir. Please proceed.  
30  
31 James Davis: The fi-, my final thought is this. When you're a public official, one of the  
32 most important things that you have a right to do is to vote. Here he voted

1 because he's the mayor and his town needed some help that this agency  
2 could provide. And what is the counterargument to that, why he shouldn't  
3 vote? It is because you have a per diem, which is not income, by what we  
4 say for the various reasons I've stated where it's not income. It's an  
5 expense and you're talking about \$12.50 per day for 250 for 30 days, what  
6 is more important here in regards to what we're trying to do. The second  
7 thing is this. If this is a problem, why has the legislature not repealed our  
8 statute and said, "You can't have a per diem"? They haven't done that.  
9 They've said you can't have compensation but you can have a per diem.  
10 They haven't changed the law because of our ethics statute. The ethics  
11 statute deals with what it deals with but they haven't changed it, so courts  
12 look at – looking at what the legislature intended to do when they created  
13 these laws and again, it's been on the books for some time. The last thing  
14 is on the precedent situation, you look for guidance as to what's happened  
15 before. And I know what we had found on guidance, that it doesn't seem  
16 positive that the per diem is an economic interest or an economic benefit.  
17 Thank you for your time. I appreciate your service to the commission.  
18

19 F. Xavier Starkes: Thank you, Mr. Davis. Miss Laster?

20  
21 Courtney Laster: Thank you. Members of the Commission, if I could just back up just a  
22 little bit and go over some of the basic facts. So it is – the respondent does  
23 serve as mayor of the Town of Batesburg-Leesville. He also serves on the  
24 Water and Sewer Commission, as opposing counsel stating. In service of  
25 that position, he receives \$250 per month. They all do, excepting the  
26 chairman, who I believe ser-, receives a little bit more. Respondent started  
27 serving on the Water and Sewer Commission in 2018. Using basic math,  
28 we know that there are 72 months between 2018 and 2023, and based on  
29 the stipulations entered into by the parties prior to the hearing, we know  
30 that respondent attended a Water and Sewer Commission meeting in 44 of  
31 those 72 months but he was paid all of the 72 months, \$250. I think it's  
32 undisputed about the votes he took and the failures to provide a written

1 statement of recusal January 13, 2020, January 21, 2020, and December  
2 11, 2023. I'd also like to point out that the December 11, 2023, vote  
3 occurred after probable cause was found in the first complaint and after a  
4 notice of hearing had been issued. So those are kind of the basic facts. I  
5 agree with respondent that a public official should not vote on matters in  
6 which they have a personal economic interest. However, I think where we  
7 disagree is whether this vote to appoint himself to a board where he gets  
8 \$3,000 a year constitutes an economic interest.

9  
10 As an initial matter, I think throughout the respondent's brief, there is a  
11 conflation of terms like per diem, compensation, income, and economic  
12 interest. The only one that this commission should be concerned with is  
13 economic interest. It doesn't matter what you call it. It is money. It is an  
14 economic interest and that is defined in statute as a distinct interest from  
15 that of the general public in a transaction or arrangement involving  
16 property or services where the public official may gain \$50 or more.  
17 Respondent admitted during his panel testimony that he performs the tasks  
18 on the Water and Sewer Commission as a service. When asked, he said,  
19 "Certainly. It is a service." As to the second part, it seems clear that he  
20 could gain and in fact does gain more than \$50 as a result of his service.  
21 There is an argument being made that this cannot be an economic interest  
22 because it complies with the Joint Water and Sewer Act and it complies  
23 with IRS guidelines. And as mentioned in staff's brief, this commission  
24 doesn't have any jurisdiction to interpret the Water and Sewer Act or the  
25 IRS guidelines and you don't have the authority to assess another  
26 governmental entity's compliance with those sets of laws. Not only that,  
27 but the argument being made there is confusing the permissibility of the  
28 payments and the procedure by which one can put themselves in a position  
29 to receive that money. In other words, can they take it and how they can  
30 come to take it.

1 Staff here does not contend that he is not entitled to these payments if he is  
2 serving on that board. They – we don't contend that the co-, the payments  
3 violate any kind of IRS plan or the Water and Sewer Act that the  
4 commission – that the Water and Sewer Commission follows in dispersing  
5 these payments. Staff's only contention is that the respondent cannot  
6 participate as a member of Town Council to put himself on the Water and  
7 Sewer Commission because he is paid \$3,000 per year in that role and that  
8 is why I presume the legislature has never amended either statute, is  
9 because there's no conflict. One says you can have it. Our statute says how  
10 you can come to get it. Briefly, a lot of respondent's brief is devoted to the  
11 other jurisdictions, the ones where he says that no other ethics commission  
12 or court in any other state has found this to constitute an economic  
13 interest. Even if this were true, this commission is obviously free to  
14 interpret the state's laws differently than another state interprets another  
15 state's laws. He mentions that there's no law that prohibits respondent's  
16 actions but obviously 8-13-700 is what prohibits respondent's actions here.  
17 There are several paragraphs in the brief devoted to an advisory opinion  
18 out of Indiana where that commission was providing analysis to a public  
19 servant about the acceptance of a payment for attending a conference  
20 sponsored by a private party. In staff's opinion, even if this were an  
21 opinion that was issued by this Commission, it would not be relevant  
22 because it's not the same type of law. That opinion is more akin to Section  
23 8-13-715 of the Ethics Act, which prohibits public servants from receiving  
24 payment for speaking at a speaking engagement in their official capacity.  
25

26 F. Xavier Starkes: Miss Laster?

27  
28 Courtney Laster: Yes.

29  
30 F. Xavier Starkes: Is there a difference between a per diem and compensation?  
31

1 Courtney Laster: Maybe. I don't know. I don't think that that is a necessary analysis for this  
2 commission to undertake because all you are looking at is whether or not  
3 there is an economic interest, so whatever it is called, per diem, stipend,  
4 salary, wages, compensation, income, I – none of that matters when it is  
5 money that he is receiving, is what I would say.  
6

7 F. Xavier Starkes: Okay. Thank you.  
8

9 Courtney Laster: Thank you. I don't believe that the respondent's counsel in his argument  
10 brought up the large class exception but there is a hefty portion of the brief  
11 devoted to that, so I'd like to address it. He argues that the large class  
12 exception applies because all members of the Joint Water and Sewer  
13 Commission receive this same payment. The large class exception is a  
14 phrase that comes from numerous advisory opinions that have been issued  
15 by this commission and it's based on the definition of economic interest. If  
16 you look at Section 8-13 e1-, 111 subsection B, it provides that there is no  
17 economic interest if the only interest that's accruing to the public official is  
18 no greater than that of anyone in the profession, occupation, or large class  
19 is the way it's phrased. And again, the argument is because all of the Joint  
20 Water and Sewer commissioners received this same payment, the large  
21 class exception must apply but this is an improper analysis because the  
22 question is not how many members of the Water and Sewer Commission  
23 received the money but how many of the Town Council people are going  
24 to receive the money as a result of respondent's actions. As – and as  
25 explained in the brief, each of the three dates, there were only one or two  
26 people that had an economic interest in the specific vote that was being  
27 made. The commission has never held that two people is enough for a  
28 large class. And in fact, when we do commission trainings, an example  
29 that is commonly given is related to a school board member who is voting  
30 on salaries. They say if you are voting to increase a salary of an entire  
31 school district, all the employees, and there's 200 of them and your spouse  
32 is one of them, you can vote 'cause it's 200 people. That's a large class. If

1 you're voting only to approve salaries for a principal and your wife is a  
2 principal and there are only two, you can't do that because there's only two  
3 and two is not a large class.  
4

5 There is another argument that counsel just raised about whether or not the  
6 Water and Sewer Commission is a business with which the respondent is  
7 associated and whether or not the Water and Sewer Commission is a  
8 separate and distinct entity from Town Council. As you all know, Section  
9 8-13-700 does say that the public officials are not permitted to participate  
10 in matters involving themselves, their family members or businesses or  
11 individuals with which they are associated. And there is, in fact,  
12 commission precedent that says if Governmental Entity 1 appoints the  
13 individual to Governmental Entity 2, that's ex-officio service and so it –  
14 when they're in that capacity, they can vote on matters related to the first  
15 governmental entity. So no one is saying here that once appointed to this  
16 board, there could be no votes related to the Water and Sewer Commission  
17 while he was on Town Council. What we're saying is that he was  
18 prohibited from acting as he did because the economic interest of a  
19 business with which he was associated was not at interest. That is not at  
20 dispute here. The reason he was prohibited from doing it is because he had  
21 a personal economic interest in it because he receives \$3,000 per year for  
22 his service on this board.  
23

24 So in sum, the commission staff is asking that the appellate panel find the  
25 respondent in violation of each count outlined in the notice of hearing.  
26 Staff would urge the panel to consider the facts of this case carefully with  
27 specific attention to the fact that the respondent took the third vote after a  
28 finding of probable cause and after issuance of a notice of hearing in the  
29 first matter and when asked why he voted, he said, "I had to be on that  
30 commission." That's on page 74. It's clear that what we have here is  
31 another public official who believes that he is the only one capable enough  
32 to do a specific task and not only is that demonstrably false because time

1 and time again, we see that this kind of thinking leads to precisely why we  
2 are here today, which is public officials acting in contravention of the  
3 Ethics Act because of their own ego. And in this instance, that happens to  
4 be accompanied by a \$3,000 payment a year for a total of \$18,000 since  
5 respondent began serving on the Water and Sewer Commission. The  
6 motivation, which was raised a few moments ago, is really irrelevant,  
7 although it is interesting in this case, when there is money attached. Staff  
8 is asking that because this appellate panel can review the record anew –  
9 you are not bound to any deference to the panel below – staff is asking  
10 that appellate – the appellate panel increase the respondent's civil penalties  
11 to the maximum of \$2,000 per count for a \$6,000 total fine and an  
12 administrative fee. Staff has also put in its brief a request that opposing  
13 parties be permitted to submit competing orders on some kind of timeline  
14 that is mutually agreeable both to this panel and to the parties. Thank you.  
15

16 F. Xavier Starkes: Miss Laster, let me – I'm gonna – wanna kind of go back to this per diem  
17 question...

18  
19 Courtney Laster: Sure.

20  
21 F. Xavier Starkes: ...again. So it's your position that it doesn't matter whether Mr. Shull is  
22 getting reimbursed or whether it's compensation. It's an economic interest  
23 still?  
24

25 Courtney Laster: I think in this instance, because we know based on the record that it is  
26 received when no one does anything, even if there is zero effort done,  
27 even if they don't attend a meeting, then yes.  
28

29 F. Xavier Starkes: All right. Thank you.  
30

31 Sara Parrish: May I ask a clarifying question?  
32

1 F. Xavier Starkes: Sure.  
2  
3 Sara Parrish: Would that position change if it was purely for reimbursement for costs of  
4 service versus receiving the money whether he was there or not? Do we  
5 tip the scale into economic interest because he's getting the money no  
6 matter what?  
7  
8 Courtney Laster: Yes. I believe so. I think...  
9  
10 Sara Parrish: Okay.  
11  
12 Courtney Laster: ...because there's not – because we know, based on the evidence – the  
13 testimony received at the panel hearing that even when there's no meeting  
14 attendance, even when there's no work done, this money is received.  
15  
16 Sara Parrish: Okay.  
17  
18 Courtney Laster: Yes.  
19  
20 Sara Parrish: Thank you.  
21  
22 F. Xavier Starkes: Any additional questions from commissioners?  
23  
24 Neal Truslow: I have one.  
25  
26 F. Xavier Starkes: Sure.  
27  
28 Neal Truslow: Good morning.  
29  
30 Courtney Laster: Good morning.  
31

1 Neal Truslow: This is Commissioner Neal Truslow. Mr. Davis, I think I understood him  
2 to say that per diem is not an economic benefit or an economic interest. It's  
3 reimbursement for time and work done by or for the agency. Miss Laster,  
4 you brought up 8-13-111 and specifically Subsection B. I wanna read from  
5 that and I – then I'd like to hear from both counsel on this idea. Section B  
6 – Subsection B says, "This definition does not prohibit a public official  
7 from participating in, voting on, or influencing or attempting to influence  
8 an official decision if the only economic interest or reasonably foreseeable  
9 benefit that may accrue to the public official is incidental to the public  
10 official's position." It's that first part of Subsection B that I'm interested in  
11 'cause I think if I understood Mr. Davis's argument, he's saying that the per  
12 diem is incidental to that position only. But on the other hand, he does say  
13 it's reimbursement for work done, so what is the commission's position  
14 and what is the respondent's position on this economic benefit being  
15 incidental to service on the commission?  
16

17 James Davis: Mr. – Commissioner, my response is in my brief, I did raise that question  
18 as you have here today. And it is an exclusion from the violation. It –  
19 specifically in your statute, it says that. And incidental, you look at the  
20 definition, the legal definition, it means minor matter, insignificant. That's  
21 the legal definition of that word. And we say the fact that if you didn't  
22 have a meeting that much – that month and you received some money, this  
23 is a small amount and it should be classified as an incidental payment and  
24 even the IRS has recognized the 250 figure. IRS allows you to pay 77  
25 cents per mileage, allows you to pay X number of dollars per day that eats  
26 up the 250 in about two days, so thi-, we classi-, we see that that is an  
27 acceptable category for this per diem is – would be my answer.  
28

29 Neal Truslow: Thank you.

31 Courtney Laster: Thank you, Commissioner Truslow. Staff's position on that is that the  
32 incidental nature of the payment must be in relation to the position that is

1 making the decision to get the payment. So of course it is incidental to the  
2 Joint Water and Sewer commissioners but it is not incidental to all the  
3 members of Town Council because not all the members of Town Council  
4 receive the payment.  
5

6 Neal Truslow: All right. So that's where you draw the distinction is that this is a separate  
7 entity and voting to be on that separate entity that happens to pay a 250  
8 per diem was impermissible, should've recused himself, should not have  
9 participated in any votes, should've filed a written recusal, all those  
10 things?  
11

12 Courtney Laster: Yes, sir. And again, because we're not focused on what kinds of payments  
13 are permissible or are not permissible but how they come to receive it.  
14

15 Neal Truslow: Okay.  
16

17 Courtney Laster: And in this case, the actions that he took in order to put himself on that  
18 board were impermissible because there's money attached to it.  
19

20 Neal Truslow: And the commission's position would be had the mayor not voted on the  
21 matter at all, not participated in the matter and then been appointed to that  
22 board or commission, then we wouldn't be here today.  
23

24 Courtney Laster: Certainly.  
25

26 Neal Truslow: Mr. Davis, out of a spirit of fairness, if you need to respond to any of that,  
27 I'd love to hear from...  
28

29 James Davis: I...  
30

31 Neal Truslow: ...you.  
32

1 James Davis: ...I've – if I've got five minutes, I'm gonna respond to various things if I  
2 may.  
3  
4 Neal Truslow: You gotta ask him for the time. I don't keep – I'm not the timekeeper.  
5  
6 James Davis: Mr. Chairman...  
7  
8 F. Xavier Starkes: Yes. [Inaudible 34:16]...  
9  
10 James Davis: ...we got five...  
11  
12 F. Xavier Starkes: ...for...  
13  
14 James Davis: ...minutes?  
15  
16 F. Xavier Starkes: ...rebuttal – you do have five minutes...  
17  
18 James Davis: Yes...  
19  
20 F. Xavier Starkes: ...for...  
21  
22 James Davis: ...sir.  
23  
24 F. Xavier Starkes: ...rebuttal. [Yes 34:19].  
25  
26 James Davis: Thank you. I'm hearing from the comi-, from the counsel from the  
27 commission, this man – the mayor here has served on the town – as mayor  
28 of that town, taken a reduced pay as mayor. He's been involved with the  
29 school district, his chamber of commerce, his civic club. He's not in it for  
30 the 250. And a lot of public officials – and I've been one myself. I was on  
31 a board for nine years. We serve and we serve and we don't get paid. Here,  
32 he's looking for – what he's entitled to is what the statute of this legislature

1 gave to him and everybody who came on that Water and Sewer  
2 Commission and that is that per diem. And when you look at – when  
3 asked – Mr. Chairman, you asked the question, "What is a per diem?" That  
4 per – the stat-, the – when you look at the legal definition in Black's Law  
5 Dictionary, it say – one says it's a payment per day to take care of what  
6 you're doing timewise. Another definition is actual reimbursement. Look  
7 at what the legislature did. They said, "No compensa-," our statute says,  
8 "No compensation." In the same sentence, it says – it says that. Then it  
9 says, "However, you get a per diem, mileage, and subsistence pay."

10  
11 I present to all of you that when you look at the case law on how you  
12 determine what a per diem is, you look at the words that are around per  
13 diem and the words around per diem are mileage and subsistence pay.  
14 Those are expenses. They are not economic interest. They are not  
15 economic benefit. The – in the panel decision, in the findings of fact, they  
16 said they didn't have a board meeting every month. Well, yes. We had  
17 COVID. Sometimes we didn't have a board meeting. They get – they got –  
18 they did get paid but it – we had COVID. They didn't have board meetings  
19 sometimes but the deal is he attended every board meeting when there was  
20 one except two. And so he attended those meetings but that's not what's  
21 important. What's important in my mind is if this is an issue and our courts  
22 look at it, if there's no case on this here, they're gonna have to look  
23 elsewhere. We did. We did a year ago. We went – I had – we did them all  
24 over the country. And I reiterate what I've said before. We found no case  
25 saying per diem is an economic interest or an economic benefit. In fact, 10  
26 states said you get paid 250. Courts rely upon precedent. Here, this is a  
27 matter – this is not a gentleman that took this job for 250. He's doing his  
28 public service is that – for that town to help them on a water problem and  
29 this [inaudible 37:31] he works for as a commissioner can help. I – needs  
30 to be commended for doing that. Thank you.

31  
32 F. Xavier Starkes: Ms. Laster.

1  
2 Courtney Laster: Thank you.  
3  
4 F. Xavier Starkes: Five minutes, please.  
5  
6 Courtney Laster: Thank you, commissioners. Again, motivation is interesting but it's not  
7 necessary for the analysis of 700. And again, what he's entitled to is not  
8 the issue. It's how he came to receive it. A public official cannot appoint  
9 themselves to a position where \$3,000 accompanies the position.  
10 Opposing counsel says per diem is payment for what you're doing per day  
11 but we know in this case, based on the testimony received at the hearing,  
12 it's also given for what you're not doing in a day. It's given if you don't do  
13 anything. And as to the 10 states that say you can pay \$250, staff's  
14 position is not that they cannot receive \$250 and it's not that they cannot  
15 be paid the \$250 on this secondary board, the Joint Water and Sewer  
16 Commission. Staff's position is that the public official who serves on that  
17 board cannot take part in appointing himself to the board. That is a clear  
18 violation of 8-13-700 in p-, staff's opinion. Thank you.  
19  
20 F. Xavier Starkes: Any questions from any other commissioners? Thank you. Mr. Davis.  
21  
22 James Davis: Thank you, Mr. Chairman.  
23  
24 F. Xavier Starkes: Miss Laster.  
25  
26 Courtney Laster: Thank you.  
27  
28 F. Xavier Starkes: Thank you again for your arguments and your presentation today. We'll  
29 take the matter under advisement and we'll issue an order within the next  
30 60 days.  
31  
32 Male: Do you wanna...

1  
2 Courtney Laster: Thank you so much.  
3  
4 Male: Do you wanna talk to them about [inaudible 39:00]...  
5  
6 Matt Tyler: Mr. Chairman.  
7  
8 Male: ...timeline.  
9  
10 Male: I'm not sure.  
11  
12 F. Xavier Starkes: Yes.  
13  
14 Matt Tyler: This is Matt Tyler. Am I to understand that Ms. Laster, she had proposed  
15 that competing orders be submitted? Is that what we're going to entertain?  
16  
17 F. Xavier Starkes: Yes. I think that's correct.  
18  
19 Meghan Dayson: I guess we would need to understand how much time did both parties need  
20 to submit those competing orders.  
21  
22 Male: Thirty.  
23  
24 Female: [Okay 39:23].  
25  
26 James Davis: Thirty days.  
27  
28 Courtney Laster: Thirty days.  
29  
30 F. Xavier Starkes: So you'll get orders to the commission within 30 days.  
31  
32 Courtney Laster: Yes...

1  
2  
3  
4  
5  
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8  
9  
10  
11  
12  
13

F. Xavier Starkes:     Okay.

Courtney Laster:     ...sir.

James Davis:     Yes sir.

F. Xavier Starkes:     That'd be great. Thank you so much.

Courtney Laster:     Thank you.

/es