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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM STATE ETHICS COMMISSION

Appellate Case No. 2025-000875

State Ethics Commission, ...Respondent,

v.

Kenneth Loveless, ...Appellant.

RECORD ON APPEAL
VOLUME I OF III

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Certificate of Counsel

STATE OF SOUTH CAROLINA
STATE ETHICS COMMISSION

Kim Benson, Complainant, vs. Kenneth Loveless, Respondent.	Case Number: C-2021-016 **ORDER DENYING RESPONDENT'S MOTION TO RESCHEDULE**

This matter comes before the State Ethics Commission (Commission) on Respondent Kenneth Loveless's Motion to Reschedule, filed on August 15, 2022. Respondent's Motion requests that the Commission move the hearing in this matter from February 16, 2023, to October 20, 2022.

At the regularly scheduled September Commission Meeting on September 15, 2022, the full Commission heard arguments on the Motion via Zoom. Respondent was represented by Desa Ballard, Esq.. The Commission's general counsel, Courtney Laster, was not present for the Motion. Ms. Laster has not opposed the Motion – Ms. Laster's position was communicated to the Commission by Ms. Ballard and confirmed by the Commission's executive director, Meghan Walker.

STATEMENT OF FACTS

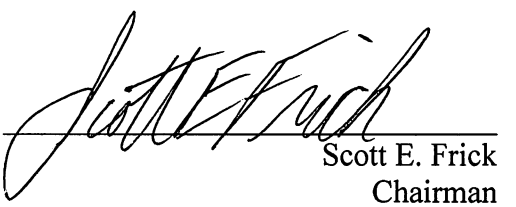
Respondent currently serves on the Board of Trustees for School District Five of Lexington and Richland Counties. On February 17, 2021, a complaint was filed with the Commission alleging various violations of the Ethics Reform Act (Act) by Respondent. The Commission found probable cause for four violations of the Act and a Notice of Hearing was signed and issued on July 11, 2022, noticing a hearing in the matter for February 16, 2023. Respondent is a candidate in the November 8, 2022 general election.

DISCUSSION

As defendant is scheduled to appear on the November 8, 2022 ballot, the Commission finds that pursuant to Section 8-13-320(9)(b)(2) of the Act, a hearing cannot be held on October 20, 2022. Section 8-13-320(9)(b)(2) states that "action on a complaint filed against a candidate which was received more than fifty days before the election but which cannot be disposed of or dismissed by the commission at least thirty days before the election must be postponed until after the election." Granting Respondent's Motion would result in a hearing being held nineteen days before Respondent's name will appear on the general election ballot. Respondent argues that this statute is intended to protect respondents from facing allegations before the Commission in the days before an election and can, therefore, be waived by a respondent. The Commission disagrees, finding the language in Section 8-13-320(9)(b)(2) unequivocal – the matter *must* be postponed until after the November 8, 2022 election.

The hearing at issue will be held, as currently scheduled, on February 16, 2023.

And it is **SO ORDERED**



Scott E. Frick
Chairman

September 15th, 2022
Columbia, South Carolina.

STATE OF SOUTH CAROLINA
STATE ETHICS COMMISSION

Kim Benson, Complainant, vs. Kenneth Loveless, Respondent.	Case Number: C-2021-016 **ORDER DENYING MOTION FOR EXPEDITED HEARING**

This matter comes before the State Ethics Commission (Commission) on Respondent Kenneth Loveless's (Respondent) Motion for Expedited Hearing. On September 12, 2022, Respondent filed a Motion to Dismiss in the above captioned matter. The matter was noticed for hearing before the Commission on September 15, 2022. The Commission's counsel was unavailable due to a family emergency and Respondent's counsel agreed to continue the matter until the Commission's counsel returned to work. The Commission's counsel filed a Response to Respondent's Motion to Dismiss on September 26, 2022. Respondent's counsel filed the present motion on September 27, 2022, requesting an expedited hearing "before the Full Commission."

The Commission denies Respondent's Motion for Expedited Hearing as it is not properly before the full Commission. Chapter 52 of the South Carolina Code of Regulations (Code) sets forth the manner by which hearings before the Commission should be conducted. Specifically, Section 52-713(A) of the Code directs that the chairman of the hearing panel "shall have the authority to hear preliminary and interlocutory matters and take such other action as is necessary to conduct the hearing." Respondent's motion is, therefore, denied. Respondent may refile the motion for consideration by the hearing panel.

And it is **SO ORDERED**.

Scott E. Frick
Chairman

September 28th, 2022
Columbia, South Carolina.

STATE OF SOUTH CAROLINA
STATE ETHICS COMMISSION

Kim Benson, Complainant, vs. Kenneth Loveless, Respondent.	Case Number: C-2021-016 **ORDER DENYING RESPONDENT'S SECOND MOTION FOR EXPEDITED HEARING**

This matter comes before the State Ethics Commission (Commission) on Respondent Kenneth Loveless's (Respondent) Second Motion for Expedited Hearing. On September 12, 2022, Respondent filed a Motion to Dismiss in the above captioned matter. The Motion to Dismiss was noticed for hearing before the Commission on September 15, 2022. The Commission's counsel was unavailable due to a family emergency and Respondent's counsel agreed to continue the Motion to Dismiss until the Commission's counsel returned to work. The Commission's counsel filed a Response to Respondent's Motion to Dismiss on September 26, 2022. Respondent's counsel then filed a Motion for an Expedited Hearing on September 27, 2022. On September 28, 2022, that motion was denied as it was not properly before the full Commission. Respondent's present motion was filed on September 29, 2022.

Respondent's Motion for Expedited Hearing is denied. On July 25, 2022, Respondent, through his attorney Karl S. Bowers, received a Notice of Hearing scheduling this matter for February 16, 2023. On September 15, 2022 Respondent's attorney requested that this case be moved to the Commission's October term – that request was denied. Respondent now requests that a hearing on his Motion to Dismiss be held within two weeks of September 30, 2022. Section 8-13-320(9)(b)(2) states that "action on a complaint filed against a candidate which was received more

than fifty days before the election, but which cannot be disposed of or dismissed by the commission at least thirty days before the election must be postponed until after the election." Section 8-13-320(9)(b)(2) of the Act requires that the Motion to Dismiss be scheduled, heard, and that an Order be issued before October 7, 2022.

Respondent's hearing in the above-captioned matter will take place on February 16, 2023 and all motions will be heard prior to the hearing on February 16, 2023.

And it is **SO ORDERED**.

F. Xavier Starkes
Chairman, Hearing Panel

September 30, 2022
Columbia, South Carolina.

STATE OF SOUTH CAROLINA
STATE ETHICS COMMISSION

Kim Benson, Complainant, vs. Kenneth Loveless, Respondent.	Case Number: C-2021-016 **ORDER GRANTING RESPONDENT'S THIRD MOTION FOR EXPEDITED HEARING**

This matter comes before the State Ethics Commission (Commission) on Respondent Kenneth Loveless's (Respondent) Third Motion for Expedited Hearing. On September 12, 2022, Respondent filed a Motion to Dismiss in the above captioned matter. The Motion to Dismiss was noticed for hearing before the Commission on September 15, 2022. The Commission's counsel was unavailable due to a family emergency and Respondent's counsel agreed to continue the Motion to Dismiss until the Commission's counsel returned to work. The Commission's counsel filed a Response to Respondent's Motion to Dismiss on September 26, 2022. Respondent's counsel then filed a Motion for an Expedited Hearing on September 27, 2022. On September 28, 2022, that motion was denied as it was not properly before the full Commission. Respondent's second Motion for Expedited Hearing was filed on September 29, 2022 and was denied on September 30, 2022. Respondent's present motion was filed on October 3, 2022.

As of today's date, counsel for both Respondent and the Commission are available on the afternoon of October 6, 2022. As such, a hearing on Respondent's Motion to Dismiss in the above-referenced matter will be heard on October 6, 2022 at 3:00 PM at the State Ethics Commission. The parties may elect to appear either in-person or via Zoom. Pursuant to Regulation 52-712(A)

of the South Carolina Code of Regulations, the matter will be heard by Commissioner F. Xavier Starkes as Commissioner Starkes is the Panel Chair for February 2023 hearings.

And it is **SO ORDERED**.

F. Xavier Starkes
Chairman, Hearing Panel

October 3, 2022
Columbia, South Carolina.

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	BEFORE THE STATE ETHICS COMMISSION
IN THE MATTER OF: COMPLAINT C2021-016	)	
Kim Benson, Complainant.	)	**ORDER DENYING RESPONDENT'S MOTION TO DISMISS**
Kenneth Loveless, Respondent.	)	

This matter comes before the South Carolina State Ethics Commission (Commission) on Respondent Ken Loveless's (Respondent) Motion to Dismiss (Motion), filed on September 12, 2022. The Motion was originally noticed for a hearing before the Commission on September 15, 2022. The Commission's counsel was unavailable due to a family emergency and Respondent's counsel agreed to continue the Motion until the Commission's counsel returned to work. The Commission's Counsel filed a Response to Respondent's Motion on September 26, 2022 and the Panel Chair heard oral arguments on Respondent's Motion on October 6, 2022.

PROCEDURAL HISTORY

The above-referenced Complaint was filed against Respondent, a member of the Board of Trustees (Board) for School District Five of Lexington and Richland Counties (District), on February 17, 2021. The Complaint alleged, among other things, that Respondent improperly participated in Board discussions and/or other activities that involved a District contract with Contract Construction, a business with which Respondent was associated.

Pursuant to Section 8-13-320(10)(c) of the Ethics, Government Accountability, and Campaign Reform Act (Ethics Act or Act), the Commission's Executive Director determined that the Complaint alleged facts sufficient to constitute a violation of the Act and ordered an investigation. In a certified letter dated February 23, 2021, Respondent was provided with a copy

of the Complaint. Respondent provided a written response on February 28, 2022. On May 19, 2022, following the investigation, the Commission found probable cause to believe Respondent violated the Ethics Act as follows:

> **COUNT ONE FAILURE TO RECUSE FROM A GOVERNMENTAL DECISION IN WHICH A BUSINESS WITH WHICH ASSOCIATED HAD AN ECONOMIC INTEREST SECTION 8-13-700(B), S.C. CODE ANN., 1976, AS AMENDED.** That Kenneth Loveless, Lexington-Richland School District Five Board Member, did in Richland County, write a letter dated March 24, 2020 inquiring about construction work of a district facility by Contract Construction, Inc., a business with which he was associated, in violation of Section 8-13-700(B).
>
> **COUNT TWO FAILURE TO RECUSE FROM A GOVERNMENTAL DECISION IN WHICH A BUSINESS WITH WHICH ASSOCIATED HAD AN ECONOMIC INTEREST SECTION 8-13-700(B), S.C. CODE ANN., 1976, AS AMENDED.** That Kenneth Loveless, Lexington-Richland School District Five Board Member, did in Richland County, on June 15, 2020, participate in discussion about construction of a district facility by Contract Construction, Inc., a business with which he was associated, in violation of Section 8-13-700(B).
>
> **COUNT THREE FAILURE TO RECUSE FROM A GOVERNMENTAL DECISION IN WHICH A BUSINESS WITH WHICH ASSOCIATED HAD AN ECONOMIC INTEREST SECTION 8-13-700(B), S.C. CODE ANN., 1976, AS AMENDED.** That Kenneth Loveless, Lexington-Richland School District Five Board Member, did in Richland County, on September 14, 2020, participate in discussion about construction of a district facility by Contract Construction, Inc., a business with which he was associated, in violation of Section 8-13-700(B).
>
> **COUNT FOUR FAILURE TO RECUSE FROM A GOVERNMENTAL DECISION IN WHICH A BUSINESS WITH WHICH ASSOCIATED HAD AN ECONOMIC INTEREST SECTION 8-13-700(B), S.C. CODE ANN., 1976, AS AMENDED.** That Kenneth Loveless, Lexington-Richland School District Five Board Member, did in Richland County, in June of 2020, participate in a site visit of a district facility being constructed by Contract Construction, Inc., a business with which he was associated, in violation of Section 8-13-700(B).

On July 11, 2022, a Notice of Hearing was issued setting forth the aforementioned violations. This Motion followed.

DISCUSSION

As discussed herein, Respondent's Motion to Dismiss is denied and this matter shall proceed to a hearing on the merits.

I. The Notice of Hearing Properly Alleges Conduct That Violates the Ethics Act

Respondent argues the Complaint should be dismissed because the Notice of Hearing fails to allege conduct that violates the Ethics Act. Specifically, Respondent contends he did not participate in any "governmental decision" that implicates Section 8-13-700 and, therefore, the allegations contained in the Notice of Hearing are faulty.[1] I disagree and find that the Notice of Hearing properly alleges conduct that violates the Ethics Act.

Section 8-13-700(B) of the Ethics Act provides, in relevant part:

> No [public official] may make, participate in making, or in any way attempt to use his [office] to influence a governmental decision in which he, a family member, an individual with whom he is associated, or a business with which he is associated has an economic interest. A [public official] who, in the discharge of his official responsibilities, is required to take an action or make a decision which affects an economic interest of himself, a family member, an individual with whom he is associated, or a business with which he is associated shall:
>
> . . .
>
> (4) if he is a public official, other than a member of the General Assembly, he shall furnish a copy of the statement to the presiding officer of the governing body of an agency, commission, board, or

[1] Respondent briefly argues that Respondent is being deprived of his First Amendment rights by these proceedings and/or the Commission's interpretation of Section 8-13-700. However, the U.S. Supreme Court has "rejected the notion that the First Amendment confers a right to use governmental mechanics to convey a message." See Nevada Ethics Comm'n v. Carrigan, 564 U.S. 117, 131 S.Ct. 2343 (2011) (finding lower court's "belief that recusal rules violate legislators' First Amendments rights is also inconsistent with long-standing traditions in the State. A number of States, by common-law rule, have long required recusal of public officials with a conflict.").

> of a county, municipality, or a political subdivision thereof, on which he serves, who shall cause the statement to be printed in the minutes and *require that the member be excused from any votes, deliberations, and other actions on the matter* on which the potential conflict of interest exists and shall cause the disqualification and the reasons for it to be noted in the minutes.
>
> (emphasis added).

Section 8-13-100(4) of the Ethics Act defines "business with which he is associated" as:

> A business of which the person or a member of his immediate family is a director, an officer, owner, employee, a compensated agent, or holder of stock worth one hundred thousand dollars or more at fair market value and which constitutes five percent or more of the total outstanding stock of any class.

"Primary jurisdiction for interpretation of the Act is bestowed upon the State Ethics Commission, pursuant to § 8-13-320(11) . . ." Op. S.C. Atty. Gen., 2006 WL 2593082 (August 24, 2006). Regarding conflicts of interest, the Commission has long held that recusal is required in any matter that implicates the economic interest of a business with which a public official is associated. See SEC AO92-072 (advising public servant to disqualify from all matters affecting the economic interests of a business with which he is associated); SEC AO2000-004 (same); SEC AO2000-011 (same). This interpretation is supported by the text of the Ethics Act, which uses the phrase "governmental decision" just once in the main text of Section 8-13-700(B), then clarifies in the following subsections that public officials are required to recuse "from any votes, deliberations, and other actions on the matter" and on all "matters pertaining to that economic interest." This interpretation is also supported by decades of guidance and enforcement actions. Id.; see also Complaint Nos. 97-035 and 97-036 (holding discussion by a public servant about a matter in which his wife had an economic interest violated Section 8-13-700(B)).

Here, it is undisputed that Contract Construction entered into a contract with the District in 2018 for the construction of Piney Woods Elementary School (PWES). It is also undisputed that

Respondent became a subcontractor for Contract Construction on February 11, 2020 on an unrelated South Carolina Law Enforcement Division (SLED) construction project, thereby making Contract Construction a business with which Respondent was associated. See Section 8-13-1300(4) (defining "business with which he is associated" as " a business of which the person . . . is a . . . compensated agent"); SEC AO2000-004 (defining "compensated agent" as "any ongoing client relationship in which the [public official] receives compensation for services rendered").

Section 8-13-700 therefore prohibited Respondent from participating in any matter in which Contract Construction had an economic interest, to include the PWES contract. See SEC AO2002-003 (finding the economic interest of a business with which the public official is associated is imputed to the public official for purposes of Section 8-13-700). Any other interpretation of Section 8-13-700 would lead to an absurd result and would defeat the entire purpose of the Ethics Act, which is outlined in the Preamble:

> Whereas, one of the most important functions of any law aimed at making public servants more accountable is that of complete and effective disclosure. Since many public officials serve on a part-time basis, it is inevitable that conflicts of interest and appearances of impropriety will occur. Often these conflicts are unintentional and slight, but at every turn those who represent the people of this State must be certain that it is the interests of the people, and not their own, that are being served. Officials should be prepared to remove themselves immediately from a decision, vote, or process that even appears to be a conflict of interest.

I therefore find that the Notice of Hearing properly alleges violations of the Ethics Act.

II. The Commission's Complaint Process Complies with the Ethics Act

Respondent argues the Complaint must be dismissed because (1) the full Commission did not vote to open an investigation; (2) the Complaint was not notarized by the Commission; and (3) the Notice of Hearing was not provided to Respondent within ten (10) days of the finding of probable cause. I disagree and find that the Commission's complaint process complied with the

Ethics Act.

Pursuant to Section 8-13-320(9) of the Ethics Act, the Commission has the duty and power "to initiate and receive complaints and make investigations, as provided in item (10) . . . of statements filed or allegedly failed to be filed . . . and, upon complaint by an individual, of an alleged violation of this chapter." Section 8-13-320(9)(a) of the Ethics Act allows the Commission to "commence an investigation on the filing of a complaint by an individual or by the commission, as provided in item (10)(d), upon a majority vote of the total membership of the commission." (emphasis added).

Section 8-13-320(10) of the Ethics Act provides for the various ways the Commission may accept a complaint and provides the process for each of these filings, the relevant portions of which are provided below:

> (a) The commission shall accept from an individual, whether personally or on behalf of an organization or governmental body, a verified complaint, in writing, that states the name of a person alleged to have committed a violation of this chapter and the particulars of the violation. The Commission shall forward a copy of the complaint, a general statement of the applicable law with respect to the complaint, and a statement explaining the due process rights of the respondent including, but not limited to, the right to counsel to the respondent within ten days of the filing of the complaint.
>
> . . .
>
> (c) If the commission, its executive director, or staff designated by the commission determines that the complaint alleges facts sufficient[2] to constitute a violation, an investigation may be conducted of the alleged violation.

[2] "Facts sufficient" means a preliminary determination based on the face of the complaint of jurisdiction over the Respondent and whether the facts plead, if true, would constitute a violation of the Act. S.C. Code Ann. Reg. 52-203(B)(6).

(d) If the commission, upon receipt of any information, finds probable cause to believe that a violation of the chapter has occurred, it may, upon its own motion and an affirmative vote of six or more members of the commission, *file a verified complaint*, in writing, that states the name of the person alleged to have committed a violation of this chapter and the particulars of the violation. The commission shall forward a copy of the complaint, a general statement of the applicable law with respect to the complaint, and a statement explaining the due process rights of the respondent including, but not limited to, the right to counsel to the respondent within ten days of the filing of the complaint. (emphasis added).

. . .

(e) At the conclusion of its investigation, the commission staff, in a preliminary written decision with findings of fact and conclusions of law, must make a recommendation whether probable cause exists to believe that a violation of this chapter has occurred. If the commission determines that probable cause does not exist, it shall send a written decision with findings of fact and conclusions of law to the respondent and the complainant. If the commission determines, by an affirmative vote of six or more commission members, that there is probable cause to believe that a violation has been committed, its preliminary decision may contain an order setting forth a date for a hearing before a panel of three commissioners, selected at random, to determine whether a violation of the chapter has occurred. If the commission finds probable cause, by an affirmative vote of six or more commission members, to believe that violation of this chapter has occurred, the commission may waive further proceedings if the respondent takes action to remedy or correct the alleged violation. Probable cause is a finding that the allegations contained in the complaint are more likely than not to have occurred and constitute a violation of this chapter or Chapter 17, Title 2.

The statutory language is clear that the Commission may accept complaints in a number of different ways. The language is equally clear that the Commission is only required to notarize complaints that it generates itself pursuant to Section 8-13-320(10)(d). Complaints filed by individuals are notarized prior to filing. There is no requirement that the Commission notarize every Complaint filed by a member of the public. In fact, to the contrary, Section 8-13-320(10)(a)

allows the Commission to "accept from an individual, whether personally or on behalf of an organization or governmental body, a verified complaint . . ." This interpretation is further supported by the Ethics Act's accompanying regulations, which outline the Complaint process in a similar manner. See S.C. Code Ann. Regs. 52-701, et seq.

As to the ten (10) day notice requirement, this applies to the Respondent's receipt of the Complaint, not of the Notice of Hearing. See Section 8-13-320(10)(a) (requiring the Commission to forward a copy of a complaint filed by an individual within ten (10) days); Section 8-13-320(10)(d) (requiring the Commission to forward a copy of a Commission-generated complaint within ten (10) days). There is no timeline set forth in the Ethics Act or the corresponding regulations regarding the Notice of Hearing, aside from Regulation 52-707, which requires the Notice of Hearing to be issued "at least thirty days before the scheduled hearing."

In this matter, Respondent conflates the process for opening a Commission-generated Complaint (outlined in Section 8-13-320(10)(d)) with a Complaint filed by a member of the public or on behalf of an organization (outlined in Section 8-13-320(10)(c)). Pursuant to Section 8-13-320(10)(c) of the Ethics Act, "if the Commission, its executive director, or staff designated by the commission determines that the complaint alleges facts sufficient to constitute a violation, an investigation may be conducted of the alleged violation." This is exactly what occurred - the Complaint was filed on February 17, 2021, the Executive Director determined the Complaint contained sufficient facts, an investigation was ordered, and Respondent was notified by way of a certified letter dated February 23, 2021.

I therefore find that the Complaint process in this matter complied with the relevant provisions of the Ethics Act.

CONCLUSION

Based on the reasoning set forth above, Respondent's Motion to Dismiss is hereby DENIED and this matter shall proceed to a hearing on February 16, 2023.

AND it is **SO ORDERED.**

F. Xavier Starkes
Chairman, Hearing Panel

October 6, 2022
Columbia, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	BEFORE THE STATE ETHICS COMMISSION
IN THE MATTER OF: COMPLAINT 2021-016	)	
Kim Benson Complainant.	)	**DECISION AND ORDER**
Kenneth Loveless Respondent.	)	

Pursuant to Section 8-13-320(10) of the South Carolina Ethics, Government Accountability, and Campaign Reform Act of 1991 (Ethics Act), the State Ethics Commission (Commission) reviewed the above-captioned complaint and found probable cause to charge Kenneth Loveless (Respondent) with four (4) counts of violating Section 8-13-700(B). Present at the hearing held on February 16, 2023, were Commissioners AJ Holloway, Scott E. Frick, and F. Xavier Starkes, Hearing Panel Chair. Respondent was represented by Desa Ballard and the Commission was represented by Courtney M. Laster. The following charges were considered:

COUNT ONE
FAILURE TO RECUSE FROM A GOVERNMENTAL DECISION IN WHICH A BUSINESS WITH WHICH ASSOCIATED HAD AN ECONOMIC INTEREST SECTION 8-13-700(B), S.C. CODE ANN., 1976, AS AMENDED

That Kenneth Loveless, Lexington-Richland School District Five Board Member, did in Richland County, write a letter dated March 24, 2020 inquiring about construction work of a district facility by Contract Construction, Inc., a business with which he was associated, in violation of Section 8-13-700(B).

COUNT TWO
FAILURE TO RECUSE FROM A GOVERNMENTAL DECISION IN WHICH A BUSINESS WITH WHICH ASSOCIATED HAD AN ECONOMIC INTEREST SECTION 8-13-700(B), S.C. CODE ANN., 1976, AS AMENDED

That Kenneth Loveless, Lexington-Richland School District Five Board Member, did in Richland County, on June 15, 2020, participate in discussion about construction of a district facility by

Contract Construction, Inc., a business with which he was associated, in violation of Section 8-13-700(B).

COUNT THREE
FAILURE TO RECUSE FROM A GOVERNMENTAL DECISION IN WHICH A BUSINESS WITH WHICH ASSOCIATED HAD AN ECONOMIC INTEREST
SECTION 8-13-700(B), S.C. CODE ANN., 1976, AS AMENDED

That Kenneth Loveless, Lexington-Richland School District Five Board Member, did in Richland County, on September 14, 2020, participate in discussion about construction of a district facility by Contract Construction, Inc., a business with which he was associated, in violation of Section 8-13-700(B).

COUNT FOUR
FAILURE TO RECUSE FROM A GOVERNMENTAL DECISION IN WHICH A BUSINESS WITH WHICH ASSOCIATED HAD AN ECONOMIC INTEREST
SECTION 8-13-700(B), S.C. CODE ANN., 1976, AS AMENDED

That Kenneth Loveless, Lexington-Richland School District Five Board Member, did in Richland County, in June of 2020, participate in a site visit of a district facility being constructed by Contract Construction, Inc., a business with which he was associated, in violation of Section 8-13-700(B).

FINDINGS OF FACT

Having carefully reviewed the evidence presented, the Panel finds as fact:

1. Respondent served on the Lexington Richland School District Five (District) Board of Trustees (Board) from 2018-2022.
2. Respondent has owned and operated Loveless Commercial Contracting, Inc. (Loveless) for approximately thirty-six (36) years. He serves as President and personally carries the line of credit for Loveless.
3. Contract Construction, Inc. (Contract Construction) is a general contractor located in South Carolina. Greg Hughes (Hughes) is the President of Contract Construction.

4. On December 19, 2018, the District retained Contract Construction as its Construction Manager for the building of Piney Woods Elementary School (PWES).

5. Contract Construction subsequently hired Loveless to perform work as a subcontractor on a State Law Enforcement Division (SLED) Forensic Services Laboratory in Columbia, SC. The agreement was signed by Respondent and was fully executed no later than March 12, 2020.

6. On March 24, 2020, Respondent submitted a letter to District Superintendent Christina Melton (Melton) raising perceived problems with the construction of PWES and criticizing terms of the District's contract with Contract Construction. Respondent requested "action and a reply on these matters within the next two weeks."

7. During a June 15, 2020, District Board meeting, Hughes provided an update on PWES to the Board. Following the update, Respondent questioned Hughes and District representative Dan Neal (Neal) about contract change orders and owner/contractor contingencies. Board member Ed White (White) then questioned Hughes and Neal about the issues raised in Respondent's March 24, 2020 letter to Melton. Respondent engaged in discussions with White and made additional comments to the Board, noting he had received unsatisfactory answers to his letter and stating, "I'm a contractor, I know things like this."

8. During a September 14, 2020 District Board meeting, Hughes provided an additional update on PWES to the Board. Board member White questioned Hughes about the issues raised in Respondent's March 24, 2020 letter. White also addressed Loveless's subcontract with Contract Construction and questioned whether it was proper. Respondent engaged in discussion with Hughes and other PWES subcontractors about the cost of specific soil and concrete work at PWES. Hughes replied, in relevant part, as follows:

> . . . I don't have any problem with the questions. And we're going to give you the best facility you've had, and it will be under budget. And I do want to speak to Mr. Loveless's abilities as a contractor. He is

> doing a fantastic job on the project we're working together on. He was selected for his qualifications and doing a fantastic job. And there's similar type issues out there, but they're minor in the scheme of things. And we're pleased with what he's doing for us.

9. During the February 8, 2021 District Board meeting, Respondent submitted a letter to the Board Chair acknowledging his affiliation with Contract Construction and vowing to "recuse [him]self from any and all votes, deliberations, and other actions on any matter that comes before the Board of Trustees relating to Contract Construction, Inc." The aforementioned letter was submitted by Respondent after he requested and received an informal opinion from the State Ethics Commission (SEC). The Informal Opinion from the SEC opined, in pertinent part, as follows: "Based on the facts presented, the general contractor for which Loveless Construction subcontracts is a "business with which (you are) associated" for the purposes of the Ethics Act. This means that whenever you are faced with a scenario in which the general contractor has an economic interest, you must recuse yourself from that matter following the instructions in Section 8-13-700(B)."

CONCLUSIONS OF LAW

Based upon the Findings of Fact, the Panel concludes, as a matter of law:

1. At all times relevant, Respondent was a public official as defined by Section 8-13-100(27). Accordingly, the Commission has personal and subject matter jurisdiction.
2. Section 8-13-100(4) defines "business with which he is associated" as:

> a business of which the person or a member of his immediate family is a director, an officer, owner, employee, a compensated agent, or holder of stock worth one hundred thousand dollars or more at fair market value and which constitutes five percent or more of the total outstanding stock of any class.

3. Upon execution of the agreement between Contract Construction and Loveless, Respondent became a compensated agent of Contract Construction. See SEC AO2000-004 (defining "compensated agent" as "any ongoing client relationship in which the [public official] receives

compensation for services rendered."). Accordingly, Contract Construction was a "business with which [Respondent was] associated" pursuant to Section 8-13-100(4).

4. Section 8-13-700 provides, in relevant part:

> (B) No [public official] may make, participate in making, or in any way attempt to use his [public office] to influence a governmental decision in which he, a family member, an individual with whom he is associated, or a business with which he is associated has an economic interest. A [public official] who, in the discharge of his official responsibilities, is required to take an action or make a decision which affects an economic interest of himself, a family member, an individual with whom he is associated, or a business with which he is associated shall:
>
> > (1) prepare a written statement describing the matter requiring action or decisions and the nature of his potential conflict of interest with respect to the action or decision;
> > . . .
> >
> > (4) if he is a public official, other than a member of the General Assembly, he shall furnish a copy of the statement to the presiding officer of the governing body of an agency, commission, board, or of a county, municipality, or a political subdivision thereof, on which he serves, who shall cause the statement to be printed in the minutes and require that the member be excused from any votes, deliberations, and other actions on the matter on which the potential conflict of interest exists and shall cause the disqualification and the reasons for it to be noted in the minutes.

5. Sections 8-13-130 and 8-13-320(10) allow the Panel to levy an administrative fee and to require payment of a civil penalty of up to $2,000 for each violation of the Ethics Act.

DECISION

NOW, THEREFORE, based on the foregoing Findings of Fact and Conclusions of Law, the Panel has determined, based on a preponderance of the evidence, that Respondent Kenneth Loveless is in violation of three (3) counts of Section 8-13-700(B) as outlined in Count One (1), Count Two

(2), and Count Three (3) of the Notice of Hearing. Specifically, the Panel finds that Respondent's (1) March 24, 2020 letter to Melton; (2) participation in the June 15, 2020 District Board meeting discussion regarding PWES; and (3) participation in the September 14, 2020 District Board meeting discussion regarding PWES were matters that required recusal pursuant to Section 8-13-700(B). The Panel finds that the Commission failed to establish by a preponderance of the evidence that Respondent participated in a PWES site visit in June of 2020 and therefore dismisses Count Four (4).

Regarding conflicts of interest, the Commission has long held that recusal is required in any matter that implicates the economic interest of a business with which a public official is associated. See SEC AO92-072 (advising public servants to disqualify from all matters affecting the economic interest of a business with which he is associated); SEC AO2000-004 (same); SEC AO2000-011 (same); see also SEC AO96-003 ("it is clear that the restrictions on the activities of a public official are broader than merely prohibiting a vote on a matter which affects the official's economic interest"). Here, Respondent owns, operates, and personally carries the line of credit for Loveless. Accordingly, when Loveless and Contract Construction entered into a subcontractor agreement, Respondent became a compensated agent of Contract Construction. From that moment forward, Respondent was bound to recuse himself from any matter in which Contract Construction had an economic interest.

The Panel notes that Respondent, once he improperly inserted himself into this matter, appeared to be critical of Contract Construction. However, the Panel finds that where there is opportunity for harm, the opportunity for benefit also exists. To that end, "the prohibitions contained in Section 8-13-700(A) and (B) serve the public interest in objective, impartial, and effective government by preventing the creation of situations which would tend to impair the objectivity and impartiality, and therefore, the effectiveness of the public member." SEC AO2000-004. Finally, the Panel calls attention to the Preamble of the Ethics Act, which provides, in relevant part, as follows:

> Whereas, one of the most important functions of any law aimed at

> making public servants more accountable is that of complete and effective disclosure. Since many public officials serve on a part-time basis, it is inevitable that conflicts of interest and appearances of impropriety will occur. Often these conflicts are unintentional and slight, but at every turn those who represent the people of this State must be certain that it is the interests of the people, and not their own, that are being served. Officials should be prepared to remove themselves immediately from a decision, vote, or process that even appears to be a conflict of interest.

THEREFORE, pursuant to Section 8-13-320(l)(i) of the Ethics Act, the Panel hereby issues a Public Reprimand and orders Respondent to pay a civil penalty of $5,250.00 ($1,750.00 for each count);

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

AND, pursuant to Section 8-13-320 of the Ethics Act, if the $6,150.00 is not paid within thirty (30) days from Respondent's receipt of this Order, a judgment in the amount of $6,150.00 shall be entered against Respondent. In the event of a failure to pay, upon the Commission's filing of said Judgment with the Clerk of Court in the County of Respondent's last known residence, the Clerk of Court shall enter this Order in the amount of $6,150.00 in its Judgment Rolls, without cost to the Commission.

FINALLY, Respondent Kenneth Loveless has ten (10) days from receipt of this Order to appeal to the full Commission.

AND IT IS SO ORDERED THIS 24th DAY OF March 2023.

STATE ETHICS COMMISSION

F. XAVIER STARKES, HEARING CHAIR
Columbia, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	BEFORE THE STATE ETHICS COMMISSION
IN THE MATTER OF: COMPLAINT C2021-016	)	
Kim Benson, Complainant.	)	**ORDER DENYING RESPONDENT'S MOTION TO ADMIT ADDITIONAL EVIDENCE**
Kenneth Loveless, Respondent.	)	

This matter comes before the South Carolina State Ethics Commission (Commission) on Respondent's Motion to Admit Additional Evidence[1] (Motion) filed on February 20, 2024. The Commission's Counsel filed a Response on March 14, 2024, and Respondent filed a Reply on March 19, 2024. The Appellate Panel heard oral arguments on March 21, 2024.

FACTS/PROCEDURAL HISTORY

On February 17, 2021, the above-referenced Complaint was filed against Respondent, a member of the Board of Trustees (Board) for School District Five of Lexington and Richland Counties (District) from 2018-2022. The Complaint alleged, among other things, that Respondent improperly participated in matters involving Contract Construction, a business with which Respondent was associated, regarding the construction of Piney Woods Elementary School (PWES). A public hearing was held on February 16, 2023. Numerous individuals attended Respondent's public hearing, including an employee from the State Inspector General's Office (SIG).[2] Following the hearing, the SIG employee requested and received an audio recording of Respondent's public hearing.

On March 24, 2023, a Decision and Order was issued finding Respondent violated the Ethics

[1] Included in the Motion was a request to stay the March 21, 2024 appellate hearing pending the outcome of this Motion. Based on the timing of this Motion's oral argument, this issue is moot.

[2] The SIG was established by the South Carolina General Assembly in 2012 and, in relevant part, exists to investigate and address allegations of fraud, waste, abuse, mismanagement and misconduct in public schools.

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Act as follows:

> **COUNT ONE FAILURE TO RECUSE FROM A GOVERNMENTAL DECISION IN WHICH A BUSINESS WITH WHICH ASSOCIATED HAD AN ECONOMIC INTEREST SECTION 8-13-700(B), S.C. CODE ANN., 1976, AS AMENDED.** That Kenneth Loveless, Lexington-Richland School District Five Board Member, did in Richland County, write a letter dated March 24, 2020 inquiring about construction work of a district facility by Contract Construction, Inc., a business with which he was associated, in violation of Section 8-13-700(B).
>
> **COUNT TWO FAILURE TO RECUSE FROM A GOVERNMENTAL DECISION IN WHICH A BUSINESS WITH WHICH ASSOCIATED HAD AN ECONOMIC INTEREST SECTION 8-13-700(B), S.C. CODE ANN., 1976, AS AMENDED.** That Kenneth Loveless, Lexington-Richland School District Five Board Member, did in Richland County, on June 15, 2020, participate in discussion about construction of a district facility by Contract Construction, Inc., a business with which he was associated, in violation of Section 8-13-700(B).
>
> **COUNT THREE FAILURE TO RECUSE FROM A GOVERNMENTAL DECISION IN WHICH A BUSINESS WITH WHICH ASSOCIATED HAD AN ECONOMIC INTEREST SECTION 8-13-700(B), S.C. CODE ANN., 1976, AS AMENDED.** That Kenneth Loveless, Lexington-Richland School District Five Board Member, did in Richland County, on September 14, 2020, participate in discussion about construction of a district facility by Contract Construction, Inc., a business with which he was associated, in violation of Section 8-13-700(B).

On April 3, 2023, Respondent filed a Respondent's Request for Review of the Hearing Panel's Decision and Order. An appellate hearing was scheduled for March 21, 2024.

In August of 2023, prior to the appellate hearing, the SIG issued a report entitled "Review of Project Management and Internal Controls" related to the District's construction of PWES. According to the report, the SIG's investigation covered activities occurring from November 2016 through November 2022. (SIG, p.2). The scope and objective of the SIG's "limited review examined contractor billing, actions of the procurement selection committee, the District's compliance with its procurement code, and contractor-related transactions," to include "potential conflicts of interest between or among the procurement selection committee members, the general

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contractor or subcontractors." (SIG, p.1). Under a portion entitled "Methodology," the report provided:

> The SIG reviewed relevant documentation, including emails, provided by the District, and applicable state and federal laws, regulations, and policies. The SIG conducted interviews of current and former District leadership, trustees, employees, representatives, project managers, and contractors for the PWES project, as well as the state's Division of Procurement Services, the Office of State Engineer officials, the South Carolina Department of Education (SCDE) officials, the Office of the State Auditor, the State Ethics Commission, external auditors that provided services to the District, and other persons associated with the PWES project.
>
> (SIG, p.1).

Following its investigation, the SIG made the following findings, in relevant part:

> (1) The SIG determined the District's accounts payable officials and project managers did not ensure sufficient documentation was provided by Contract Construction to support the amount requested for payment in the pay apps and that the District failed to provide proper contract management and oversight of the payment process.
>
> (2) The SIG determined that a selection committee member prepared written statements as required by the South Carolina Code of Laws §8-13-700(B)(3) that provided notice to the selection committee of his/her potential conflict of interest, and the agency head was apprised of the member's potential conflict and deemed him/her qualified. The SIG determined District officials and selection committee members were unable to provide the identity of the appointing official, documentation regarding the appointments, the timing of the appointments, or the criteria used for determining qualified committee members.
>
> (3) The SIG determined that the Board's disregard of at least three legal reviews, including two investigations, in order to pursue ethics actions against a selection committee member constituted a waste of District resources, amounting to at least $12,605 and Board interference in violation of Board policy BBA.
>
> (4) The SIG determined that the District's execution of a Buyer Agency Agreement with The Education Group, Inc. without Board approval was a violation of the District's procurement code. The SIG determined that the District issued an RFP seeking a certified public accounting firm to provide procurement audit

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> services for FYs 2019-2021, with the option to also audit FYs 2017 and 2018. As specified in the Scope of Work of the RFP, the procurement audit was required to be performed in accordance with the agreed upon audit procedures issued by the DPS. However, the audit agreement was changed by the Board and District representatives from a procurement audit to a procurement consulting services contract, which was a substantial departure from the RFP requirements that resulted in the waste of $105,650 in District resources.
>
> (SIG, pp.18-19).

At its conclusion, the SIG report provided, in relevant part:

> The SIG extends its appreciation to the District's current and former leadership, Board members, employees, representatives, project managers, and contractors for the PWES project. In addition, the SIG is appreciative of the collaboration with the state's Division of Procurement Services, the Office of the State Engineer, the South Carolina Department of Education, the Office of the State Auditor, the State Ethics Commission, the District's external auditors, and other persons associated with the PWES project for their assistance and cooperation provided during this review.

On January 23, 2024, Respondent submitted a Freedom of Information Act (FOIA) request to the Commission seeking all documents exchanged between the Commission and the SIG concerning Respondent's complaint matter. Commission staff provided Respondent with emails dated February 17, 2023 and February 21, 2023 between a SIG employee and the Commission's Executive Director. Within this exchange, the SIG employee sought an audio recording of the public hearing, as well as any exhibits from the public hearing. The Executive Director responded by advising the SIG employee how to obtain the audio recording.[3]

On February 13, 2024, Respondent submitted a "Request for Subpoenas" asking the Commission to issue subpoenas, in relevant part, as follows:

> 1. To the custodian of the records of the Office of Inspector General for any and all documents, correspondence, communications contained

[3] Although the SIG employee requested the public exhibits from Respondent's public hearing, the Executive Director did not provide these to the SIG employee due to an oversight. No additional communications between the SIG employee and the Executive Director occurred.

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on a compact disc sent by Brian D. Lamkin to Representative Jay Kilmartin on October 19, 2023 in OIG File No. A-4-0139 . . .

2. To the Office of the Inspector General commanding the deposition of State Inspector General Brian D. Lamkin.

3. To the State Ethics Commission and its Executive Director, Meghan Walker, for any and all documents, correspondence, and communications sent to or received from any employee, agent, investigator, or staff of the Office of Inspector General as set forth in page 1 of the August 18, 2023 report of the Office of the State Inspector General regarding [PWES] Construction; and a list setting forth all individuals from the State Ethics Commission who were interviewed in connection with OIG's report described above.

4. To Thomas William McGee III, Nelson Mullins, 1320 Main Street, Columbia, SC 29201 for all documents provided by Gregory Hughes of Contract Construction Inc. . . .

Following additional contact with Commission staff, Respondent filed this Motion.

DISCUSSION

Respondent asks the Appellate Panel to (1) supplement the record with the August 2023 SIG report and (2) permit Respondent to engage in additional discovery, admitting "into the record any relevant evidence produced in response to [the aforementioned] subpoenas . . ." [4] (Motion, p.2). Respondent claims "the information and communications exchanged between the [SIG] and the Commission are relevant and should be admitted into the record because Respondent was a sitting member of [the District Board] during the construction of [PWES] and the allegations made against Respondent in this matter stem primarily from the construction of [PWES]." (Reply, p.4) In support of this argument, Respondent relies on S.C. Code Ann. §§ 1-23-320(G)(1)-(2), which provides that the "record in a contested case must include all pleadings, motions, intermediate rulings, and

[4] Respondent's Motion briefly raises the issue of information being "inappropriately placed" in Motions to Quash filed by individuals who were served with Commission subpoenas at Respondent's request during the discovery phase of this Complaint matter. To the extent Respondent is requesting that portions of these documents should be stricken from the record, this request is denied because (1) pleadings are not evidence; and (2) if these pleadings were objectionable, Respondent should have filed a Motion to Strike the offending portions at the time of submission.

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depositions; and evidence received or considered." Respondent argues the information he seeks is relevant because it constitutes "evidence received or considered by the Commission and is therefore material to the decision reached by the [Hearing P]anel." (Reply, pp.2-3). As discussed herein, the Commission disagrees and Respondent's Motion is denied.

S.C. Code Ann. Regs. 52-807 allows additional evidence to be added to the record when "necessary for completion of the record in a case on review." In ruling on an application to submit additional evidence, the Commission must consider two (2) factors: (1) the materiality of the proposed additional evidence; and (2) the existence of a good reason for the failure to introduce such evidence at the original hearing. See Brown v. Peoplease Corp., 402 S.C. 476, 741 S.E.2d 761 (Ct. App. 2013). Material evidence is that which would present a reasonable possibility of a different outcome. See DeHart v. SCDHHS, No. 98-ALJ-08-0096-AP, 1998 WL 682496 (S.C. Admin. L. Ct. Sept. 14, 1998); see also Wright v. Strickland, 306 S.C. 187, 410 S.E.2d 596 (Ct. App. 1991) (finding the moving party did not proffer any testimony or show that the evidence could make any difference to the outcome of the case).

The Commission finds Respondent has failed to point to a single fact that would create a reasonable possibility of a different outcome in Respondent's complaint matter. There are no facts in the SIG report that relate to Respondent's relationship with Contract Construction, nor is there any indication in the SIG report that Respondent did not engage in the conduct found to be violative of the Ethics Act as determined by the Panel's Order.

The Commission further finds that Respondent cannot establish a good reason for failing to introduce any fact set forth in the SIG report because, according to the report, the SIG's period of review was from 2016-2022. Respondent's hearing did not occur until February 16, 2023, meaning any fact uncovered by the SIG could have also been discovered by Respondent prior to the hearing. Indeed, Respondent had the ability to engage in discovery prior to the Panel hearing, and he exercised that right by issuing numerous subpoenas and conducting several depositions. In fact, one

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of the subpoenas currently sought by Respondent relates to Greg Hughes, an individual he has already deposed.

Finally, the Commission finds Respondent's reliance on §§ 1-23-320(G)(1)-(2) is misplaced. These statutory provisions are a clear reference to the fact-finder, which is the Hearing Panel in this instance. The only information received or considered by the Hearing Panel was the information presented during Respondent's public hearing. Respondent is undoubtedly aware of this information given he was present and represented by counsel for the duration of the hearing.

CONCLUSION

Based on the reasoning set forth above, Respondent's Motion to Admit Additional Evidence is hereby DENIED and this matter shall proceed to an appellate hearing.

AND it is **SO ORDERED.**

Neal D. Truslow
Chairman, Appellate Panel

June 3, 2024
Columbia, South Carolina

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STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	BEFORE THE STATE ETHICS COMMISSION
IN THE MATTER OF: COMPLAINT C2021-016	)	
Kim Benson, Complainant.	)	**APPEAL ORDER**
Kenneth Loveless, Respondent.	)	

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

RELEVANT PROCEDURAL HISTORY

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

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

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

> **COUNT ONE FAILURE TO RECUSE FROM A GOVERNMENTAL DECISION IN WHICH A BUSINESS WITH WHICH ASSOCIATED HAD AN ECONOMIC INTEREST SECTION 8-13-700(B), S.C. CODE ANN., 1976, AS AMENDED.** That Kenneth Loveless, Lexington-Richland School District Five Board Member, did in Richland County, write a letter dated March 24, 2020 inquiring about construction work of a district facility by Contract Construction, Inc., a business with which he was associated, in violation of Section 8-13-700(B).
>
> **COUNT TWO FAILURE TO RECUSE FROM A GOVERNMENTAL DECISION IN WHICH A BUSINESS WITH WHICH ASSOCIATED HAD AN ECONOMIC INTEREST SECTION 8-13-700(B), S.C. CODE ANN., 1976, AS AMENDED.** That Kenneth Loveless, Lexington-Richland School District Five Board Member, did in Richland County, on June 15, 2020, participate in discussion about construction of a district facility by Contract Construction, Inc., a business with which he was associated, in violation of Section 8-13-700(B).
>
> **COUNT THREE FAILURE TO RECUSE FROM A GOVERNMENTAL DECISION IN WHICH A BUSINESS WITH WHICH ASSOCIATED HAD AN ECONOMIC INTEREST SECTION 8-13-700(B), S.C. CODE ANN., 1976, AS AMENDED.** That Kenneth Loveless, Lexington-Richland School District Five Board Member, did in Richland County, on September 14, 2020, participate in discussion about construction of a district facility by Contract Construction, Inc., a business with which he was associated, in violation of Section 8-13-700(B).

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

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

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

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

FACTS

1. Respondent served on the District Board from 2018-2022.
2. Respondent has owned and operated Loveless Commercial Contracting, Inc. (LCC) for over thirty-five (35) years. Respondent serves as President, signs all contracts on LCC's behalf, and personally carries the line of credit for LCC.
3. At all times relevant, Contract Construction was a general contractor located in South Carolina and Greg Hughes (Hughes) was its President.
4. On December 19, 2018, the District entered into a contract with Contract Construction for the building of PWES.
5. Thereafter, Contract Construction hired LCC to perform work on an unrelated State Law Enforcement Division (SLED) Laboratory (SLED Lab). The agreement between LCC and Contract Construction was signed by Respondent no later than March 12, 2020.
6. On March 24, 2020, Respondent submitted a letter to the District Superintendent raising perceived problems with the construction of PWES and criticizing certain terms of the District's contract with Contract Construction. Respondent requested "action and a reply on these matters within the next two weeks."

7. During a June 15, 2020 District Board meeting, Contract Construction provided a progress report on the PWES construction. Following the report, Respondent questioned Hughes and District consultant Dan Neal (Neal) regarding, in relevant part, contract change orders and owner/contractor contingencies. Another Board member, Ed White (White), questioned Hughes and Neal about the issues raised in Respondent's March 24, 2020 letter. Respondent engaged in additional discussion with White and the Board, noting he had received unsatisfactory answers to his March 24, 2020 letter.

8. During a September 14, 2020 District Board meeting, Contract Construction provided another progress report on the PWES construction. White again questioned Hughes about the issues raised in Respondent's March 24, 2020 letter. White also raised the issue of LCC's contract with Contract Construction with regard to the SLED Lab and questioned whether Respondent's participation in matters related to Contract Construction was proper. Respondent continued to question Hughes and others about the cost of materials and the work being performed at PWES. Hughes replied, in relevant part, as follows:

> . . . I don't have any problem with the questions. And we're going to give you the best facility you've had, and it will be under budget. And I do want to speak to Mr. Loveless' abilities as a contractor. He is doing a fantastic job on the project we're working together on. He was selected for his qualifications and doing a fantastic job. And there's similar type issues out there, but they're minor in the scheme of things. And we're pleased with what he's doing for us.

9. During the February 8, 2021 District Board meeting, Respondent submitted a letter to the Board acknowledging his affiliation with Contract Construction on the SLED Lab and stating that he would thereafter recuse himself from all matters related to Contract Construction.

10. As outlined in its Decision, the Hearing Panel found that Respondent violated Section 8-13-700(B) of the Ethics Act by (1) writing the March 24, 2020 letter to the District Superintendent

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

LAW/ANALYSIS

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

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

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

Section 8-13-700(B) of the Ethics Act provides, in relevant part:

> No [public official] may make, participate in making, or in any way attempt to use his [office] to influence a governmental decision in which he, a family member, an individual with whom he is associated, or a business with which he is associated has an

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

> economic interest. A [public official] who, in the discharge of his official responsibilities, is required to take an action or make a decision which affects an economic interest of himself, a family member, an individual with whom he is associated, or a business with which he is associated shall:
>
> (1) prepare a written statement describing the matter requiring action or decisions and the nature of his potential conflict of interest with respect to the action or decision;
>
> . . .
>
> (4) if he is a public official, other than a member of the General Assembly, he shall furnish a copy of the statement to the presiding officer of the governing body of an agency, commission, board, or of a county, municipality, or a political subdivision thereof, on which he serves, who shall cause the statement to be printed in the minutes and require that the member be excused from any votes, deliberations, and other actions on the matter on which the potential conflict of interest exists and shall cause the disqualification and the reasons for it to be noted in the minutes.

Section 8-13-100(4) of the Ethics Act defines "business with which he is associated" as:

> A business of which the person or a member of his immediate family is a director, an officer, owner, employee, a compensated agent, or holder of stock worth one hundred thousand dollars or more at fair market value and which constitutes five percent or more of the total outstanding stock of any class.

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

> (a) . . . an interest distinct from that of the general public in a purchase, sale, lease, contract, option, or other transaction or arrangement involving property or services in which a public official, public member, or public employee may gain an economic benefit of fifty dollars or more.
>
> (b) This definition does not prohibit a public official, public member, or public employee from participating in, voting on, or influencing or attempting to influence an official decision if the only economic interest or reasonably foreseeable benefit that may accrue to the public official, public member, or public employee is incidental to the public official's, public member's,

> or public employee's position or which accrues to the public official, public member, or public employee as a member of a profession, occupation, or large class to no greater extent than the economic interest or potential benefit could reasonably be foreseen to accrue to all other members of the profession, occupation, or large class.

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

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

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

"decisions" and "actions," but also provides that public officials are required to recuse "from any votes, deliberations, and other actions on the matter" and on all "matters pertaining to that economic interest." See Section 8-13-700(B)-(C). This interpretation is also supported by decades of guidance and enforcement actions, not only from the Commission, but from other entities responsible for interpreting and enforcing the Ethics Act.[5]

The governmental decision at the heart of this matter is the District's 2018 contract with Contract Construction for the construction of PWES. It is undisputed that Respondent, who personally carries the line of credit for LCC and personally signs all its contracts, became a subcontractor for Contract Construction on March 12, 2020, on an unrelated SLED Lab, thereby making Contract Construction a business with which Respondent was associated. See Section 8-13-100(4) (defining "business with which he is associated" as " a business of which the person . . . is a . . . compensated agent"); SEC AO2000-004 (defining "compensated agent" as "any *ongoing* client relationship in which the [public official] receives compensation for services rendered") (emphasis added).[6] Accordingly, after March 12, 2020, Respondent was required to recuse himself

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

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

from any matter in which Contract Construction had an economic interest, to include the inner workings of its contract with the District. See SEC AO2002-003 (finding the economic interest of a business with which the public official is associated is imputed to the public official for purposes of Section 8-13-700). It was therefore in violation of Section 8-13-700 for Respondent to insert himself into the inner workings of the contract between the District and Contract Construction by (1) writing the March 24, 2020 letter to the Superintendent demanding action with regard to Contract Construction's performance under the PWES contract; (2) participating in the June 15, 2020 Board discussion regarding Contract Construction's performance under the PWES contract; and (3) participating in the September 14, 2020 Board discussion regarding Contract Construction's performance under the PWES contract.

Any other interpretation of Section 8-13-700(B) would lead to an absurd result that would allow a public official to be involved in literally every aspect of a matter that implicated their own economic interests as long as they recused themselves when it came to a formal vote. This would defeat the entire purpose of the Ethics Act, which is outlined in the Preamble:

> Whereas, one of the most important functions of any law aimed at making public servants more accountable is that of complete and effective disclosure. Since many public officials serve on a part-time basis, it is inevitable that conflicts of interest and appearances of impropriety will occur. Often these conflicts are unintentional and slight, but at every turn those who represent the people of this State must be certain that it is the interests of the people, and not their own, that are being served. Officials should be prepared to remove themselves immediately from a decision, vote, or process that even appears to be a conflict of interest.

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

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

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

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

Pursuant to Section 8-13-320(9) of the Ethics Act, the Commission has the duty and power "to initiate *and* receive complaints and make investigations, as provided in item (10) . . . of statements filed or allegedly failed to be filed . . . and, upon complaint by an individual, of an alleged violation of this chapter." (emphasis added). In that regard, Section 8-13-320(9)(a) of the Ethics Act allows the Commission to "commence an investigation on the filing of a complaint by an individual *or* by the commission, as provided in item (10)(d), upon a majority vote of the total membership of the commission." (emphasis added).

Section 8-13-320(10) of the Ethics Act provides for the various ways the Commission may accept a complaint and provides the process for each, the relevant portions of which are provided below:

> (a) The commission shall accept from an individual, whether personally or on behalf of an organization or governmental body, a verified complaint, in writing, that states the name of a person alleged to have committed a violation of this chapter and the particulars of the violation. The Commission shall forward a copy of the complaint, a general statement of the applicable law with respect to the complaint, and a statement explaining the due process rights of the respondent including, but not limited to, the right to counsel to the respondent within ten days of the filing of the complaint.
>
> . . .
>
> (c) If the commission, its executive director, or staff designated by the commission determines that the complaint alleges facts sufficient to constitute a violation, an investigation may be conducted of the alleged violation.
>
> (d) If the commission, upon receipt of any information, finds probable cause to believe that a violation of the chapter has occurred, it may, upon its own motion and an affirmative vote of six or more members of the commission, file a verified complaint, in writing, that states the name of the person alleged to have committed a violation of this chapter and the particulars of the violation. The commission shall forward a copy of the complaint, a general statement of the applicable law with respect to the complaint, and a statement explaining the due process rights of the respondent including, but not limited to, the right to counsel to the respondent within ten days of the filing of the complaint.

As an initial matter, Respondent appears to conflate the process for opening a Commission-generated complaint (outlined in Section 8-13-320(10)(d)) with a complaint filed by a member of the public (outlined in Section 8-13-320(10)(c)). Pursuant to Section 8-13-320(10)(c) of the Ethics Act, "if the Commission, its executive director, or staff designated by the commission determines that the complaint alleges facts sufficient to constitute a violation, an investigation may be conducted of the alleged violation." This is exactly what occurred - the complaint was filed on February 17, 2021 by a member of the public, the Executive Director determined the complaint contained sufficient facts, an investigation was ordered, and Respondent was notified by way of a certified letter dated February 23, 2021. Accordingly, the investigation into this matter was opened under the lawful authority given to the Executive Director by Section 8-13-320(10)(c) of the Ethics Act.

As to the ten (10) day notice requirement, Section 8-13-320(10)(a) and (d) require only that the Commission forward a copy of the complaint to the Respondent within ten (10) days, which was done in the present case – the complaint was filed on February 17, 2021, the Executive Director determined the complaint contained sufficient facts, an investigation was ordered, and Respondent was notified by way of a certified letter dated February 23, 2021. There is no timeline set forth in the Ethics Act or the corresponding regulations regarding the issuance of the Notice of Hearing, aside from Regulation 52-707, which requires the Notice of Hearing to be issued "at least thirty days before the scheduled hearing."

DECISION

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

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

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

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

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

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

STATE ETHICS COMMISSION

NEAL D. TRUSLOW,
APPELLATE PANEL CHAIR

Columbia, South Carolina

STATE OF SOUTH CAROLINA
STATE ETHICS COMMISSION

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2021 FEB 17 AM 11:43
SC ETHICS COMMISSION

COMPLAINT FORM

FOR COMMISSION USE ONLY:
CASE NUMBER
C-2021-016

COMPLAINANT: Kim Benson
ADDRESS: 1415 Beaver Dam Rd. Columbia SC 29212
TELEPHONE NUMBER: 803-361-9510
TITLE: Parent & Tax Payer

RESPONDENT: Kemeth Loveless
ADDRESS: 228 Lookout Pointes DR Chapin SC 29036.
TELEPHONE NUMBER: 803-345-0547
TITLE: School Board Trustee

Set forth in detail specific facts upon which you based your complaint against above-named respondent (only detailed, clear factual allegations will be considered. If additional space is needed, attach supplemental sheets).

* Please see attached document which contains various links to additional documents & media.

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

STATE OF SOUTH CAROLINA
COUNTY OF Richland

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

Kim M Benson
Complainant Signature

Sworn to and subscribed before me this
17th day of February, 2021

Notary Public for South Carolina
My Commission expires 8-11-2025

SEC-7 (Revised 8/2019)

REPLY TO: 201 Executive Center Drive, Suite 150, Columbia, South Carolina 29210 (803)253-4192
FAXED COPIES WILL NOT BE ACCEPTED

C102form

SCANNED

MLW RC 2-17-21 RP

ROA 0049 LOGGED

Respondent: Kenneth Loveless
Date Submitted: February 17, 2021

I am submitting this complaint against Kenneth Loveless, Lexington Richland School District 5 Board Trustee. Mr. Loveless received an informal opinion from the South Carolina Ethics Commission, dated September 25, 2020. This opinion was based on a hypothetical scenario that Mr. Loveless presented regarding the ethics of his business, Loveless Commercial Contracting, taking a contract with a District 5 vendor in a different school district – such as Richland District 2. It is important to note that Mr. Loveless requested this opinion while fully engaged in a $1,000,000+ contract with Contract Construction as a subcontractor. Contract Construction was hired by the Lexington Richland School District 5 Board of Trustees in December 2018, while Ken Loveless was a School Board Trustee, to be the general contractor for the construction of District 5's new elementary school, now known as Piney Woods Elementary School. It is interesting that he did not ask the SCEC directly about that contract at that time. The timeline that follows is also remarkably interesting, because Mr. Loveless' creates a steady stream of criticism of Contract Construction's work on the Piney Woods project. He goes to great lengths to discredit their work, he demands unnecessary inspections, and causes delays. The District has spent valuable time and resources in hiring consultants and running tests that have all confirmed that Mr. Loveless' claims are without merit.

The question is, why would he manufacture lies and work so hard to discredit Contract Construction whilst working with them as a subcontractor on another project? To gain an upper hand on the PWES site, to manipulate Contract Construction into giving future contracts for Loveless Commercial Construction? To distract his fellow trustees from discovering his economic relationship with Contract Construction. In one of the videos included in this report you will hear that even the owner of Contract Construction seems quite confused by Mr. Loveless' allegations. Regardless of the reason for his chaotic behavior, Mr. Loveless' financial relationship with Contract Construction is a conflict of interest, as defined by the South Carolina Ethics Commission. And his obstructionist, hostile behavior, and dubious power-grabs are of great concern to those who care about the future of Lexington Richland School District 5.

Timeline and Attachments:

- November 2018 – Ken Loveless wins a seat on the District 5 Board of Trustees.
- December 2018 – Contract Construction is awarded the contract for Elementary School #13 (soon to be named Piney Woods Elementary School).
- February 11, 2020 – Loveless Commercial Construction signs on as a subcontractor with Contract Construction for State Project #D50-9976CB (SLED Forensic Services Laboratory). Mr. Loveless signed the document (Doc A). At this time, Mr. Loveless does NOT notify the District 5 Board of Trustees of this contract, nor does he recuse himself of any of the District's dealings with Contract Construction. If anything, this evidence will prove that he ramps up his critique of Contract Construction. As of this date, Ken Loveless is in violation of Section 8-13-700 (A) and (B).

- February 13, 2020 – Mr. Loveless sends an email (Doc B) to then Board Chairperson, Robert Gantt, copying all other board members. In this email he begins what becomes a year-long drama of claims against the contractor, the district's staff and consultants, and fellow board trustees, all while his company, Loveless Commercial Construction, quietly accepts a contract with Contract Construction. His omission of this fact, while raising cane about Contract Construction, is dubious and dishonest.

- March 24, 2020 – Ken Loveless sends an email to Dr. Melton, District 5 Superintendent, with 30 plus attachments, directing her to get answers to his questions about the quality of work being done at Piney Woods Elementary School. (Doc C))

- April 20, 2020 – Mr. Loveless is defensive and often out of order during a report on the PWES project by Contract Construction. The contractors', consultants', and testing reports in response to issues raised in Mr. Loveless' email to Dr. Melton are also presented in this meeting. (Doc D)
  Video June 15

- June 18, 2020 – Trustees Ken Loveless, Jan Hammond, and Chairperson Michael Cates visit the PWES site, as requested during the June 15 meeting. It is rumored that Mr. Loveless spent some time talking with Greg Hughes, the owner of Contract Construction, during the visit, saying things like "we need to work together" and indicated that he "could make more trouble for Contract Construction". This may have been said in humor, but it was not necessarily received as such.

- July 10-13, 2020 – Emails move between board trustees regarding Mr. Loveless' claims against Contract Construction. It is in this email thread that then Chairperson Michael Cates tells Mr. Loveless that he is not to visit the PWES site. (Doc E)

- July 16, 2020 – Ken Loveless reports in an email to fellow board trustees that he received a package of concrete delivery tickets that arrived anonymously in the mail. (see September 14, 2020) (Doc F) Note that this document is entered into the board records on September 14, when the board receives a letter from subcontractor, Knight Construction.

- August 2, 2020 – Greg Hughes, the owner of Contract Construction, and Dan Neal , the District's construction project consultant, respond to Mr. Loveless' claims. This letter is directed to superintendent, Dr. Melton. You can cleorly hear their tone of frustration in their very thorough responses. (Doc G)

- September 14, 2020 – This video of the September 14 board meeting shows a great example of the devious questioning that Mr. Loveless uses to undermine Greg Hughes, the general contractor, during his report on the Piney Woods Elementary School project. He creates an air of distrust and hostility in board meetings and is known to be quite aggressive in other meetings that are not shared with the public.
  Video September 14

- September 14, 2020 - Knight Construction reports in a letter to Greg Hughes, the owner of Contract Construction, that Ken Loveless requested, on or around April 17,

2020, copies of concrete delivery tickets be mailed to his attention. This contradicts Mr. Loveless' claim that the concrete delivery tickets were sent to him anonymously. (Doc H)

- September 18, 2020 – The State Newspaper published a story titled, "Feud over new Midlands school leads to ethics accusations against school board member". (Doc I)

- September 21, 2020 – Mr. Loveless emails the SCEC to seek opinion.

- September 25, 2020 – The SCEC responded to Mr. Loveless' inquiry and refers to law Section 8-13-700 B4) directing that in such a situation, the public official must recuse himself from any votes, deliberations, and other actions on the matter on which the potential conflict of interest exists and shall cause the disqualification and reason for it to be noted in the minutes. This opinion also states that the public officer must submit a written statement describing the matter requiring this action and the nature of his potential conflict. In conclusion, the SCEC directs that "whenever you are faced with a scenario in which the general contractor has an economic interest, you must recuse yourself from that matter." Ken Loveless does NOT share this response from the SC Ethics Commission with his fellow board trustees.

- September 28, 2020 – Ken Loveless' meddling and condemnations lead to the resignation of Dan Neal, District 5's experienced and well-respected construction manager for the Piney Woods Elementary School project. (Doc J) Video September 28

- September 28, 2020 – After Mr. Neal's resignation, during the Discussion Agenda, Ken Loveless submits to the board a copy of the contract (dated February 11, 2020 (Doc A)) between Loveless Commercial Construction and Contract Construction for the SLED project. He also submits the opinion he received from the SC Ethics Commission.

- October 12, 2020 – After having some time to look back at events from the previous months, then Board Secretary Beth Hutchinson submits a copy of the SCEC's opinion with her own notes. (Doc K)

- November 16, 2020 – Ken Loveless accepts the office of Vice Chair of the Lexington Richland School District 5 Board of Trustees. Newly elected board trustees are sworn in. The new members are Cathy Huddle, Matt Hogan, and Rebecca Blackburn-Hines. FYI: Ken Loveless made a $1000 campaign donation to each of these candidates. His wife, Jondy Loveless (also a former D5 Board Trustee) made $500 campaign contributions to Hogan and Hines.

- January 25, 2021 – Though he has sought and reported the SC Ethic's Commission's opinion that he should recuse himself of matters involving Contract Construction,

during this board meeting, Mr. Loveless asks Clay Cannon, Director of Facilities Operations, to submit copies of all construction contacts to the board for *his* review. Video January 25 (23:00 mark)

- January 28, 2021 – Ken Loveless fails to comply with SCEC's opinion and prior board instructions from then chair Mr. Cates, as he participates in a site visit at Piney Woods Elementary School. (Doc L)

- February 8, 2021 – At the12:00 mark in the video segment of the superintendent's report is an example of how Ken Loveless tends to insert non sequitur construction related questions and statements into other discussions. Board members and public observers have wondered if he does this to disrupt the meeting. Video February 8a

- February 8, 2021 - Ken. Loveless finally submits the written statement (Doc M) prescribed in the law quoted in the September 28 opinion by SCEC. After his statement is ready by board chairperson, Jan Hammond, Mr. Loveless makes a long statement of rebuttal that sets out all the reasons why he still feels that he should NOT have to recuse himself. His rebuttal then evolves into accusations of conflict of interest by another board trustee, Ed White. Mr. White has been critical of Mr. Loveless' disruptions and refusal to recuse himself of issues regarding Piney Wood's construction. Board secretary, Nikki Gardner, then makes a motion to investigate questions of Mr. White's campaign contributions. Video February 8b

- February 9, 2021 – The State Newspaper published a story titled, "SC school board member steps away from construction project after ethics dispute". The last paragraphs show how Mr. Loveless really feels about recusing himself from construction-related board business. (Doc N)

- Social Media: Mr. Loveless participates on a Facebook page, "Learn About Your D5 School District," that is widely known to be critical of teachers, students, and parents who express differing opinions. The group has "taken up" for Mr. Loveless and, in turn, its administrators and members often condemn other board members along with the district superintendent, staff, and teachers. Mr. Loveless should not be sowing seeds of political strife via social media. Lately members of this group have been shaming District 5 teachers for questioning reentry plans and COVID-related teacher/staff safety. Mr. Loveless' participation in and support of this forum is equal to him being complicit in the derogatory statements and false claims made by members of the group. (Doc O)

In closing, I submit this complaint against Mr. Kenneth Loveless with great concern about a policy issue that he is currently trying to push through without the usual process. He is incredibly determined to put three board committees in place, despite the South Carolina School Board's advisement against committees and resistance, based on past experience, from some trustees. The chief complaint about board committees is that they can become political and undermine the superintendent. Alas, he has proposed the creation of a Construction Committee, that he intends to chair. Given his history of

lying to his fellow trustees, stepping out of line regarding board protocol, making unreasonable demands of the superintendent, and benefiting personally from a District 5 financial contract, I do not think he should be given any control over a construction committee or any construction-related dealings of the District 5 Board of Trustees. I believe that he should NOT be allowed any vehicle with which he can continue to create political strife and administrative obstruction. With this, I ask the South Carolina Ethics Commission to please act on this complaint promptly.

ATTACHMENTS:

- Documents (Docs A – O) are attached.
- Videos are on the enclosed jump drive. The password is the same as the folder name: LovelessD5

P.S. While researching facts for this complaint, I discovered (on the SCEC website)that Loveless Commercial Construction was awarded a contract for over $3 million by Irmo Chapin Recreation Commission that spanned 2018-2019. Ken Loveless' brother, Bruce Loveless, was a Commissioner on ICRC's Board of Commissioners at that time and still is. This is not an ethics violation related to District 5, but it may point to a disturbing trend.

Attachment #3, Pg 4 Doc A included with the minutes of the 9/28/2020 meeting at the request of Board member Ken Loveless pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

AIA Document A401™ – 2017

Standard Form of Agreement Between Contractor and Subcontractor

AGREEMENT made as of the Eleventh day of February in the year Two Thousand Twenty
(In words, indicate day, month and year.)

Date of Subcontract which is after last Vote

BETWEEN the Contractor:
(Name, legal status, address and other information)

Contract Construction, Inc.
1125 Bickley Road
Irmo, South Carolina 29063

and the Subcontractor:
(Name, legal status, address and other information)

Loveless Commercial Contracting, Inc.
1821 State Street
Cayce, South Carolina 29033

The Contractor has made a contract for construction (hereinafter, the Prime Contract) dated: February 6, 2020

with the Owner:
(Name, legal status, address and other information)

South Carolina Law Enforcement Division
Department of Administration
921 Main Street
Columbia, South Carolina 29201

for the following Project:
(Name, location and detailed description)

SLED Forensic Services Laboratory – State Project No. D50-9976-CB)
4700 Broad River Road
Columbia, South Carolina 29210

The Prime Contract provides for the furnishing of labor, materials, equipment and services in connection with the construction of the Project. A copy of the Prime Contract, consisting of the Agreement Between Owner and Contractor (from which compensation amounts may be deleted) and the other Contract Documents enumerated therein, has been made available to the Subcontractor.

The Architect for the Project:
(Name, legal status, address and other information)

LS3P Associates Ltd.
701-A Lady Street
Columbia, South Carolina 29201

The Contractor and the Subcontractor agree as follows.

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201™–2017, General Conditions of the Contract for Construction, is adopted in this document by reference.

Date Subcontract received back signed from Contractor

RECEIVED
MAR 12 2020
LOVELESS
Commercial Contracting, Inc

Init.
/

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§ 14.7 The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 14.7.1 Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 15 ENUMERATION OF SUBCONTRACT DOCUMENTS

§ 15.1 This Agreement is comprised of the following documents:

.1 AIA Document A401™–2017, Standard Form Agreement Between Contractor and Subcontractor;

.2 Prime Agreement between the Owner and Contractor, including all exhibits thereto

.3 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if not included in the Prime Agreement, dated as indicated below:

.4 Other Exhibits incorporated into this Agreement:
(Clearly identify any other exhibits incorporated into this Agreement.)

Exhibit A – List of Specifications
Exhibit B – List of Drawings
Exhibit C – List of Addenda
Exhibit D – Sample Certificate of Insurance
Exhibit E – Consent of Surety Company to Partial Payment
Exhibit F – Sample Bond Forms
Exhibit G – W9 Form
Exhibit H – Payment Application
Exhibit I - Parking Permit Form

.5 Other documents:
(List other documents, if any, forming part of the Agreement.)

This Agreement entered into as of the day and year first written above.

CONTRACTOR *(Signature)*
Greg Hughes (President)
Kyle Farley (Vice President)
(Printed name and title)

SUBCONTRACTOR *(Signature)*
KENNETH B. LOVELESS, PRESIDENT
(Printed name and title)

Attachment #3, pgs is included with the minutes of the 9/28/2020 meeting, at the request of Board member Ken Loveless pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

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RFA 3050

Doc B

Ed White

From: Edward White <ewhite@lexrich5.org>
Sent: Monday, June 15, 2020 12:46 PM
To: Ed White
Subject: Fwd: Concrete Inspection ans Testing Related matter December 6, 2019

This Issue Dec '19 → Feb '20 → June '20 → Sept '20 this claim Feb 2

Attachment #1, 191 is included with the minutes of the 9/14/2020 meeting, at the request of Board member Ed White pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

External Email - From: ewhite@lexrich5.org

---------- Forwarded message ---------
From: **Kenneth Loveless** <kloveless@lexrich5.org>
Date: Thu, Feb 13, 2020 at 6:08 PM
Subject: Concrete Inspection ans Testing Related matter December 6, 2019
To: Robert Gantt <RGantt@lexrich5.org>, Beth Hutchison <bhutchison@lexrich5.org>, Michael Cates <michaelcates@lexrich5.org>, Jan Hammond <jhammond@lexrich5.org>, Nikki Gardner <ngardner@lexrich5.org>, Board Member Ed White <EWhite@lexrich5.org>, Dr. Christina Melton <csmelton@lexrich5.org>

Feb 13, 2020

Mr, Gantt,

When Dr.Melton, Dan Neal and I met on December 9,2019, she asked that I call Mr.Neal directly about observations and questions. Dr. Melton requested Mr.Neal to give me his business card with contact information, which he did. Last year we were instructed to contact administrative staff members directly to ask questions and make observations in their respective areas of expertise.I have been doing that. In the email dated February 12, 2020 from you, I am now being required to submit questions directly to you and Dr. Melton.

I spoke to Mr.Neal yesterday. He stated to me that he could not give me answers to my requests.I called Mr.Neal to find the times and dates he could possibly to meet on site to review documents and review the work related to the matter. Mr.Neal said to me that he was under orders from you, the board chair and the superintendent not to meet with me or to provide documents without a directive from the two of you.I believe that neither of you has the power to do as Mr.Neal says.

First, I was elected by the public, am peer to you. Further, I am not an employee and as such, do not take orders from Dr. Melton.

Second, the requests for documents are targeted to specific items and timeframes and are not overly burdensome. They are not attorney work product and are not the product of any executive session since the causative event was brought to the entire board's attention during the public participation session of the December 9,2019 board meeting. The documents requested are all items which are required in the Project Manual or contract documents.If the documents have been submitted and maintained as the Project Manual and contract documents require, all can be sent to me with as little as two hours clerical effort.

Additionally, since we are paying one half million dollars for testing, I do not believe we would would be putting any imposition upon the consultants to answer the legitimate concerns of the public.

In as far as Mr. Neal is concerned,for December 9,2019, I was attempting to arrange a meeting with Mr.Neal to ask questions prior to the board meeting that night.I wanted to meet with Dan Neal without the architect and construction manager present because I had concerns which an owner might want to keep confidential. In a December 5,2019 email to me from you, Robert Gantt it was stated:" As you know, Mr. Neal is a Mechanical Engineer and a Professional Engineer.He is the District 5 representative looking out for our interest He is not however an architect nor the Prime Contractor for D5 on the new elementary school. He may not have the have all the detail for design and construction you may be seeking."

In your February 12,2020 email you state " Our consultant Mr. Dan Neal is a professional engineer with advanced degrees and a career with vast experiences that benefit the district in the pursuit of excellence in this construction". It appears to me that you want it both ways. I don't fathom the reversal in your opinion of him.

I, too,have experience and degrees.The longer it takes to gain the answers to my questions and obtain the documents requested, the more costs and the long term safety could be jeopardised.

And, here's the kicker, Mr. Gantt, I was elected to bring oversight so that we will not have projects such as the Chapin High School Renovations where the experts were aware that work was not per specification and it ended up costing the taxpayers millions to correct defects.

And, I am a bargain. It is not costing you anything for an extra set of eyes. My intent ,regardless of Ed White's ascertains, is to have an exceptionally well built project. I believe that all of us have the same goal. I come with my own insurance so there is no liability. I will not give directives.

Please provide me the documents that I have requested.

Respectfully submitted,

Kenneth B. Loveless

All Board Members have the same rights and responsibilities,

Mr. Loveless is not credentialled to sign off on this project.

This is incorrect. Mr. Loveless was not on the Board during the Settlements. Total deficiencies at Chapin High School less than #23,000, Settlement discussion to be on subsequent meeting.

See and listen to September 14, 2020 Board recording.

Attachment #1 pg 2 is included with the minutes of the 9/14/2020 meeting, at the request of Board Member Loveless pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

Doc C

Questions Raised about Construction on Amicks Ferry Road

Kenneth B. Loveless

228 Lookout Pointes Drive

Chapin, SC 29036

March 24, 2020

Attachment #1, pg. 1 is included with the minutes of the 6/15/2020 meeting, at the request of Board member Ed White pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

Dr. Christina Melton

Superintendent Lexington-Richland School District 5

1020 Dutch Fork Road

Irmo, SC 29063

Re: Elementary School # 13 Amicks Ferry Road

Dear Dr. Melton:

First, I am aware that district administration has had its hands full with the COVID-19 Pandemic. Yet, construction at the site continues and items within the body of this report have bearing upon contractor safety and quality of construction. As such, each should have relative equal gravity as compared to the present geopolitical occurrences. I believe that I had no choice but to report the situation.

As general notes, any item marked as CONFIDENTIAL is no longer so (and should never have been because this is public project) because the construction documents after approval of the GMP are for public knowledge. Likewise, passages to which I refer marked DRAFT were unchanged during contract negotiations and are also in the public domain.

All correspondence via district email concerning this matter is included. (See attachment #1) I initially requested that the Project Representative Dan Neal investigate by providing Daily Progress reports, photos, concrete delivery tickets for each batch (truckload), Field Density test reports, cut sheets and submittals for select fill and by class of concrete used on site. We also need to review all dates of mobilizations of each contractor or subcontractor, concrete tests reports, soils test reports and electrical conduit submittals from the period interval from the inception of the project until and including progress on December 9, 2019. The initial soils information given indicated an Erosion and Sedimentation Observation Report from Terracon dated 9/25/2019. So, the inception of the project had to have occurred before that date.

At the December 9, 2019 school board meeting, Mrs. Susan Baker made know her observations (see attachment # 2) and requested explanations for actions taken by the Contractor on the night of December 6, 2019. Mrs. Baker has never received an answer to her inquiry. Under school board policy BEDH (see attachment #3) a school board trustee may request an official oral answer to the information

at the next board meeting. Since I was unaware that Mrs. Baker had not received an answer until today, I am hereby requesting such for the next board meeting.

At the January 27 board meeting, we received letters (see attachments #4, 5 and 6) from engineers and a letter from the project architect (see attachment #7) orchestrated by and presented through the district's Project Representative, Mr. Dan Neal. After reviewing the letters, I have the following to offer:

1) In general, the letters attempt to limit Mrs. Baker's request by filtering out potential causative effects other than concrete materials and testing. Mrs. Baker's inquiry did not exclude any other areas of concern which might have been and are: design, construction, materials utilized, inspections and safety. Mr. Neal choose to make concrete and material testing his focus since his witness, Mr. Greg Hughes, President of Contract Construction, Inc., later stated in the board meeting that electrical duct bank concrete materials did not need to be tested. I asked Mr. Neal in your office December 9, 2019, the afternoon before the meeting, about the matter. He told me that he was confident that the work had been done correctly since Contract Construction's project superintendent had personally supervised the work.

2) As in any construction related endeavor, it's Safety First. Many of our students in mock and real life interviews tout the fact that they have earned through study the OSHA 10 Hour Certification. Yet, we as adults, are allowing unsafe conditions on our district's work site. Think how disillusioned students will be when they become aware of this situation. Our highly regarded general contractor was supervising work performed under tractor lights. I reference you to 29 CFR OSHA 1926 Construction Industry Regulations Section 1926.56 Illumination. (See attachment #8) The Final Geotechnical Engineering Report Item 6.5 General Construction Considerations on page 20 warn bidders about Excavation Safety. OSHA Section 1926.32 deals with the Competent Person who was to have supervised excavations on site. Subpart P deals with excavations. On March 12, 2020 at 9:16 a.m. and again at March 13, 2020 at 3:25 p.m. contractor's employees were observed in open excavations over 5 feet depth without trench boxes, trench shoring, ladders or other equipment. The occurrence on March 12 was observed at the water main tie-in location in the right-of-way at the extreme northeastern corner of the property. After a period of almost continual rain for weeks, exceedingly wet soil conditions existed. Yet, a vertically walled excavation (one without sloped banks) was observed. To make matters worse, a track hoe with its surcharge loading was on the leading edge of the excavation directly above and adjacent to the employee. (See attachment #9). There is no evidence that the contractor has complied with either the OSHA illumination section or the trenching section. These minimum standards were brought into question with workers observed in open trenches at night. Please see also the thumb drive with video of a similar occurrence made from Amick's Ferry Road December 10, 2020. (see attachment #10) Contrary to statements made, the safety violations continued after the December 9, 2020 school board meeting.

3) Letters from RB Todd dated December 18, 2019 and Terracon dated January 8, 2020 (see attachments #4 and 5) were sent. The letters are in error by stating that concrete testing

#1, pg. 2

Attachment is included with the minutes of the 1/27/2020 meeting, at the request of Board member Ex Quite

pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

is not a requirement of Project Specification Section 321313 Concrete Walks, Curb and Pavement. In response, the specifications reference SCDOT 2007 Standard Specifications for Highway Construction (see attachment #11) page 6 101.3.14 defines The SCDOT Construction Manual as the "criteria and procedures used by engineering personnel in the administration of construction contracts". The SCDOT Construction Manual as revised 01/11/2019 (see attachment # 12) includes the Quality Assurance and Testing Guide which is an amendment to Figures 106B and 106C of the SCDOT Construction Manual. The guide is also known as SC-50-T.
As a consequence, the SCDOT further defines material classifications not by their use such as conduit encasement but by rather strengths of materials. The Project Manual for Elementary School # 13 states under Specification Section 321313 Concrete Walks and Curbs page 321313-2 paragraph 2.5 A. 1. (see attachment #13) "Concrete Walks and Curbs and Gutters: Class 3000 per SCDOT Table 701.2.12.2."
Referring to SC-50-T (attachment # 14) the concrete is defined as structural Class 3000 and requires 1 each set of concrete cylinder tests per and up to 50 CY on small pours as well as Slump, Air Content, Temperature and Thickness Verification for each batch (truckload).

4) The letter from Sims Engineering dated December 19, 2019 addressed to Barb Haller and Clay Cannon states that testing of concrete at concrete encased conduits is not required. (see attachment #6) The Project Manual for Elementary School #13 Electrical Basic Materials and Methods states under Specification Section on page 260500-15 article 3-03 Raceways Underground Feeder Conduit, Communications Conduit, and Duct Banks: "3.) Where required concrete encasement shall be either 2000psi or 3000psi." (see attachment #15) But, on December 6, 2019 Specification Section 260500 was not part of the Project Manual because the Early Site Work contract which was the only contract at the time. Specification Section 260500 was not part of the Early Site Work Bid Set. The building GMP had not yet been approved nor with it other specification sections. Further, there is no evidence that a highly non-standard 2000 psi design mix had been submitted and approved by the Engineer of Record. In all likelihood, the more standard Class 3000 mix design was used. In any case, testing was required under SC-50-T. I have asked that the district obtain from the construction manager at risk all the delivery tickets from the concrete suppliers so that we can determine the mixes actually incorporated into the work. It was stated that no concrete tests were performed and no test data has been received to date.

5) Under Specification Section 260500 page 15 3.03 Raceways Underground Feeder Conduit, Communications Conduit and Duct Banks: it states "1) Use GRC and PVC schedule 40 for underground and duct bank installations." NFPA 70 National Electric Code 2017 page 70-88 states Section 230.50 (A) (1) Service Entry Cables (3) Schedule 80 PVC conduit.' (see attachment # 16) If installed in accordance with Specification Section 260500 of the Project Manual for Elementary School # 13, the installation may not meet code.(see attachment #17)

Attachment #1, pg. 3 is included with the minutes of the 6/15/2020 meeting, at the request of Board member [signature]
pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

6) Underground duct banks under NFPA 70 of that National Electric Code must be carefully installed by skilled workmen. Under section 230.6 (4) pages 70-84 and 85 it requires cables be "in conduit and installed with no less than 18"of earth beneath buildings and other structures". Section 230.32 on page 70-86 requires protection against damage. Section 230.53 on page 70-88 requires raceways to drain. Section 300.5 on pages 70-136 and 137 has requirements for wet locations, backfill and compaction and minimum concrete coverage over conduits and other requirements. Section 300.7 on page 70-139 has expansion and expansion deflection and deflection fittings requirements. Section 310.2 on page 70-145 has round cross sectional requirements. Section 310.15, on pages 70-146,147 and 148, shows spacing using PVC spacers and mounts between raceways as requirements. Article 352 Rigid Polyvinyl Chloride Conduit: Type PVC on pages 70-202 and 203 shows 352.3 Securing and Supporting requirements.

Clearly the intent of these requirements as shown in paragraph 110.12 page 70-44 which notes that acceptable industry practices are described in reference specification ANSI/NECA 1-2015. These references have at their cores describe the intent that all installations be carefully inspected prior to concrete placement. (see attachment #16)

7) Of 15 each Field Density Soils Reports from Terracon provided, none are noted as occurring at electrical duct bank locations. (see attachment #18) All nine performed at trench locations were at storm drain pipe locations. None of those reports indicates the existence of a required mud slab or support anchoring slabs for conduit or duct bank construction. None indicates testing of Class 1 or 2 "Select Fill" for pipe bedding as required in Specification Section 312333 Trenching, Backfilling, Compacting for Utility Systems Embedment Materials paragraph 2.6.1 and.2 on page 312333-5 for storm drain piping (see attachment #19) and NFPA 70 300.5 (F) on page 70-136 Backfill for Underground Conduit Installations. (see attachment #16) In fact, Specification Section 312333 2.6 A.4.(see attachment #20) indicates that all the trench backfill as noted in the Terracon reports is the least desirable material listed, Class IV. So, instead of select fill soils which are listed in the specifications, unsatisfactory were utilized.

8) Because the work was supervised as indicated by the general contractor in the January 27, 2020 board meeting and Mr. Neal on December 9, 2019 there are indications that the work was performed by forces not licensed to do this work. The electrical subcontractor probably had not been mobilized since to do so he would have been working without a subcontract. The work on the building contract had not yet been approved because the Guaranteed Maximum Price had not yet been submitted. Electrical specifications were not included under the Early Site Work Bid Set. To know for certain we need to know the date that the electrical subcontractor mobilized. I have requested that the district ask the construction manager at risk for this information. (see attachment #21)

9) 3 each Laboratory Services Reports, i.e., # 73191119.0023, # 73191119.0030 and # 73191119.0032 are soils classifications reports which are identified as unsatisfactory soils

#1, pg. 4

Attachment ____ is included with the minutes of the 01/13/2020 meeting, at the request of Board member Ed Wood pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

for use as listed in Section 312000 1.7 C. page 312000-5 of Project Manual for Elementary School #13. These soils were used on this project anyway. (see attachment #22)

One of the soils used shown on Laboratory Services Report # 73191119.0011 dated 10/14/2020 has a maximum dry density weight less than the 95 PCF as specified in Section 312000 1.7 B Soils Materials which should have also rendered it unsatisfactory for use. (see attachment #23)

It should be noted that I brought it to the attention of Mr. Neal and attorney Michael Montgomery during contract negotiations with the construction manager at risk that unclassified excavation should have been included in the Contract for Construction. At the time, we were told that it would have been cost prohibitive to include unclassified excavation in the requirements. But, we have already agreed to pay up to an additional $175,000.00 for the Soils Plasticity Remediation Allowance which is allowance # 2 Exhibit C Allowances in the BUILDING GMP approved December 9, 2019 even though each bidder possessed the soils reports at time of bid. Incredibly, this work is related to site paving not buildings but was approved as an allowance under the Building GMP. (see attachment # 24) It certainly appears that the Owner is taking on and paying for the contractor's risk here because all of this was known at the time of the bid.

Of the 15 each Field Density Reports nine each relate to tests in confined trenches and six each relate to general fill soils installed in large unconfined areas. The site is approximately 24 acres which is 1,045,440 square feet. If one third of it was compacted fill that would require 104 tests per 8" lift of fill soils installed. There are embankments noted where at least 48"of fill soils have been installed. That makes the approximate order of magnitude number of soils compaction tests required (35 times 6 each 8" lifts) equal to 210 tests. Yet, in the general fill areas which are not the trench areas through and including November 11, 2019, there were only 11 individual Field Density Tests made. I cannot say for certain but for a project this large where 1 test is to be done in 8" lifts of fill soils placed per 10,000 sf of surface area in pavement areas and 1 test per 2,500 sf under building footprint area is required per 8' lift (see page 18 Fill Compaction requirements of the Final Geotechnical Engineering report Lex 5/Amicks Ferry Site by ECS Southeast, LLP dated June18, 2019,) (see attachment #25) the number of 11 each tests seems inordinately low. It appears that only approximately 5% of the required number of tests may have been performed.

The 9 each trench tests reported above were on storm drain lines. None were done on Electrical Duct Bank Construction and none were done on the day which Susan Baker observed the work being placed on the night of 12/6/2019.

10) There is correspondence from the previous board chair which states that access to the site and documents under the control of the construction manager at risk are somehow not obtainable by the Owner.(See attachment # 1) Please refer to the General Conditions to the Contract for Construction A 201 -2007 article 3.16 on page 18. "The Contractor shall

Attachment #1, pg 5 is included with the minutes of the 11/5/2020 meeting, at the request of Board member Ed Wolf pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

provide the Owner and Architect access to the Work in preparation and progress wherever located." (see attachment #26)

Under article 13.5.2 page 37 should the "Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing inspection or approval under 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing , inspection or approval by an entity acceptable to the Owner...."(see attachment #27)

Article 13.5.4 states "Required certificates of testing, inspection and approval shall, unless otherwise required by the Contract Documents, be secured and promptly delivered to the Architect." (see attachment #27)

Further, the Project Manual under 14000 1.8 A. Contractor's Quality Control Plan states that within 10 days of the Notice to Proceed and not less than five days prior to the preconstruction conference that the Contractor is to submit a comprehensive plan of quality control to include a schedule of testing and inspection. It also requires continuous inspection of workmanship. (see attachment # 28)

Under 013300 pages 5, 6 and 7 of the Project Manual H 3. And 5. Material Test Reports and Product Test Reports are to be submitted to the Architect for review. This includes design mixes for concrete, select backfill embedment and pipe bed material and PVC electrical conduit. (see attachment # 29). By contract these are to be made available to the Owner upon request.

Under AIA Document A 201-2007 article 3.11 page 16 Documents and Samples at the Site The Contractor is to maintain for the Owner one of submittals. This includes the requested items in the paragraphs above. (see attachment #30)

Under article 3.12.7 the Contractor is to perform no portion of the work on site which require submittals until the submittals have been approved by the Architect. (see attachment # 31) This includes the requested items in the paragraphs above.

Finally, under A 133 -2009 page 8 article 2.3.8.8, it states" The construction Manager shall also keep, and make available to the Owner and Architect, a daily log containing a record each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect the progress of the work, accidents, injuries, and other information required by the Owner." (see attachment #32)

In addition to the documents requested in paragraph one of this letter, I ask that you as district superintendent also provide the answers to the following questions for the period from the inception of the project until December 9, 2019:

Attachment #1, 13.9 is included with the minutes of the 12/19/2020 meeting, at the request of Board member [illegible] pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

A) Were safety protocols noted in # 2) above followed in regard to illumination and trench safety? If not, what is being done about it?

B) Were concrete mix designs submitted by the general contractor and each subcontractor for each type mix used or to be used on the project? Provide a copy of each approved mix design.

C) Were the specified mixes placed at each location as required? Provide a copy of the material delivery tickets and location of each batched placed.

D) Was a schedule of required tests submitted and approved as in 14000 1.8 A. for concrete and earthwork provided? Provide a copy of the schedule. Which contractor or subcontractor was responsible for coordination and scheduling of the testing agency? Were the tests performed per the schedule?

E) Were the tests performed in proper number and locations as specified? If not, what will be done about it?

F) When was each contractor or subcontractor mobilized? Who was on the site each day? What problems were reported? Provide copies of contractor and subcontractor daily reports. Provide a listing the other information required by the owner as above under A 133-2009 page 8 article 2.3.2.7.

G) Was schedule 80 PVC conduit with proper spacers and supports used at duct bank construction? Was select fill pipe bedding and embedment material installed at storm drain and duct bank locations. Was a concrete mud slab or anchoring slab used at duct bank locations? Was the installation inspected? If so, provide the inspection report. If not, what will be done to insure the installation was done properly?

H) Has the district taken on and paid for the contractor's risk as in #9 above? If so, how will that be rectified?

In summary, applicable building codes and/or the Project Manual may not have been followed. As you can see, the district through its paid consultants must require the contractors follow the contract documents. We, as the board, must act accordingly by overseeing and insisting that our administrative group investigate and rework as necessary for quality assurance.

Please keep in mind that only the Architect may change project specification requirements issued after the contract has been signed. He or she may only do so a change order executed by the Owner (the board).

I hope that we are good stewards for future citizens. We teach our children the scientific method. Carl Sagan said: "Something my father dearly loved is the scientific method, and it's founded in this element of humility. The idea is that you pursue truth wherever it goes; you need to evidence, and if you can –you see if it's repeatable." Why would we teach our children this and then not want to know? Ronald Reagan said it best when he said, "Trust but verify."

I request action and a reply on these matters within the next two weeks.

#1, M.7

Attachment is included with the minutes of the 11/17/2020 meeting, at the request of Board member Ed White pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

Please act accordingly.

Respectfully submitted,

Kenneth B. Loveless, Trustee

Attachment #1, pg. 8 is included with the minutes of the 6/15/2020 meeting, at the request of Board member Ed White pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

Doc D

Response By District Consultant

Dan Neal, PE (ret)
165 Golf View Bend
Elgin, SC 29045

April 20, 2020

Dr. Christina Melton, Ed. D.
Superintendent,
School District Five of Lexington and Richland Counties
1020 Dutch Fork Road
Irmo, SC 29063

Dear Dr. Melton,

Please find attached a letter, with enclosures, from Mr. Greg Hughes, President of Contract Construction, Inc. Mr. Hughes answers in detail the concerns raised by Trustee Ken Loveless in his letter dated March 24, 2020. I agree with Mr. Hughes letter in its entirety. In my opinion, Contract Construction, Inc. is one of the premiere K-12 construction firms in the state and we are fortunate to have them working on this project for District 5. Please let me know if you have any additional questions.

Sincerely,

Dan Neal

Dan Neal, PE (ret)

Attachment #2, pg. 1 is included with the minutes of the 6/15/2020 meeting, at the request of Board member Ed White pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

CONTRACT
CONSTRUCTION

4/20/20

Responses to Questions Raised by Ken Loveless

Dan Neal, PE (ret)
165 Golf View Bend
Elgin, SC 29045

Attachment #3, Pg. 1 is included with the minutes of the 6/15/2020 meeting, at the request of Board member Loveless pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

RE: Letter Dated 3/24/20 from Ken Loveless

Dear Dan:

I am writing in response to the above-referenced correspondence (which I enclose for reference purposes) and will respond to items that I feel require a response from us in the order in which issues were identified. Before I begin, I want to make it clear that I take immediate exception to Mr. Loveless' inference that we should not be currently working on the school during the "present geopolitical occurrences". Construction has been deemed essential and we are taking each day with a newly elevated level of caution to protect the workers on our project. The safety of our workers is our top priority and I am disappointed that Mr. Loveless would attempt to portray otherwise.

Regarding Mrs. Susan Baker's observation:

As you may be aware, we had record-breaking quantities of rainfall in the latter part of 2019 so we did then and still do now take advantage of every single opportunity to get work completed so our project can remain on schedule, and that includes nights and weekends. Proper illumination has been questioned based on a video taken from across the street, the illumination provided was deemed safe by our project superintendent for the task at hand and the work was completed under our direct supervision in accordance with the contract documents.

Item 2:

safety record

I would like to start by stating that Contract Construction has a 35-year impeccable safety record and enjoys a very good relationship with OSHA, who has commented on a number of occasions that we are in fact "highly regarded" in the OSHA organization. We are also an active participant in OSHA's Office of Voluntary Programs and invite them regularly to all of our jobsites. We have constructed over a billion dollars worth of educational facilities across the state of South Carolina with very few OSHA violations. Furthermore, our Experience Modification Rate (MOD) has been 0.75 for the past three years, we are a member of the National Safety Council, and have been awarded the highest safety award offered by our 180-member General Contractor's Captive Insurance Group 8 years in a row. So, with all that said, the students in LR5 have the rare opportunity to experience the process in real life, from one of the top school-builders in the state, and we would welcome the chance to go into the classrooms to enhance their learning experience.

o: 803.781.7058 | f: 803.732.3064 | P.O. Box 269, Ballentine SC 29002 | www.contractconstruction.net

#3.09.2

meeting, at the request of Board member Ed Ware pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

CONTRACT CONSTRUCTION

1. As noted above, illumination for the curb and gutter pour was adequate and appropriate and no one was put at any risk during this placement. However, since illumination levels have been questioned from hundreds of yards away, we have rented light towers, which hopefully will not disturb surrounding neighbors. If documentation of illumination levels is going to be deemed necessary by LR5, please let us know and we will begin to record this information.
2. We take exception to Mr. Loveless' guestimate on the depth of the trench. The trench was 40" deep and at no point has any worker been endangered by entering excavations over 60" without proper benching or use of trench boxes. Regarding the proximity of the excavation equipment, there was and has not been any displacement of trench walls caused by the weight of excavation equipment and any statement to the contrary is simply a supposition.

Item 3:

Please see attached letter from Bruce Todd of ADC Engineers, the civil engineer of record, explaining the strength of the concrete curb and gutter. In addition, it should be noted that the curb installed will be in place for approximately 18 months prior to turning over to the Owner and any damaged or compromised curb will be replaced accordingly.

Item 4:

Chris Patrick of the Simms Group, Electrical Engineer of record offers the following:

> "The electrical specifications state that concrete encasement shall be either 2000 psi or 3000 psi. The electrical specifications do not specifically require testing of the concrete encasement. The company that provided the concrete should provide written confirmation of the compressive strength of the concrete delivered and used for concrete encasement of conduit."

Attached are the delivery tickets for the concrete placed in the electrical duct bank, substantiating that a 3000psi mix design was used. One should note that this concrete was in-fact sold to West Electric, a properly licensed electrician. This also provides substantiation to our response to item 8.

Item 5:

Chris Patrick of the Simms Group, Electrical Engineer of record, explaining the erroneous interpretation of the electrical code as it relates to the activity in question:

> "NEC 230-50(A) addresses "*Protection Against Physical Damage*" of "*Underground Service-Entrance Conductors*", which is the application addressed in 260500, 3-03 where PVC Schedule 40 is permitted for this project. NEC 230-50(A) references NEC 300.5, where the use of PVC Schedule 40 is permitted for underground installations of service-entrance conductors. NEC 230-50(B)(3), the section referenced in the March 24 letter, addresses "*Protection Against Physical Damage*" of "*All Other Service-Entrance Conductors*" (i.e. not underground). 260500, 3-03 does not permit PVC Schedule 40 in these cases, and in fact, specifically states, "*PVC is not permitted above grade.*" The electrical specifications require Galvanized Rigid Metal Conduit (RMC) or Intermediate Metal Conduit (IMC) for the condition described in

o: 803.781.7058 f: 803.732.3064 P.O. Box 269, Ballentine SC 29002 www.contractconstruction.net

#3, 19.3

...th the minutes of the 6/15/2020 meeting, at the request of Board member Ed White pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

CONTRACT CONSTRUCTION

NEC 230-50(B), which is permitted in 230-50(B)(1) and 230-50(B)(2). The installation as specified in 260500 complies with the requirements of NEC 230-50."

Item 6:

Terracon report number 73191119.0037 states clearly, "the installation of the schedule 40 conduits are installed in accordance with the plans."

Item 7:

I am not sure I follow this question. The electrical duct bank was excavated into virgin soils and is not a structural component of the building, so compaction testing was not required nor necessary. The duct bank being questioned is also concrete encased so I cannot fathom why there would be a concern with settlement of this utility.

Item 8:

In order to maintain the early sitework schedule, Contract Construction proceeded at risk to get the conduits installed so sitework would not be interrupted. We did so with the clear understanding that we would not be paid for this work if the GMP was not approved. West Electric, a properly licensed electrical contractor, performed this work. By Contract Construction doing this, the Owner gained the benefit of accelerating the project with no risk. To be clear, the GMP documents were complete at the time of installation and used for this construction.

Item 9:

The reason that it is fiscally irresponsible to put the risk of unclassified excavations on the CMR / Site Contractor is that the numbers will be unnecessarily padded to cover unknown quantities of unsuitable materials, and then the subcontractor will reap all the rewards of savings. It is true that we included an allowance in the GMP for soils plasticity remediation in the amount of $170,000. However, through many discussions with our site contractor, geotechnical engineer, civil engineer, and special inspector we were able to improve the in-place soils using soil cement, were able to do so within the early sitework GMP, and have not had to use one cent of the $170,000 allowance to date. In this scenario, all allowance savings will be returned to the Owner and not kept by a subcontractor that was asked to bid an unclassified site.

7 firms addressed

Regarding the suitability of the soils, Terracon notified the project team on or about Oct. 4th that the onsite soils did not meet the project specifications for structural fill. Terracon was directed to do additional onsite soil classification in multiple areas across the project area. The project team, consisting of the Owner, Terracon, ECS Southeast (geotechnical engineer of record), Contract Construction, Coogler Construction (site contractor), Quackenbush, ADC (Civil) and Johnson and King (Structural) had multiple discussions about how to mitigate and move forward with the onsite soils, which are natural and typical for this area. These methods included a stone base for the building area and modified soil cement subgrade for the pavement subgrades. To be very clear, there are no subsurface conditions beneath in-place construction that have been deemed unsatisfactory.

c: 803.781.7058 f: 803.732.3064 P.O. Box 269, Ballentine SC 29002 www.contractconstruction.net

CONTRACT CONSTRUCTION

Attachment #3, pg. 4 is included with the minutes of the 6/15/2020 meeting, at the request of Board member Ed White pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

Item 10:

a. Documents and site access have been made available to our Owner Representative on site. We are not obligated to provide information or access to anyone other than those named in our contract.
b. No additional testing has been deemed necessary by the designers of record. In addition, Contract Construction will provide warranties and guarantees as specified in the contract documents at the conclusion of the project.
c. The testing company works for Lexington-Richland School District Five, so these reports are provided directly from Terracon to LR5.
d. We did conduct a pre-construction conference on 9/12/19 with Terracon and Lexington County. It was at that meeting that our Quality Control Plan was reviewed, as well as, the Schedule of Special Inspections which dictates exactly what is required to be tested.
e. All of these items have been submitted and approved by the design team and have been made available to our Owner Representative.
f. All items are being maintained at the project site and are readily available for our Owner Representative to review.
g. Daily reports have and continue to be maintained since the inception of this project and are readily available to our Owner Representative.

Answers to questions posed:

a. Yes, and we continue to monitor worker safety every single day.
b. Yes. Approved mix designs are maintained in our submittals folder on site.
c. Yes. Terracon can confirm this as fact. If material delivery tickets are to be matched to locations placed, that would be an additional service for Terracon and should be negotiated with them.
d. The Schedule of Special Inspections is clearly listed in section 14000 and is being strictly adhered to. Contract Construction arranges for all inspections. Terracon will confirm that inspections have been conducted in accordance with the schedule of special inspections.
e. Terracon can confirm that tests have been performed in proper number and locations.
f. Subcontractor mobilizations and any issues encountered are documented in our daily reports by our site superintendent.
g. 1. Schedule 40 was specified, installed and signed off on by Terracon as being in accordance with the contract documents. 2. Where utilities were installed in fill locations, such fill was deemed appropriate for use by Terracon. Waterlines and Sanitary Sewer were bedded with 57 stone per the Town of Chapin requirements. 3. No mud slab or anchoring slab was used or deemed necessary by Terracon during the installation of the electrical duct bank. See attached report as requested.
h. The District gained all the benefit regarding the scenario mentioned in item 9.

o: 803.781.7058 | f: 803.732.3064 | P.O. Box 269, Ballentine SC 29002 | www.contractconstruction.net

CONTRACT
CONSTRUCTION

I conclude by stating that we are not perfect and never will be, but every single day we strive to do things better than the day before and to be more like a thermostat affecting our surroundings, instead of a thermometer that merely reacts to them. When we encounter issues, we work with the project team to resolve them. In addition to Contract Construction's very high level of daily quality control, LR5 has hired trust-worthy individuals and firms that include a dedicated Owner Representative, Architect, Professional Engineers, and Special Inspectors to verify our work. I believe that everyone on this project team will confirm that this project is being managed very professionally and with very few deficiencies for this size project.

Please do not hesitate to let me know if I have not adequately responded to any of the issues presented by Ken Loveless.

Sincerely,

Greg Hughes
President

Attachment #3, Pg. 5 is included with the minutes of the 10/15/2020 meeting, at the request of Board member Ed White pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

o: 803.781.7058 | f: 803.732.3064 | P.O. Box 269, Ballentine SC 29002 | www.contractconstruction.net

ADC
ENGINEERING
7436 Broad River Rd– Suite 212
Irmo S.C. 29063

March 31, 2020

Quackenbush Architects + Planners
1217 Hampton Street
Columbia, SC 29201

Attn: Barb Haller, AIA, LEED AP

Re: Amicks Ferry Road Elementary School – Curb and Gutter Testing

Dear Barb:

This letter is in response to item #3 of a correspondence between Ken Loveless (Trustee – LRSD5) and Dr. Christina Melton (Superintendent- LRSD5) dated March 24, 2020. The item is in reference to testing for structural strength of concrete poured for curb and gutters.

The SCDOT testing standards referenced in the letter are correct. However, it was never the intent on this project, or any project, to test the structural strength of concrete being used in a non-structural application like curb and gutter.

It is my professional opinion as the Engineer of Record, that even though the concrete strength specified for curb and gutters is 3000 psi, that they are not considered a structural element. Therefore, testing of concrete in the construction of curb and gutter sections is an unnecessary expense.

However, if it is desired to confirm the structural strength of concrete previously poured, it is suggested that the testing firm propose a plan for non-destructive testing of poured in place curb and gutter.

Sincerely,

Bruce Todd, P.E., LEED AP BD+C
803-781-3141 x.306
brucet@adcengineering.com

Attachment #4, Pg. 1 is included with the minutes of the 4/13/2020 meeting, at the request of Board member Ed White pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

OFFICE:
PO BOX 3408
SUMMERVILLE, SC 29484
PHONE: 843-821-7600
FAX: 843-821-7627

MIDLANDS DISPATCH
803-754-8633

No. 713598

PLANT LOCATIONS:
PLANT 6 BLYTHEWOOD
PLANT 7 IRMO, SC
PLANT 8 LUGOFF, SC
PLANT 9 WINNSBORO, SC

Attachment #4, pg. 2 is included with the minutes of the 6/23/2020 meeting, at the request of Board member Ed Lowry.

pursuant to South Carolina Code Ann. Section 30-4-90(d)(2), the Board majority and Board Policy REDG-1 disapproves, disagrees with, objects to, or otherwise disfavors the contents of this attachment.

UNLOADING

Drivers are not permitted to add water to the mix to exceed the maximum slump. Drivers are prohibited from delivering concrete except under the truck's own power, and where site conditions permit the safe and proper operation of this equipment. Drivers are not permitted to go beyond the curb line, except upon the authorization of the customer and his acceptance of risk for any loss or damage to the property or our equipment. This includes any wrecker or towing charges for getting out of the location. Water added.

RECEIPT AND RELEASE:

Gallons _____ Customer's representative

RECEIVED SUBJECT TO CONDITIONS ON REVERSE SIDE

CAUTION

May cause eye or skin injury. Contains Portland cement. Fresh mixed cement, mortar, concrete, or grout may cause skin injury.

TAKE THESE PRECAUTIONS:

1. Avoid all contact with eyes.
2. Wear rubber boots and gloves, and avoid prolonged contact directly with skin or through porous materials.
3. In case of contact with skin or eyes, FLUSH THOROUGHLY WITH WATER.
4. If irritation persists, get medical attention promptly.
5. Keep children away.

TERMS: Net 30 Days

CUSTOMER ID	P.O. NUMBER	ZONE	ORDERED BY	TIME	DATE	TICKET
001269				11:19 AM	11/14/19	14667

SOLD TO	DELIVER TO	Leave Plant	Arrive Job Site
		1140	1230
		Leave Job Site 1245	Arrive Plant 105

QUANTITY THIS LOAD	QUANTITY ORDERED	QUANTITY DELIVERED	PRODUCT CODE	PRODUCT DESCRIPTION	UNIT OF MEASURE	UNIT PRICE	EXTENDED PRICE
1.00	1.00	1.00	ENVFEEM	ENVIRONMENTAL FEE MIDL FUE			

TRUCK	DRIVER	SLUMP	DUE AT JOB	USE OF CONCRETE		
	DA:				SUB TOTAL	
CALCIUM	WATER REDUCER	AIR ENTRAIN	PHONE		TAX	
				GALS/CY MAY BE ADDED NOT TO EXCEED W/C RATIO	TOTAL	

DELIVERY INSTRUCTIONS

10 MINUTES PER YARD ALLOWANCE

OFFICE:
PO BOX 3408
SUMMERVILLE, SC 29484
PHONE: 843-821-7600
FAX: 843-821-7627
MIDLANDS DISPATCH
803-754-8633

No. 713599

PLANT LOCATIONS:
PLANT 6 BLYTHEWOOD, SC
PLANT 7 IRMO, SC
PLANT 8 LUGOFF, SC
PLANT 9 WINNSBORO, SC

Attachment #4 to the minutes of the 01/15/20 meeting, at the request of Board member [illegible] is included with the agenda.

pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy EEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

UNLOADING

Drivers are not permitted to add water to the mix to exceed the maximum slump. Drivers are prohibited from delivering concrete except under the truck's own power, and where site conditions permit the safe and proper operation of this equipment. Drivers are not permitted to go beyond the curb line, except upon the authorization of the customer and his acceptance of risk for any loss or damage to the property or our equipment. This includes any wrecker or towing charges for getting out of the location.
Water added.

RECEIPT AND RELEASE:

Gallons

Customer's representative

RECEIVED SUBJECT TO CONDITIONS ON REVERSE SIDE

CAUTION

May cause eye or skin injury. Contains Portland cement. Fresh cement, mortar, concrete, or grout may cause skin injury.

TAKE THESE PRECAUTIONS:

1. Avoid all contact with eyes.
2. Wear rubber boots and gloves, and avoid prolonged contact directly with skin or through porous materials.
3. In case of contact with skin or eyes, FLUSH THOROUGHLY WITH WATER.
4. If irritation persists, get medical attention promptly.
5. Keep children away.

TERMS: Net 30 Days

CUSTOMER ID	P.O. NUMBER	ZONE	ORDERED BY	TIME	DATE	TICKET
001269				12:45 PM	1/14/19	4668

SOLD TO	DELIVER TO	Leave Plant	Arrive Job Site
		1:00	1:45
		Leave Job Site 1:54	Arrive Plant

QUANTITY THIS LOAD	QUANTITY ORDERED	QUANTITY DELIVERED	PRODUCT CODE	PRODUCT DESCRIPTION	UNIT OF MEASURE	UNIT PRICE	EXTENDED PRICE
1.00	1.00	.00	ENVFEEM	ENVIRONMENTAL FEE MIDL			
1.00	1.00	1.00	MIN LOAD	MINIMUM [illegible] CHARGE MI			

TRUCK	DRIVER	SLUMP	DUE AT JOB	USE OF CONCRETE	
		4			SUB TOTAL
CALCIUM	WATER REDUCER	AIR ENTRAIN	PHONE		TAX
				GAL/CY MAY BE ADDED NOT TO EXCEED W/C RATIO	TOTAL

DELIVERY INSTRUCTIONS

10 MINUTES PER YARD ALLOWANCE
$60.00 PER HOUR OVERTIME

Proper Board Role in Construction

the South Carolina Freedom of Information Act. Please see the following link for exemptions provided for in SC FOIA: https://www.scstatehouse.gov/code/t30c004.php

3) **How can some board members deny other board members access to LR5 building sites? How or why does one have that power? Shouldn't all building have oversight by all board members?** Construction contracts give control of construction sites to the general contractor. Managing the construction contractor is an administrative function. The District, with Board approval, contracted for Contract Construction to serve as the District's Construction Manager at Risk for Elementary School 13. The terms of the contract give Contract Construction the responsibility to maintain a safe and secure job site. The District's administration is responsible for the day to day management of the District's operations. Board Policy BBA describes the Board's Powers and Duties, including Visits to Schools. Oversight is the responsibility of the Board collectively. Board Policy BB notes that "All powers of the board lie in its action as a body." Board members acting as individuals have no authority over personnel or school affairs. Board Policy BCA notes that board members' basic function is policymaking, not administration.

The Superintendent and the administration operate and supervise the day to day functions of the District including construction projects.

The District retains a consultant to represent the District's interest and ensure the terms of the contract are being met. This professional acts as the owner's representative on the project. In addition to Contract Construction and the District's consultant, the District also engages the services of a third-party inspection company that is paid by and answers to School District Five.

Michael Cates
School Board Chairman
School District Five of Lexington & Richland Counties

4) **When can we expect the redistricting information? Withholding this information (which should have been completed before deciding where to build #13) is very inconsiderate to LR5 families with school age children.** No official timeline has been provided for the Milone & MacBroom report, but one will be provided publicly to the school board at the appropriate time.

5) **And 5) When will the Amicks Ferry /#13 traffic patterns be resolved?** There are no traffic pattern issues to resolve. The District is complying with all elements of a traffic study, which has been accepted and approved by SCDOT.

Your questions and comments were shared with all members of the Board of Trustees and posted publicly on the District's website.

Attachment #5, pg. 1 is included with the minutes of the 10/15/2020 meeting, at the request of Board member Ed White pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

Doc E

July 10-13

Ed White

From: Edward White <ewhite@lexrich5.org>
Sent: Monday, July 13, 2020 12:49 PM
To: Ed White
Subject: Fwd: Attachments to my letter Dr. Melton dated 3/24/20

Attachment #2, pg. 1 is included with the minutes of the 8/10/2020 meeting, at the request of Board member Ed White pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

◄External Email► - From: ewhite@lexrich5.org

---------- Forwarded message ---------
From: **Edward White** <ewhite@lexrich5.org>
Date: Mon, Jul 13, 2020 at 12:47 PM
Subject: Fwd: Attachments to my letter Dr. Melton dated 3/24/20
To: Beth Hutchison <bhutchison@lexrich5.org>, Christina Melton <csmelton@lexrich5.org>, Janis Hammond <jhammond@lexrich5.org>, Kenneth Loveless <kloveless@lexrich5.org>, Michael Cates <michaelcates@lexrich5.org>, Nikki Gardner <ngardner@lexrich5.org>, Robert Gantt <rgantt@lexrich5.org>

Michael,

As you are aware, state law allows me to put any information on the record to be included in the minutes of our meeting.

Ken Childs assisted us in the creation of the current policy years ago, including the requirement that the information be stamped with a disclaimer by the district, and the policy was designed to comply with state law.

My submission at the last meeting is the complete submission not to be amended or supplemented by another board member.

When an item is on the agenda, I have the right, as a board member, to ask any relevant questions I chose germane to the topic. When the Superintendent requested that I wait and pursue my questioning at a later date, when the presenters could be better prepared, I acquiesced.

I have many questions yet to ask on the subject of the work product of Contract Construction and the accusations of Ken Loveless in his letter and I look forward to this topic being put on our agenda again in the near future.

To be clear, if I am interested in an exhibit or attachment to Ken's letter I will ask for it.

Finally, I take issue with Ken Loveless accusing you and Dr. Melton of conspiring or doing anything with me asking these questions. I did not consult with anyone before raising my questions or putting the documents on the record. I think it is interesting that Ken is accusing the two of you of censorship when it appears that what he really wants is to limit my ability to speak , ask questions or put information of my choosing in the minutes of our meeting.

Thank you,

Ed

---------- Forwarded message ---------
From: **Kenneth Loveless** <kloveless@lexrich5.org>
Date: Mon, Jul 13, 2020 at 8:27 AM
Subject: Re: Attachments to my letter Dr. Melton dated 3/24/20
To: Michael Cates <michaelcates@lexrich5.org>
CC: Christina Melton <csmelton@lexrich5.org>, Beth Hutchison <bhutchison@lexrich5.org>, Robert Gantt

<RGantt@lexrich5.org>, Jan Hammond <jhammond@lexrich5.org>, Nikki Gardner <ngardner@lexrich5.org>, Ed White <EWhite@lexrich5.org>

Mr. Cates : Mr. White and Mr. Hughes have used as part of their replies as evidence such documents as Terracon report # 37 which is not on the district's website. It has been given to neither me through request to the Superintendent nor the public through FOIA. Neither has the full complement of Terracon reports. My letter cannot be characterized as mere accusations. How could it be? It simply asks questions. I have unwittingly stumbled upon an institutional censorship scheme. You, Mr. Chairman, have just admitted to being part of it. You say below that you don't need my full letter to make your promulgation that my questions are unfounded. I expected more from you but that is OK. What is not OK is that some of the people involved received the entire letter and some did not. What is not OK is that some of the people involved were allowed to see other documents including all those I have requested and some were not. You see, Mr. Chairman, someone other than the people involved got to determine what other important people should be able to see. They were asked to formulate their opinions without all the information. Those people may be more naturally inquisitive and therefore less dogmatic than you. They might have inquiring minds. But, you participated in a scheme to keep them from having the right to make their own decisions. That, Mr. Chairman, is wrong. I reiterate my request that my full letter with attachments,all the documents that I have requested in the body of the letter and all of the Terracon reports be released to the public. Let the public make the determination. Respectfully submitted., Kenneth B. Loveless, Trustee

On Sun, Jul 12, 2020, 1:45 PM Michael Cates <michaelcates@lexrich5.org> wrote:

Mr. Loveless,

First, let me be clear, so you do not have to surmise, speculate, or assume. For the record, I did not involve an attorney in my response.

Second, I received your letter without the corresponding attachments on April 20, 2020, along with the rest of the board. I was not involved in answering your letter and did not need the attachments to understand your accusations and the written response by Dan Neal, Contract Construction, and ADC Engineering. Anyone who was involved in answering your unfounded accusations received the full document. I am sure the response to your letter was at considerable expense to the district.

Third, you attempted to obtain the floor without being recognized and interrupted another board member. It is your responsibility to understand how to obtain the floor and how to raise an objection. I interrupted Mr. White not because he was out of order, but because the presenters did not have the documents he was referencing in front of them. To be very clear, you are wrong. Mr. White's questions were germane to the agenda item. Item 9 was listed as Superintendent's Report, Update on Elementary School 13. As I stated during the meeting, I did not know that Mr. White intended to ask questions regarding the response to your letter.

Please accept this as my final response to this matter.

Michael Cates
School Board Trustee, Board Chair
District Five of Lexington & Richland Counties
803 518-4567
michaelcates@lexrich5.org

Attachment #2 pg. 2 is included with the minutes of the 8/10/2020 meeting, at the request of Board member Ed White pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

On Jul 12, 2020, at 10:28 AM, Kenneth Loveless <kloveless@lexrich5.org> wrote:

Mr. Cates, I surmise by your response that an attorney has advised you. If so, which attorney? I have the right to know if an attorney paid by the school district for which I am a trustee was involved. Second, we know that Trustees Gardner and Hammond never received my full letter with attachments. Did you receive the full letter from Dr.Melton prior to the meeting? Did anyone including Mr. Hughes and Mr. Neal receive my full letter prior to the meeting? Third, you as board chair let Mr. White, over my attempted objections, continue his cross examination of his "expert" witness. Mr. White continued. You effectively lost control of the meeting. If we were to have had a discussion of the matter and if the Superintendent had requested such as policy states, then policy requires it to have been on the agenda. Since you and the Superintendent set the agenda, did you know that Mr. White would attempt to discuss and

characterize my work without citing and very possibly without having received my full letter prior to the meeting? Please respond. Respectfully submitted, Kenneth B. Loveless, Trustee

On Sat, Jul 11, 2020, 4:34 PM Michael Cates <michaelcates@lexrich5.org> wrote:
I have not spoken to Dr. Melton, she can respond if she wishes, at a more appropriate time. Since many of your questions are related to board members and board policy I will respond. My response to your questions is found in italics below.

Dr.Melton, in conversation with Trustees Gardner and Hammond and a follow-up review of documents which Trustee White plans to attach to the minutes of the latest board meeting of June,2020. I noticed the 32 attachments which were part and parcel to my letter were not included.

Mr. White has no obligation to include the attachments.

Further, I noted that contrary to policy BEDH, the 32 attachments to my letter were not forwarded to the other board members. Was a decision made to present my inquires to the full board? If so, I did not receive any notice under policy BEDH of such. Was such a decision sent to others? I have it on good authority that your actions by not publishing my letter in its entirety with the 32 attachments included constitute censorship. Board members Gardner, Hammond and possibly the others were not given the full benefit of the body of the work.

Policy BEDH, Public Participation at meetings, has no bearing on your request. Your letter to Dr. Melton and the response was sent to the full board. Your request was not for information but for an investigation. I am not sure it is covered by policy. Policy BEDGA, Board Records, addresses requests for information from board members. The policy states,

Requests by members of the board
Since the board is ultimately responsible for all district operations, individual board members are extended special consideration in obtaining information. Under normal circumstances, requests to inspect and/or receive copies of records should be made by individual board members to the superintendent who may refer such requests to the Office of Community Services.
These particular requests will be processed whenever possible in a more expeditious manner than otherwise required by law
and at no cost to the individual board members. All board members will be appropriately advised of all requests as well as the responses
If, on the other hand, the requests are determined by the superintendent to be unusual in nature, by reason of their content, subject matter or volume/size, then they should be referred by the superintendent to the fully seated board. The superintendent
will require that such requests be made in writing. Upon affirmative action by the board, all requested information and available written documents once again will be provided board members as expeditiously as possible and at no cost to the individuals
involved.
Individual board members may request information as a member of the general public in accordance with the provisions of the Freedom of Information Act

Dr. Melton chose to answer your questions, and you along with the full board received the response on April 20, 2020. She could have referred your request to the full board for a vote because it was undoubtedly "unusual in nature, by reason of their content, subject matter of volume/size..." To be clear, you have no individual authority to direct the work of the Superintendent. You do not have the individual authority to set deadlines for the Superintendent. Your insistence to act with individual authority is in direct violation of board policy, BB, School Board Legal Status, BBA, Board Powers and Duties BCA, Board Member Code of Ethics, and the Superintendent's contract of employment.

Your allegations appear to be refuted by the district consultant for construction matters, the construction management company, professional engineers, and the third-party inspector hired by the district. I am sure the response was at great expense to the district.

Mr. White had no right to launch into an obviously orchestrated cross examination of his expert witness because I was never given notice of any decision on your part under policy BEDH.Therefore, the opinions and conclusions offered and made could have been formed without important information.

Attachment #47 (p. 3) is included with the minutes of the 8/10/2020 meeting, at the request of Board member B. White pursuant to South Carolina Code Ann. Section 30-4-90(e)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

Policy BEDH has nothing to do with this. I am not sure what notice you require. Mr. White's questions were germane to the agenda item. Your claim that this was orchestrated is false and baseless.

The topic was presented during a board meeting and was therefore up to you to state that important parts if my inquiry had been deleted and that notice under policy BEDH that a decision to present to the entire board had been made. Any acts that spring from your original action could be additional acts of censorship.

Dr. Melton is a participant in the board meeting by contract and policy. The Superintendent is not responsible for managing the board meeting, which would be the board chair's responsibility. BEDH has no bearing on this matter.

As a way forward, I request that you immediately explain in public your actions to:1) not forward important portions of my letter to other decision makers and to: 2) not publish any decision to present my inquiry to the full board.

Let me say once again you have no authority to direct the work of the Superintendent. You are welcome to share the attachments with the board. I believe you have shared documents with the board in the past. It is my understanding your letter stands on its own and the attachments were shared with those tesked with answering your inquiry.

Further, I ask that if my letter is to be included in the minutes of the meeting, that the entire letter with all attachments be included. By copy of this communication to Board Chairman Michael Cates, that he by way of his role, direct that my letter in its entirety be included in the minutes. Sincerely, Kenneth B.Loveless,Trustee

It is not up to you to determine what other board members will add to the record. Please review policy BEDG since my explanation of this policy in previous emails appears to be insufficient. Your request to add the attachments to the minutes should have been made the night of the meeting you wish to attach for the record items, they must be germane to the agenda and should be limited to five pages front and back. I have interpreted the five pages to be per item. As an example, I viewed Mr. White's request for the record as three distinct items. Your letter, the response form Contract Construction, and my response to a public participation question. The policy manual can be found at https://boardpolicyonline.com/?b=lex5

Michael Cates
School Board Trustee, Board Chair
District Five of Lexington & Richland Counties
803 518-4567
michaelcates@lexrich5.org

Attachment #2, pg.4 is included with the minutes of the 07/10/2020 meeting, at the request of Board member Ed White pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

On Jul 10, 2020, at 10:53 PM, Kenneth Loveless <kloveless@lexrich5.org> wrote:

Dr.Melton, in conversation with Trustees Gardner and Hammond and a follow-up review of documents which Trustee White plans to attach to the minutes of the latest board meeting of June,2020. I noticed the 32 attachments which were part and parcel to my letter were not included. Further, I noted that contrary to policy BEDH, the 32 attachments to my letter were not forwarded to the other board members. Was a decision made to present my inquires to the full board? If so, I did not receive any notice under policy BEDH of such. Was such a decision sent to others? I have it on good authority that your actions by not publishing my letter in its entirety with the 32 attachments included constitute censorship. Board members Gardner, Hammond and possibly the others were not given the full benefit of the body of the work. Mr. White had no right to launch into an obviously orchestrated cross examination of his expert witness because I was never given notice of any decision on your part under policy

BEDH.Therefore, the opinions and conclusions offered and made could have been formed without important information. The topic was presented during a board meeting and was therefore up to you to state that important parts if my inquiry had been deleted and that notice under policy BEDH that a decision to present to the entire board had been made. Any acts that spring from your original action could be additional acts of censorship. As a way forward, I request that you immediately explain in public your actions to:1) not forward important portions of my letter to other decision makers and to: 2) not publish any decision to present my inquiry to the full board. Further, I ask that if my letter is to be included in the minutes of the meeting, that the entire letter with all attachments be included. By copy of this communication to Board Chairman Michael Cates, that he by way of his role, direct that my letter in its entirety be included in the minutes. Sincerely, Kenneth B.Loveless,Trustee

Attachment #2, pg.5 is included with the minutes of the 8/10/2020 meeting, at the request of Board member Ed White pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

For the Record - 9/14/2020
Beth Hutchison

District Five

Attachment #2, pg 1 is included with the minutes of the 9/14/2020 meeting at the request of Board member Beth Hutchison pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

Doc F

Fwd: familyneals@aol.com has sent you a file from the Terracon CDW

1 message

July 16, 2020

Kenneth Loveless <kloveless@lexrich5.org> Thu, Jul 16, 2020 at 5:17 PM
To: Michael Cates <michaelcates@lexrich5.org>, Beth Hutchison <bhutchison@lexrich5.org>, Robert Gantt <RGantt@lexrich5.org>, Nikki Gardner <ngardner@lexrich5.org>, Christina Melton <csmelton@lexrich5.org>, Janis Hammond <jhammond@lexrich5.org>, Edward White <EWhite@lexrich5.org>

All,

After receiving Terracon Report # 37, I offer the following:

Please review the attached photos above from the letter from Dan Neal to Dr.Melton dated 4:45 PM 7/13/2020. The letter contains Terracon report # 37 of which the photos are a part. The electrical code, NFPA 70 article 352.30 (B) requires 2' PVC conduit to be supported at no greater than 5'0" O.C. Look at the second photo. Do you see anything supporting the conduit off the earth? There is nothing there.

Both photos show the conduit is penned down to the floor of the ditch with piles of dirt,not on PVC conduit spacer racks with restraints as required. Those dirt piles are still there right now separating the conduit from the concrete. The concrete is not homogeneous because the concrete has dirt mixed in with it.The conduit is on the ditch bottom held down by the dirt following the contour of the excavation, not suspended in the concrete as required. The conduit can be punctured by the mass of the concrete and backfilled earth above the concrete bearing on it. This mass can force the conduit into sharp rocks or other objects in the ditch bottom.That is why the NFPA 70 calls for such conduit to be Schedule 80 rather than schedule 40 as constructed.Had the duct bank been constructed properly, the schedule 40 PVC conduit would have been acceptable. Did Mr. Sims,the electrical engineer, know the full story when he wrote his letter in defense of Mr. Hughes? Why was Mr.Sims prompted to write the letter without full knowledge? Whether or not Mr. Sims agrees or not, best practices were not installed with the conduit on the ditch bottom. It's a simple concept.

Article 352.44 requires expansion fittings where there will be temperatura changes. I don't see any.

Mr. Hughes says in his letter of 4/20/20 that all has been signed off by Terracon. Mr. Hughes knows that Terracon is not the deciding entity. Terracon works for the district to insure the district testing protocols are followed. As such, Terracon does not take on the role of interpreting the specifications for the contractor. Only the Architect can do that and the Architect must be informed before the work can continue or the contract is responsible for his actions.

I invite everyone to read this: The Project Manual Section 14000 1.8 B.states :"Project quality-control manager may also serve as Project superintendent."There is a built-in conflict of interest. The fox is guarding the hen house. Does anyone seriously believe that the same person who is paid to push production and schedule is going to also demand quality when that would mean slowing the schedule and production? Can you imagine any homeowner building a house who would cede to his builder the owner's right to control quality? Would any of you? Yet, the district did just that.

I have studied the Terracon reports that were provided to date.There are a minimum of 238 reports which are supposed to have been posted through 7/6/2020. 76 are actually posted. Of those 76, ten reports show deviations from the specifications. You can read them. They show that there are more than just a few instances where Terracon indicated discrepancies but the quality-control manager/ Project superintendent proceeded on without stopping.

See other side →

July 16, 2020 Email

Mr.Gantt sent me Terracon reports 1-35 when he was chairman. Of those 35 reports only 1-18,23 and 31A are shown on the website. I have the remainder and can prove that they came from the district. Contrary to the Director of Communications,the district has reports that it is not sharing with the public. Will they be shared today? What's in the remaining more than 162 reports? Why are they not being shared? You should ask that.

I have asked for all the missing reports through 7/6/2020. My wife has sent a FOIA request for the same. Other parties have sent FOIA requests for the same.To date, the website does not list the full complement of reports.

A package of concrete delivery tickets came anonymously in the mail. I have reviewed those and found serious problems which I forward in a letter to Mr. Cates and Dr. Melton on 7/14/2020. My letter of March 24,2020 to Dr. Melton asked for other important information which has apparently been ignored. You should ask why I cannot see the things for which I have asked.

Please review and act accordingly by understanding that quality construction takes a group effort. I am trying to help the group.

Ken Loveless

---------- Forwarded message ---------
From: **Christina Melton** <csmelton@lexrich5.org>
Date: Tue, Jul 14, 2020 at 9:06 AM
Subject: Fwd: familyneals@aol.com has sent you a file from the Terracon CDW
To: Katrina Goggins <kgoggins@lexrich5.org>

This message is being blindcopied to all Board of Trustees. An attachment is included for your information.

Christina S. Melton, Ed.D.
Superintendent
School District Five of Lexington & Richland Counties
office: 803.476.8169 or 803.476-8116
www.lexrich5.org

Pursuing Excellence for Tomorrow's Challenges

Attachment to the minutes of the _____ meeting of the Board of Trustees held on _____ is approved as submitted/corrected pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

#2, pg 2

---------- Forwarded message ---------
From: **Dan Neal** <familyneals@aol.com>
Date: Mon, Jul 13, 2020 at 4:45 PM
Subject: Fwd: familyneals@aol.com has sent you a file from the Terracon CDW
To: csmelton@lexrich5.org <csmelton@lexrich5.org>

Here is the requested report 37.

Doc G

Philoma Skipper

From:	Greg Hughes
Sent:	Monday, September 14, 2020 7:52 AM
To:	Philoma Skipper
Cc:	Kyle Farley
Subject:	Fwd: Response to Ken Loveless concerns regarding electrical duct bank, Ryan Drafts, and Curb and Gutter Concrete
Attachments:	Dennis Core Results (1).pdf; CC&I ES 13 Electrical Service Letter.pdf; Letter from Knights.pdf; Rebound Hammer Test Amicks Ferry.pdf; Curb Concrete Submittal.pdf

Philoma,

Please print me 4 copies of this (including attachments), paperclip, and put in a folder for Kyle to bring to the board meeting tonight. Thanks.

Greg Hughes, President
Contract Construction, Inc.
803.781.7058 o
803.513.8090 c
P.O. Box 269, Ballentine, SC 29002
www.contractconstruction.net

Attachment #2, pg 10 is included with the minutes of the 9/14/2020 meeting, at the request of Board member Dr. Ken Loveless pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

CONTRACT CONSTRUCTION

Begin forwarded message:

From: Dan Neal <familyneals@aol.com>
Subject: Fwd: Response to Ken Loveless concerns regarding electrical duct bank, Ryan Drafts, and Curb and Gutter Concrete
Date: August 2, 2020 at 8:35:42 AM EDT
To: "csmelton@lexrich5.org" <csmelton@lexrich5.org>, "lrichard@lexrich5.org" <lrichard@lexrich5.org>, "michaelcates@lexrich5.org" <michaelcates@lexrich5.org>
Cc: "ghughes@contractconstruction.net" <ghughes@contractconstruction.net>, "dquackenbush@quackenbusharchitects.com" <dquackenbush@quackenbusharchitects.com>, "mhm@montgomerywillard.com" <mhm@montgomerywillard.com>
Reply-To: Dan Neal <familyneals@aol.com>

Dr. Melton,

Please see attached Mr. Hughes' comments on Mr. Loveless' concerns in recent emails. I absolutely agree with everything in Mr. Hughes' email and especially his comments about Ryan Drafts and as the email states, the concrete strengths speak for themselves. I do not yet have the comments from Mr. Quackenbush on the electrical duct band, but I expect them before we have our meeting on Tuesday.

Dan Neal

Attachment #2 pg 11 is included with the minutes of the 9/9/2020 meeting, at the request of Board member Beth Rotruck pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

-----Original Message-----
From: Greg Hughes <ghughes@contractconstruction.net>
To: Dan Neal <familyneals@aol.com>
Sent: Thu, Jul 30, 2020 9:32 am
Subject: Response to Ken Loveless concerns regarding electrical duct bank, Ryan Drafts, and Curb and Gutter Concrete

Dan,

In response to emails from Ken Loveless that have been forwarded to me I offer the following responses:

1. Regarding the electrical duct bank installation, see attached letter from CC&I, special inspection subcontractor to Terracon, explaining why Mr. Loveless' assertions are incorrectly applied to this installation. You will note that this is not just the opinion of the inspection agency, but also the opinion of Mid Carolina Electric Cooperative (the ultimate authority for this installation) and the Electrical Engineer of record. You may also want to get Quackenbush Architects and Planners to weigh in on this issue with their "interpretation" of their specifications, as Mr. Loveless points out as protocol.
2. Now I will address Mr. Loveless' attack on our Project Superintendent, Ryan Drafts. Ryan takes his job very seriously and is arguably one of the best school builders in this state. His attention to quality assurance is apparent by the speed at which he corrects discrepancies identified and his level of quality control is illustrated by the small number of discrepancies noted by Terracon. This is a testament to how he personally identifies issues and has them corrected prior to scheduled inspections. Mr. Loveless seems to think it is impossible to be exemplary in both quality and schedule but I can assure you that Ryan is nearly perfect at both. What is most disturbing is that on June 18, Mr. Loveless visited the jobsite with other board members and Dr. Melton and was very complimentary of Ryan's management of the jobsite and the flow at which he has constructed the facility. If Mr. Loveless still doubts Ryan's capabilities, I will be happy to provide a number of reference letters on Ryan's behalf that will be testimonials to Ryan's unique abilities to push a schedule without sacrificing quality.
3. Lastly, Mr. Loveless refers to an anonymous package of concrete tickets that came in the mail. These were not at all anonymous. Mr. Loveless used his recent re-established relationship with Pete Knight, Owner of Knight's Redi-Mix, as well as his position on the Board of Trustees to have Pete provide him with Coogler Construction's concrete delivery tickets for the curb and gutter. He went on to specifically request that they not be emailed, but mailed to him. Pete Knight is our preferred concrete supplier and has done business with us for many years and Mr Loveless manipulated him under the guise that "as a board member he was trying to help put an issue to bed related to the concrete used for curb and gutter on Elementary School 13". Now that the manner in which these tickets were received has been cleared up, let's talk about the concrete itself. Mr. Loveless points out a number of tickets that have water added or have time limit issues. We decided to simply let the concrete speak for itself and did so using two different testing methods (you will note that we also tested the "identifying concrete" poured over the electrical duct bank since this was also a concern of Mr. Loveless in previous correspondances). Attached are the results of 20 concrete cores taken by Dennis Corporation, 17 of which were from curb and gutter and 3 of which were from the electrical duct bank. The average of the 17 cores in the curb and gutter was 4478 psi compared to the specified requirement of 3000 psi. The three cores taken at the electrical duct bank averaged 3780 psi, for concrete that had no specified strength requirements. As a second level of verification, Coogler Construction requested that Knights Redi-Mix perform non-destructive testing at 8 other locations and those results averaged 4686, which is very consistent with the destructive testing performed by Dennis Corporation. We utilized two different companies to perform testing so there would be no "fox watching the hen house" accusations. Knights goes further to explain the reason they were not concerned with the placement of concrete from trucks that had exceeded the normal time limitations for concrete.

In closing, we feel that we have gone above and beyond to address the issues that Mr. Loveless felt were detrimental to the project, and hope that we have provided information that proves, beyond a shadow of a doubt, that the work in place meets and exceeds the project requirements.

Feel free to contact me if there are any further questions regarding these matters.

Greg Hughes, President
Contract Construction, Inc.
803.781.7058 o
803.513.6090 c
P.O. Box 269, Ballentine, SC 29002
www.contractconstruction.net

Attachment #2 1 P 3 12 is included with the minutes of the 9/14/2020 meeting, at the request of Board member Beth Hutchison pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

CONTRACT CONSTRUCTION

On Jul 21, 2020, at 9:15 PM, Dan Neal <familyneals@aol.com> wrote:

Greg, please research these issues and let me know when you can provide a full report to me so that I can brief Dr. Melton. Thanks.

Dan

-----Original Message-----
From: Christina Melton <csmelton@lexrich5.org>
To: familyneals@aol.com
Sent: Tue, Jul 21, 2020 8:35 pm
Subject: Fwd: familyneals@aol.com has sent you a file from the Terracon CDW

Dan ,
Upon your review , reach out to Erin for us to schedule a time to discuss this information.

Christina S. Melton , Ed.D.
Superintendent of School District 5 of Lexington & Richland Counties

Sent from my iPhone

Begin forwarded message:

> **From:** Michael Cates <michaelcates@lexrich5.org>
> **Date:** July 16, 2020 at 6:21:54 PM EDT
> **To:** Ken Loveless <kloveless@lexrich5.org>
> **Cc:** Beth Hutchison <bhutchison@lexrich5.org>, Robert Gantt <RGantt@lexrich5.org>, Nikki Gardner <ngardner@lexrich5.org>, Christina Melton <csmelton@lexrich5.org>, Jan Hammond <jhammond@lexrich5.org>, Ed White <EWhite@lexrich5.org>
> **Subject: Re: familyneals@aol.com has sent you a file from the Terracon CDW**

Mr. Loveless,

All Terracon reports are on the district website. The reports are listed by month some months have multiple pages and the district has been maintaining the site for some time. I am not sure how many

because I have not taken the time to count them. I see reports I-200 with some numbers having multiple reports (a,b,c) are listed. If you need help accessing them please let me know. They can be found at https://www.lexrich5.org/Page/24735

If, and I say if, what you are describing is so, what remedy are you sugesting?

Michael Cates
School Board Trustee, Board Chair
District Five of Lexington & Richland Counties
803 518-4567
michaelcates@lexrich5.org

Attachment #2, 2013 is included with the minutes of the 7/14/2020 meeting, at the request of Board member Beth Rittenberg pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

On Jul 16, 2020, at 5:17 PM, Kenneth Loveless <kloveless@lexrich5.org> wrote:

All,

After receiving Terracon Report # 37, I offer the following:

Please review the attached photos above from the letter from Dan Neal to Dr.Melton dated 4:45 PM 7/13/2020. The letter contains Terracon report # 37 of which the photos are a part. The electrical code, NFPA 70 article 352.30 (B) requires 2' PVC conduit to be supported at no greater than 5'0" O.C. Look at the second photo. Do you see anything supporting the conduit off the earth? There is nothing there.

Both photos show the conduit is penned down to the floor of the ditch with piles of dirt,not on PVC conduit spacer racks with restraints as required. Those dirt piles are still there right now separating the conduit from the concrete. The concrete is not homogeneous because the concrete has dirt mixed in with it.The conduit is on the ditch bottom held down by the dirt following the contour of the excavation, not suspended in the concrete as required. The conduit can be punctured by the mass of the concrete and backfilled earth above the concrete bearing on it. This mass can force the conduit into sharp rocks or other objects in the ditch bottom.That is why the NFPA 70 calls for such conduit to be Schedule 80 rather than schedule 40 as constructed.Had the duct bank been constructed properly, the schedule 40 PVC conduit would have been acceptable. Did Mr. Sims,the electrical engineer, know the full story when he wrote his letter in defense of Mr. Hughes? Why was Mr.Sims prompted to write the letter without full knowledge? Whether or not Mr. Sims agrees or not, best practices were not installed with the conduit on the ditch bottom. It's a simple concept.

Article 352.44 requires expansion fittings where there will be temperature changes. I don't see any.

Mr. Hughes says in his letter of 4/20/20 that all has been signed off by Terracon. Mr. Hughes knows that Terracon is not the deciding entity. Terracon works for the district to insure the district testing protocols are followed. As such, Terracon does not take on the role of interpreting the specifications for the contractor. Only the Architect can do that and the Architect must be informed before the work can continue or the contract is responsible for his actions.

I invite everyone to read this: The Project Manual Section 14000 1.8 B.states :"Project quality-control manager may also serve as Project superintendent."There is a built-in conflict of interest. The fox is guarding the hen house. Does anyone seriously believe that the same person who is paid to push production and schedule is going to also demand quality when that would mean slowing the schedule and production? Can you imagine any homeowner building a house who would cede to his builder the owner's right to control quality? Would any of you? Yet, the district did just that.

I have studied the Terracon reports that were provided to date.There are a minimum of 238 reports which are supposed to have been posted through 7/6/2020. 76 are actually posted. Of those 76, ten reports show deviations from the specifications. You can read them. They show that there are more than just a few instances where Terracon indicated discrepancies but the quality-control manager/ Project superintendent proceeded on without stopping.

Mr.Gantt sent me Terracon reports 1-35 when he was chairman. Of those 35 reports only 1-18,23 and 31A are shown on the website. I have the remainder and can prove that they came from the district. Contrary to the Director of Communications,the district has reports that it is not sharing with the public. Will they be shared today? What's in the remaining more than 162 reports? Why are they not being shared? You should ask that.

I have asked for all the missing reports through 7/6/2020. My wife has sent a FOIA request for the same. Other parties have sent FOIA requests for the same.To date, the website does not list the full complement of reports.

A package of concrete delivery tickets came anonymously in the mail. I have reviewed those and found serious problems which I forward in a letter to Mr. Cates and Dr. Melton on 7/14/2020. My letter of March 24,2020 to Dr. Melton asked for other important information which has apparently been ignored. You should ask why I cannot see the things for which I have asked.

Please review and act accordingly by understanding that quality construction takes a group effort. I am trying to help the group.

Ken Loveless

Attachment #2, Pg 14 is included with the minutes of the 7/14/2020 meeting, at the request of Board member Beth Hutchinson pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

---------- Forwarded message ----------
From: **Christina Melton** <csmelton@lexrich5.org>
Date: Tue, Jul 14, 2020 at 9:06 AM
Subject: Fwd: familyneals@aol.com has sent you a file from the Terracon CDW
To: Katrina Goggins <kgoggins@lexrich5.org>

This message is being blindcopied to all Board of Trustees. An attachment is included for your information.

Christina S. Melton, Ed.D.
Superintendent
School District Five of Lexington & Richland Counties
office: 803.476.8169 or 803.476-8116
www.lexrich5.org

Pursuing Excellence for Tomorrow's Challenges

Doc H

P.O Box 3408
Summerville, SC 29484-3408

Office (843) 821-7600
Fax (843) 821-7627

September 14, 2020

Mr. Greg Hughes
Contract Construction
P.O. Box 269
Ballentine, SC 29002

Re: Amick's Ferry Elementary School Project

Dear Greg:

On or around April 17, 2020 Ken Loveless requested copies of concrete delivery tickets as it pertains to curb & gutter concrete supplied to Coogler Concrete for the above referenced project. At Mr. Loveless's request the delivery tickets were mailed to his attention.

Please contact me should you have any questions or if you need any additional information.

Respectfully,

Pete Knight
President

Attachment #2, Pg 3 is included with the minutes of the 9/14/2020 meeting, at the request of Board member Beth Bulwinkle pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

Doc I

The State Newspaper
September 18, 2020

Feud over new Midlands school leads to ethics accusations against school board member

BY BRISTOW MARCHANT
SEPTEMBER 18, 2020 09:53 AM

Questions of ethics violation rise out of Lexington Richland District 5 board meeting

Some board members at Lexington Richland District 5 are concerned about contract awarded to a fellow board member Ken Loveless. BY LEXINGTON RICHLAND DISTRICT 5
CHAPIN, SC

A long-simmering feud over a new elementary school in Lexington-Richland 5 has boiled over into accusations of unethical conduct against one of the project's biggest critics.

The spat escalated at Monday's Lexington-Richland 5 school board meeting, when members accused their colleague Ken Loveless of using his position on the board to secure lucrative jobs for his company.

Loveless Commercial Contracting was awarded a more than $1 million contract this spring to perform subcontracting work on a construction project oversecn by Contract Construction for the State Law Enforcement Division. Loveless's fellow board members blasted that decision.

Contract Construction is the firm overseeing the construction of Piney Woods Elementary School.

"He has turned his board seat into a money-making enterprise by submitting a bid to work for a contractor already doing business with the school district for which he serves as a board trustee," said board member Ed White.

Loveless disputes that his board position had anything to do with the contract.

"My company bid a project, put it out to five or six general contractors, and we were the low bidder with the contractor that was selected," Loveless said. "Period. It had nothing to do with anything with school board."

Loveless said he had spoken about the project with the S.C. Ethics Commission, who had assured him the contract did not raise legal issues.

Under questioning from White at Monday's meeting, Contract Construction president Greg Hughes acknowledged the two men had discussed potential business between the two firms during a June 18 tour that some school board members took of the Piney Woods site. White said that the incident showed Loveless mixing his personal business with the husiness of the board.

Loveless described the conversation as innocuous.

"After the tour was over, he was talking to me about how they had just bid this big west campus job at USC, and that our company had put out a preliminary bid to all the contractors," Loveless said. "He was talking to me that there was a possibility we would be working together... since then the project was shelved because of money problems, but he was asking me if I wanted to do other work with him. Of

course, we're a construction company, and we've been around here for years... I said, 'Why don't we go over some time and look at the SLED job?' I hadn't seen it. He said 'sure.'

"That was the extent of the conversation. What did I do wrong there? ... It doesn't create a conflict of interest for businessmen to talk about a project that's not related to School District 5."

Greg Hughes had a similar recollection of the conversation. "I mentioned he'd done good work on the SLED job, and he said he was interested in doing more," Hughes recalled.

But while answering questions at Monday's school board meeting, Hughes walked a fine line between defending his company's work on Piney Woods while acknowledging his relationship with Loveless.

"He does good work for us," Hughes said. "I'd like him to continue doing it."

The latest allegations are the latest in a long dispute between board members over construction of the new elementary school on Amicks Ferry Road about three miles southwest of Chapin, which is slated to open in the fall of 2021. Loveless has been critical of the project since he joined the board in 2018, questioning its cost and what he identifies as deficiencies in its construction.

Loveless criticized the strength of concrete used to insulate electrical wiring buried at the site, which caused the firm to do additional testing, and absorb the cost, before confirming its suitability. He's also questioned practices like doing work on the site at night. Other school board members say the independent inspectors contracted to oversee the project haven't flagged any serious issues.

The dispute continued Monday over a July 16 letter, in which Loveless claimed he had received an anonymous shipment of concrete delivery tickets detailing conditions of the material. In trying to determine where the tickets had come from, the board were told by the concrete supplier that they had provided the tickets at Loveless's request. Board member Beth Hutchison criticized Loveless for trying to mislead his colleagues about how he had acquired the tickets and why they might have been sent.

"He lied to us and he lied to the public," Hutchison said.

Loveless later told The State he didn't want to "rat out my source" for the delivery tickets, although Hughes openly acknowledged Monday their concrete supplier had produced the tickets at the board member's request. Loveless also complained he'd been unable to receive such documents when he requests them from the district.

Loveless also argues he's been denied the ability to visit the Piney Woods site, other than the June 18 site tour. White argues there are liability issues if a board member is issuing directions to contractors on the job.

"He says he ran on this theme of 'I'm going to oversee construction,'" White said. "But we all have equal rights to vote on policy. It's not proper for one board member to decide, 'I'm going to do this part of the district's business.'"

But Loveless says his critical stance on the project means it can't be unethical for him to work on another project with Contract Construction. He voted against their Piney Woods contract when he first joined the board and has continued to question its handling of the site, even after he received the SLED contract.

"Where's the conflict of interest?," he said. "You'd think they would welcome me being involved, since I think you can see I know what I'm talking about."

Doc J

- I am a retired Navy Captain who commanded and who retired as the Assistant Chief of Civil Engineers for the entire Navy.
- I have three master's degrees and have been a PE in SC since 1982
- I ran operations in RSD 2 which included construction, facility maintenance and repair, food services, security, and transportation.
- I was the South Carolina Area Manager for a large international engineering firm whose projects included the design of the Ravenel Bridge in Charleston
- The Governor has appointed me to the SC Procurement Review Panel
- I was also on the RSD 2 school board and the last year I served I was the vice-chair of an effective board.
- I believe that I understand what a board and each member need to do.
- Dr. Hefner called me over 5 years ago and asked me if I could give him a day or two a week for a couple of months to help solve three issues at the Chapin HS addition project:
    - The inconsistent brick color
    - The slope in the football and soccer practice fields
    - The poor quality metal siding
- My tasking then went on to completing the renovations to Irmo HS, the completion of Chapin Middle School, the replacement of the siding at Chapin High, and the eventual addition of the third wing at Chapin Middle School.
- Dr. Melton asked me to stay on and work the design and construction of what was then ES 13

Attachment #1, pg 1 is included with the minutes of the 9/28/2020 meeting, at the request of Board member Michael Cates pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment

– Dan Neal
pg. 1

- We worked through the Architect and CM@R contractor selections and are well on our way to delivering a state of the art school that will outlive us all
- When Dr. Hefner asked me to come and help 5 years ago, I told him I would do it if I had Board support and the work was rewarding
- Until recently that was the case
- I find that today I spend more time answering trivial questions by those who want to find fault and it detracts from the project
- When I was a Board member I understood that:
    - I had no authority as an individual
    - I chose not to visit construction projects unless I was invited by the administration and that was rare
    - I understood that it was not my job to supervise construction, but rather to support those who do
- Last Thursday I gave Dr. Melton my resignation in accordance with my ageement
- I am proud that I was able to work with the superb men and women in the District Administration, and the best K-12 architects and contractors in South Carolina
- Mr. Chairman, thank you for this personal privilege

— Dan Neal
pg. 2

Attachment #1 pg 2 is included with the minutes of the 9/28/2020 meeting, at the request of Board member Michael Cakes pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

Doc K

Resubmitted by Beth Hutchison 10/12/20 mtg

State of South Carolina

State Ethics Commission

see pages 2+3 to see Recusal requirement for Mr. Loveless regarding Ethics Commission Warning that he must recuse himself in School Board business whenever discussion & vote about Contract Construction - he must recuse himself.

CHILOS C. THRASHER, CHAIR
JAMES [illegible]
BRIAN M. BARNWELL

ANDOLYN THOMAS PEARSTON

301 EXECUTIVE CENTER DRIVE, SUITE 150
COLUMBIA, S.C. 29210

MEGHAN WALKER
EXECUTIVE DIRECTOR

September 25, 2020

Attachment #3, pg 6 is included with the minutes of the 9/25/2020 meeting at the request of Board member Ken Loveless pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

VIA ELECTRONIC MAIL ONLY

Kenneth B. Loveless
228 Lookout Pointes Drive
Chapin, SC 29036
ken@lovelesscontracting.com

Re: Informal Opinion Request

Dear Mr. Loveless:

Thank you for your request for an informal opinion from the State Ethics Commission (Commission). An informal opinion is the opinion of Commission staff, taking into consideration any applicable formal opinions, law, and/or judicial decisions. Please be advised that an informal opinion is not binding on the Commission. Additionally, the Commission's jurisdiction is limited to the applicability of the Ethics, Government Accountability, and Campaign Reform Act of 1991 (Act). This opinion is based solely on the facts relayed by you and does not supersede any other statutory or regulatory restrictions or procedures which may apply to this situation. A failure to disclose relevant information may void the opinion.

ISSUE

On September 21, 2020, you presented the following in an e-mail:

> I am an elected member of the Lexington-Richland District Five Board of Trustees. The company for whom I am employed as President, Loveless Commercial Contracting, Inc., from time to time subcontracts work from general contractors. I understand that our company can neither bid upon nor construct projects either as subcontractor or a general contractor for District Five. Loveless Commercial Contracting, Inc. has never done so.
>
> If my employer, Loveless Commercial Contracting, Inc. is awarded a project outside of District Five such as an upcoming project at E.L. Wright Middle School in Richland District No. 2 as a subcontractor for a general contractor who does

#1, pg1 Attachment is included with the minutes of the 10/12/2020 meeting at the request of Board member Beth Hutchison pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

See pages 2+3

Attachment #1, P2 is included with the minutes of the 10/12/2020 meeting, at the request of Board member Beth Hutchison pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

business with District Five, what ethics path in reference to voting upon matters that effect the general contractor with whom Loveless contracts should I follow?

LAW

Section 8-13-700 states, in part:

(A) No [public official] may knowingly use his official [office] to obtain an economic interest for himself, a family member, an individual with whom he is associated, or a business with which he is associated . . .

(B) No [public official] may make, participate in making, or in any way attempt to use his [office] to influence a governmental decision in which he, a family member, an individual with whom he is associated, or a business with which he is associated has an economic interest. A [public official] who, in the discharge of his official responsibilities, is required to take an action or make a decision which affects an economic interest of himself, a family member, an individual with whom he is associated, or a business with which he is associated shall:

(1) prepare a written statement describing the matter requiring action or decisions and the nature of his potential conflict of interest with respect to the action or decision;

. . .

(4) if he is a public official, other than a member of the General Assembly, he shall furnish a copy of the statement to the presiding officer of the governing body of an agency, commission, board, or of a county, municipality, or a political subdivision thereof, on which he serves, who shall cause the statement to be printed in the minutes and require that the member be excused from any votes, deliberations, and other actions on the matter on which the potential conflict of interest exists and shall cause the disqualification and the reasons for it to be noted in the minutes.

Attachment #3, P37 is included with the minutes of the 9/28/2020 meeting, at the request of Board member Beth Hutchison pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

Section 8-13-100(4) defines "business with which he is associated" as:

[a] business of which the person or a member of his immediate family is a director, an officer, owner, employee, a compensated agent, or holder of stock worth more than one hundred thousand dollars or more at fair market value and which constitutes five percent or more of the total outstanding stock of any class.

Rec'd by Beth Hutchison 10/12/2020

DISCUSSION

Based on the facts presented, the general contractor for which Loveless Construction subcontracts is a "business with which [you are] associated" for purposes of the Ethics Act. This means that whenever you are faced with a scenario in which the general contractor has an economic

- General Contractor Contract Construction as of Oct. 2021

* If other conflicts occur the requirement

Note: Mr. Loveless must recuse himself

interest, you must recuse yourself from that matter following the instructions in Section 8-13-700(B). There is no outright prohibition against Loveless Construction performing subcontracting work for this general contractor; rather, Section 8-13-700(B) must be followed in instances where the general contractor has an economic interest. Thank you for contacting the Commission. If you have any questions or need anything further, please do not hesitate to contact me.

Sincerely,

Courtney M. Laster

Courtney M. Laster
General Counsel

Attachment #1, pg 3 is included with the minutes of the 10/2/2020 meeting, at the request of Board member Beth Hutchison pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

Attachment #3, pg 8 is included with the minutes of the 9/25/2020 meeting, at the request of Board member Ken Loveless pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

Doc L

Names confirmed and added by Complainant

Doc M

Kenneth B. Loveless

228 Lookout Pointes Drive

Chapin, SC 29036

Mrs. Janis Hammond

Chairperson of the Board of Trustees

School District Five of Lexington-Richland Counties SC Ethics Commission Statements of Economic Interests

1020 Dutch Fork Road

Irmo, SC 29063

Re: Recusal of Kenneth B. Loveless on certain matters

Dear Mrs. Hammond:

In accordance with the requirements of SC Code Section 8-13-700(B)(1), I am advising you, as Chairperson of the Board of Trustees for School District Five of Lexington and Richland Counties, of my affiliation with Contract Construction, Inc. My affiliation with Contract Construction, Inc. is that the company which I am employed and a stockholder, Loveless Commercial Contracting, Inc. operates as a subcontractor on the S.C. Law Enforcement Division Forensics Lab project, Columbia, SC. The association began on March 12,2020 and will end at the completion of the construction project.

Please be advised that effective immediately, I will recuse myself from any and all votes, deliberations, and other actions on any matter that comes before the Board of Trustees relating to Contract Construction, Inc.

Please publish my statement to the Board and the public at the Board's next meeting on February 8,2021 and include a copy of this statement with the minutes of that meeting.

Yours Truly,

Kenneth B. Loveless

Vice Chairman of the Board of Trustees

School District Five of Lexington-Richland Counties

State of South Carolina
State Ethics Commission

EXHIBIT E

CHILDS C. THRASHER, CHAIR
DONALD GIST, VICE CHAIR
BRIAN M. BARNWELL

AJ HOLLOWAY
DON JACKSON
BRANDOLYN THOMAS PINKSTON

201 EXECUTIVE CENTER DRIVE, SUITE 150
COLUMBIA, S.C. 29210

MEGHAN L. WALKER
EXECUTIVE DIRECTOR

September 25, 2020

VIA ELECTRONIC MAIL ONLY
Kenneth B. Loveless
228 Lookout Pointes Drive
Chapin, SC 29036
ken@lovelesscontracting.com

Re: Informal Opinion Request

Dear Mr. Loveless:

Thank you for your request for an informal opinion from the State Ethics Commission (Commission). An informal opinion is the opinion of Commission staff, taking into consideration any applicable formal opinions, law, and/or judicial decisions. Please be advised that an informal opinion is not binding on the Commission. Additionally, the Commission's jurisdiction is limited to the applicability of the Ethics, Government Accountability, and Campaign Reform Act of 1991 (Act). This opinion is based solely on the facts relayed by you and does not supersede any other statutory or regulatory restrictions or procedures which may apply to this situation. A failure to disclose relevant information may void the opinion.

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>
> If my employer, Loveless Commercial Contracting, Inc. is awarded a project outside of District Five such as an upcoming project at E.L. Wright Middle School in Richland District No. 2 as a subcontractor for a general contractor who does

business with District Five, what ethics path in reference to voting upon matters that effect the general contractor with whom Loveless contracts should I follow?

LAW

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>
> (B) No [public official] may make, participate in making, or in any way attempt to use his [office] to influence a governmental decision in which he, a family member, an individual with whom he is associated, or a business with which he is associated has an economic interest. A [public official] who, in the discharge of his official responsibilities, is required to take an action or make a decision which affects an economic interest of himself, a family member, an individual with whom he is associated, or a business with which he is associated shall:
>
> > (1) prepare a written statement describing the matter requiring action or decisions and the nature of his potential conflict of interest with respect to the action or decision;
> >
> > . . .
> >
> > (4) if he is a public official, other than a member of the General Assembly, he shall furnish a copy of the statement to the presiding officer of the governing body of an agency, commission, board, or of a county, municipality, or a political subdivision thereof, on which he serves, who shall cause the statement to be printed in the minutes and require that the member be excused from any votes, deliberations, and other actions on the matter on which the potential conflict of interest exists and shall cause the disqualification and the reasons for it to be noted in the minutes.

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> [a] business of which the person or a member of his immediate family is a director, an officer, owner, employee, a compensated agent, or holder of stock worth more than one hundred thousand dollars or more at fair market value and which constitutes five percent or more of the total outstanding stock of any class.

DISCUSSION

Based on the facts presented, the general contractor for which Loveless Construction subcontracts is a "business with which [you are] associated" for purposes of the Ethics Act. This means that whenever you are faced with a scenario in which the general contractor has an economic

interest, you must recuse yourself from that matter following the instructions in Section 8-13-700(B). There is no outright prohibition against Loveless Construction performing subcontracting work for this general contractor; rather, Section 8-13-700(B) must be followed in instances where the general contractor has an economic interest. Thank you for contacting the Commission. If you have any questions or need anything further, please do not hesitate to contact me.

Sincerely,

Courtney M. Laster

Courtney M. Laster
General Counsel

District Five OF LEXINGTON & RICHLAND COUNTIES

Agenda

Board of Trustees

Regular Meeting

Location: Spring Hill High School, Multipurpose Room

Video Livestream: https://lexrich5.rev.vbrick.com/#/webcasts/boardmeeting

February 8, 2021

These documents are not date-stamped because the minutes from this meeting are not available yet. See pg. 2 of agenda.

1. Call to order at 5:00 p.m.

2. Approval of the agenda

3. Enter Executive Session to consider the following:
   a. Selected employment items (*Exhibit A*) (Action)
   b. Selected employment items (*Exhibit B*) (Information Only)
   c. Discussion and review of the Superintendent's Goals/Expectations and the Board/Superintendent Relationship
   d. Legal advice regarding one construction contract
   e. Legal advice related to Amicks Ferry Elementary School sewer line

4. Call to order at 7:00 p.m.

5. Welcoming remarks – Jan Hammond, Board Chair

6. Invocation – Ken Loveless, Board of Trustees

7. Pledge of Allegiance – Ken Loveless, Board of Trustees

8. Superintendent's Report (Action as necessary)
   - 2020-2021 School Reentry Overview: Part XI
   - Flexible Innovative Virtual Education (FIVE)

9. Approval of the minutes of the January 25, 2021 board meeting

10. Public Participation*

ACTION AGENDA

11. Action as Necessary or Appropriate on Matters Discussed in Executive Session

12. Approval of Proposed 2021-2022 School Year Calendar *(Exhibit C)*

13. Second Reading Approval of revisions to Policy BDE "Board Committees" *(Exhibit D)*

DISCUSSION AGENDA

14. Financial relationship of board member with a vendor and recusal requirements *(Exhibit E)*

15. Adjourn

INFORMATION AGENDA

16. Board Policy BEDB "Agenda"

17. The next regular scheduled board meeting will be February 22, 2021. Location to be determined.

**The Board welcomes and encourages public participation. We respectfully ask that you adhere to the procedures and the decorum provided in board policy BEDH "Public Participation at Meetings". Your comments should be limited to three minutes. Questions asked during public participation will be handled in accordance with board policy BEDH.*

COVID-19 NOTICE: Due to federal and state social distancing guidelines, seating capacity at our school board meeting will be limited. The district will live stream board meetings to provide virtual viewing options. Masks will be required.

Doc N

SC school board member steps away from construction project after ethics dispute

BY BRISTOW MARCHANT
FEBRUARY 09, 2021 02:20 PM,
UPDATED FEBRUARY 09, 2021 10:26 PM

Questions of ethics violation rise out of Lexington Richland District 5 board meeting

Some board members at Lexington Richland District 5 are concerned about contract awarded to a fellow board member Ken Loveless. BY LEXINGTON RICHLAND DISTRICT 5

A Lexington-Richland 5 school board member has recused himself from involvement with work on a new elementary school because of his ties to the construction company.

Facing criticism over his business relationship with Contract Construction, Loveless on Monday provided the board with a letter detailing the ties between his company, Loveless Commercial Contracting, and the firm overseeing construction of Piney Woods Elementary School.

"Please be advised that effective immediately, I will recuse myself from any and all votes, deliberations, and other actions on any matter that comes before the Board of Trustees relating to Contract Construction, Inc.," Loveless wrote.

Contract Construction is the firm overseeing construction of Piney Woods Elementary School on Amicks Ferry Road near Chapin. The school is slated to open its classrooms to students this fall. The firm also contracts with Loveless Commercial Contracting, the board member's firm, on a separate project outside Lexington-Richland 5.

On Monday, Loveless said that work is part of the "normal course of business" for his contracting firm, and it came about last March, long after the district agreed to use Contract Construction for the Piney Woods project. Loveless pointed out that he has been critical of the project for a long time and had voted against it on numerous occasions.

Loveless Commercial Contracting's work with Contract Construction involves a project separate from Piney Woods Elementary. Loveless said he won the job based on a competitive public bidding process. Had Contract Construction not been selected for the other project, Loveless said, his firm could have ended up working with another company.

Speaking about the work he and his wife have done for Lexington-Richland 5, Loveless said, "We are not motivated by money or interest, as my opponents would have you believe."

Loveless' relationship with Contract Construction previously came under fire last fall when it was highlighted by board member Ed White and then-board member Beth Hutchison.

Loveless has said his construction work is unrelated to his role on the school board, and that his relationship with the company doesn't pose an ethical conflict, citing an advisory from the S.C. Ethics Commission.

But in that letter to Loveless, an Ethics Commission attorney cited state ethics law requiring "No [public official] may make, participate in making, or in any way attempt to use his [office] to influence a

government decision in which he ... or a business with which he is associated has an economic interest," according to the document filed with the Sept. 28 board meeting minutes.

Critics argue that language would prohibit Loveless from having any involvement with the district's construction projects involving Contract Construction.

"It's clear he should not be involved in any way," Hutchison, who didn't seek reelection to the Lexington-Richland 5 school board last November, told The State.

On Monday, board member Catherine Huddle moved that the school board also ask the Ethics Commission whether White should recuse himself from matters involving Contract because of past campaign donations he received from the company and its executives as far as back as 2010. White declined to comment on the motion to The State.

Board member Rebecca Blackburn Hines also asked that ethics officials rule on whether Loveless' recusal precludes him from inspecting the construction site on Amicks Ferry. The board approved both motions.

Loveless was also criticized for discussing business with the company's president during a tour of the Piney Woods site last June. Hutchison argued the ethics rule should prohibit Loveless from even taking such district-arranged trips to the construction site.

She compared the situation to the board's role in hearing concerns about individual students. "If you know the family, you have to recuse yourself," Hutchison said. "You have to leave the room. You couldn't call or lobby your colleagues about the case. You couldn't have any influence at all. That's what recusal means."

But Loveless made clear at the board's Jan. 25 meeting he doesn't believe the recusal precludes him from making future visits to the site. "Just because I recuse myself does not mean I cannot go on a construction site," Loveless said at the meeting. "You're abridging my rights as a school board member to do that."

Doc O

From Facebook:

Learn About Your D5 School District

Private group
·3.8K members

About This Group

This Facebook group is in NO WAY associated with School District 5 of Lexington and Richland Counties. This group was created by concerned citizens to allow for pertinent and timely discussion about the school district and its Board of Trustees, and the seats coming open in November. This group does not solicit funds nor fundraise for candidates. The administrators are not paid.

If you review our pre-Covid posts you can see the information we uncovered and shared about questionable actions by the current board. An incredible amount of research, FOIA requests, and study. The current board is controlled by 4 people who have a history of suppressing public input and not being transparent with this information. The only way to fix this is new blood.

Sample posts/comments by Ken Loveless in this Facebook group:

Ken Loveless
Mar 3, 2020 ·

In the January 27,2020 board meeting and in previous ones, I have been attacked by Ed White and the rest of the board majority. I have been pointing out that the quality of construction through inspection needs to be carefully monitored at Amick's Ferry, lest we have another debacle like the 2008 Bond Referendum Renovation at Chapin High School. That work was never properly completed. New materials were torn out because specifications either weren't followed or were improperly drawn. We, the taxpayers,not the contractors paid for the rework. Not only that, the board paid the general contractor as settlement an extra $700,000,in addition to his contracted amount.More rework continues at Chapin High recognized as " just discovered" and we, the taxpayers,again, are paying for it. Mr. White has repeatedly ascribed my motives at Amicks Ferry as trying to stop construction and/or trying to usurp his precious 4 vote majority's decision to throw extra millions more than necessary at the project. Again, he is trying to use your money to deflect from the fact that his group sat on its laurels for ten years after not building the school the voters voted for in 2008 at Dorrick's Pond. Now, after Susan Baker recently documented their placing concrete at night under tractor lights, the superintendent will not ask that contractor provide me with pertinent documents in his possession which his contract states he must. (blocking the request is Mr. White's precious 4 vote majority). I am being denied access and even threatened with removal from the board if I go on site. Mr. White has repeatedly stated in board meetings that his new school is beautiful and will be "built to last 100 years" If he wants that, then we need to adhere to the specs. It will have to be someone else. I will not be allowed to participate.

Juli Jordan Booth ▸ Learn About Your D5 School District
Jul 14, 2020 ·

There appeared to be a little dust-up between Chairman Cates and Trustee Loveless last night. Actually, Chairman Cates appeared to be "disciplining" Mr Loveless for something, but it was difficult to understand what was going on.

I'm hoping Trustee Ken Loveless will explain. This occurred when the board was voting on approval of the minutes from the last meeting.

The vote on approving the minutes was 4-3 (Nikki Gardner, Jan Hammond, Ken Loveless dissenting). So what was it about the minutes that they didn't want to approve?

Ken Loveless

Susan Baker questioned early on in public participation construction activities at night without lights. Susan, a longtime volunteer and SIC member at Chapin High was trying to prevent s repeat of the construction debacle at CHS which left us with 1100 deficiencies. Since that time Ed White,Michael Cates and the board majority have made it their mission to keep me, a general contractor since 1986 off the project. Having monitored the construction at Elementary School #13 from afar, I have been relegated to monitoring the inspection and testing reports supposedly provided by the district. I did that as well as noted serious safety viol... See More

reported by others in a letter to the Superintendent asking questions March 24, 2020. That detailed letter (nine pages with 32 attachments) noted serious matters. It asked for documents in the district's possession which I still have not been allowed to see. I received cover letter with a response from the district's paid contractor of choice defending himself but nothing of substance from the district's Project Representative, Dan Neal. Ed White at the June 15,2020 deemed that his contractor as the expert(fox guarding the henhouse)and proceeded to lob softball questions to him. I objected. I was gaveled out of order. Cates, the chairman, who lost control of the meeting, later wrote me that he stopped the meeting so that his witnesses (Dan Neal and others) could've the documents,i.e.get their stories straight. Ed White placed into the record at the last night's meeting my letter WITHOUT any of the 32 attachments which they did not want anyone to see and without anyone being able to see documents which purported to defend Ed's star witness, the paid contractor.Last night, I was attempting to include my full letter with attachments for the record. Cates, in an effort to at censorship supported by the board majority, scolded me by
told me that my request was out of order. The vote to approve the minutes of the June 15,2020 meeting was approved 4-3 with the majority voting to keep everyone uninformed. I hope you will remember so all the work will not have been done in vain.

Jondy Loveless
Sep 20, 2020 ·

This from Ken Loveless:

For as long as anyone can remember, this school board and administration have resorted to hurling accusations as a way to suppress criticism.

On Monday, the knives came out once again. Instead of making the agenda to discuss what is foremost in all parents' minds, re-entry, the majority members came after me. This time I was the target of well orchestrated, but completely baseless accusations. Make no mistake: The sole reason beh'nd the false attacks was the fact that I'd brought to light very serious problems involving nonconforming materials being used on the ongoing new Piney Woods Elementary School Project.

Yes, I'm in the construction business. In fact, my construction background is one of the reasons I ran for the school board. I never made any bones about the fact that, given the persistent construction-related missteps in our district, someone with construction experience was need on the board.

No, that's not a conflict of interest. Nor have I done anything improper, unethical or illegal. It's no more a conflict of interest for a contractor to serve on the board than a government employee or a lawyer to serve on the board.

Unfortunately, character assassination has become the standard response to some pretty serious problems in this district, including even critical issues that deserve civil, rational discussion ... such as the mismanaged construction with multiple issues such as siding and its subsequent replacement at Chapin High, selection of contractors and designers, actions that lead to the the never-built Derrick Pond school and latent soils and foundation matters on Oak Pointe Elementary School construction. it should be no surprise that these problems happen again and again and again: It's simply easier to kill the messenger than to acknowledge our shortcomings and address them.

For my part, I'm going to continue to do the job I came here to do, which is to clean up substandard practices in District 5's capital projects program. If that puts me in the crosshairs, so be it.

Ken Loveless ▸ Learn About Your D5 School District

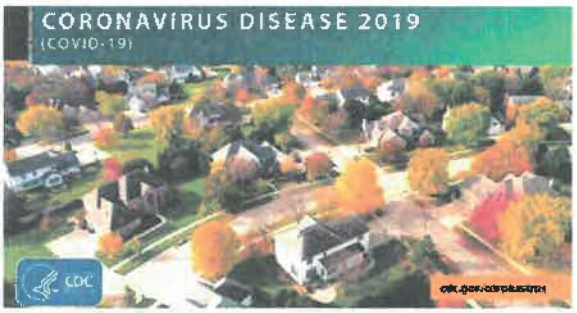
Ken Loveless
Oct 13 2020 ·

Robert Gantt and Ed White have worked diligently with their whisper campaign trying to blame the debacle with Chapin High construction on the "Lady in the Pink Hard Hat". In his diatribe at the September 28, 2020 school board meeting White was forced to bring his statements out in the open. Well, something happened yesterday that would have otherwise gone unnoticed if not mentioned here. Dr. Melton yesterday put out a statement that Facilities Director Clay Cannon would provide preliminary costs at the next juncture where Capital Budgets would be discussed to correct electrical problems at Chapin High. It took Scott Catlin, Dan Neal and Mike Montogomery leaving association with the District to finally get movement on the issue. Retiring board member Beth Hutchison got the spot light at last night's board meeting but the true unsung super hero is my precious wife, Jondy Loveless, for staying true to her convictions for the safety of our teachers,staff and students. She knew that the contract work had never been completed at CHS. She knew that the contractor's performance bond was not called. She also knows that as it exists now, there are code violations and serious safety concerns with the electrical work. Kudos to Jondy Loveless," The Lady in the Pink Hard Hat". Now, it is up to the District to act sooner than later to make long overdue safety repairs!

← Learn About Your D5 School District

Judy Raphael Kletter ▸ Learn About Your D5 School District
6 hrs

Is our new elementary school (and all of our schools) following the new CDC Covid guidelines for the safety of all student?



CDC.GOV
Community, Work, and School
Actions that communities can take to slow the spread of CO...

Ken Loveless
I wouldn't know about Piney Woods. Board member Ed White and another have kept me away from Piney Woods by threatening me with Ethics Violations if I go on site. Their latest tact is to claim that because my company has a construction contract on a another project, an office building project for SC Law Enforcement Division with the same general contractor, that I cannot see construction documents on Piney Woods. I hate to disappoint them but I will continue to work to see that the public's money is properly spent and that some of the federal money is spent on older schools. Should you have questions about Piney Woods, contact board member Ed White.

BOWERS LAW OFFICE LLC

Post Office Box 50549
Columbia, South Carolina 29250

Phone: 803-753-1099 **butch@butchbowers.com**

February 28, 2022

Via Electronic Mail (rcaldwell@ethics.sc.gov)
Ryanne Caldwell
Chief Investigator
SC State Ethics Commission
201 Executive Center Drive, Suite 150
Columbia, South Carolina 29210

Re: *In the Matter of Kenneth Loveless*
Complaint No.: C2021-016

Dear Ms. Caldwell:

I hope this finds you well. As we discussed on January 25, 2022, Mr. Loveless wishes to provide a written response to the referenced complaint. However, we respectfully decline your invitation to shift the burden to Mr. Loveless of "address[ing] how his participation in discussions regarding Contract Construction from February 2020 through September 2020 did not violate Section 8-13-700(B)". As you know, the burden of proof is not on Mr. Loveless, it is on the Commission. However, we will submit the following which should be considered as Mr. Loveless's response to the complaint by Kim Benson on February 17, 2021.

Preliminarily, this letter shall serve as Mr. Loveless' direction to the Commission that he waives confidentiality of these proceedings, as he is permitted to do under S.C. Code Ann. Section 8-13-320(10)(b). He reserves the right, therefore, to share any communications between himself and the Commission with whomever he desires to share the materials with.

As you know, Mr. Loveless became a "public official" when he was elected as a member of the Lexington-Richland School Board in November 2018. S.C. Code Ann. Section 8-13-100(27).

Prior to his election, on August 20, 2018, District Five issued a Notice of Intent to Award a contract for Construction Manager-at-Risk for construction of Elementary School #13, which was later named Piney Woods Elementary School.

Once Mr. Loveless was elected, Mr. Loveless did not have any individual authority to decide anything regarding Piney Woods Elementary school, or its construction. As you know, the Board collectively "manage[s] and control[s]" the school district. Section 59-19-10. Statutory duties of School Boards are spelled out by the general assembly, and they include the obligation

to "[p]rovide schoolhouses" and to [t]ake care of, manage and control . . . school property of the district. Section 59-19-90. District Five Board has a code of ethics that obligates its Trustees to "accept the responsibility along with . . . fellow board members of ensuring that optimal facilities and resources are provided for the proper functioning of schools" and "recognizing that authority rests only with the board in official meetings and that the individual member has no legal status to bind the board outside of such meetings." District Five Policy BCA.

This is significant because SEC AO2003-002 relied on the fact that a public official who "has no independent decision-making authority" on his own was not required to recuse himself from providing services of drafting, coordination within the agency, presenting the consensus of the senior staff to the Board and representing the agency in the approval process in the General Assembly, even though his spouse "represents clients seeking permits." The Commission found it significant that the public official's decision-making authority was minimized by a "lengthy [process] that provides for public comment and legislative review" and only the Board as an entity had for initial approval of regulations. There, as here, Mr. Loveless has no individual ability to make decisions for the Board.

As a Board member, however, Mr. Loveless was obligated to the citizenry to bring matters to which he was alerted by citizens and that he personally observed regarding construction at Piney Woods Elementary School to the attention of the school administration. He has carried out his obligations throughout his tenure on the Board, but he has not taken any action with respect to the District's contract with Contract Construction to benefit his economic interest or that of his family.

The company that employs Mr. Loveless was selected as a subcontractor by Contract Construction in connection with a construction project for SLED in late February, 2020. Bids are submitted by lower-level staff at Mr. Loveless's office. In late February or early March 2020, Mr. Loveless became aware that a contract was going to be awarded by Contract Construction for the SLED project. It was Contract Construction that created the alleged "economic interest" by selecting Loveless Commercial Contracting as a subcontractor on the SLED Forensic Lab Project. However, at no time did Mr. Loveless or his employer have an economic interest in Contract Construction's dealings with the school district. Mr. Loveless has no reason to believe that his status as a member of the school board influenced a decision by a private contractor who was performing a construction project for a public entity to choose Loveless Commercial Contracting as a sub-contractor. That is true, unless the private contractor awarded the contract to the company by which Mr. Loveless is employed for the intentional purpose of attempting to prevent Mr. Loveless from commenting on the quality of work by the contractor being performed for the School District, which is apparently what has occurred here.

Mr. Loveless did not believe that his company's status as a subcontractor on the SLED project being constructed by a private entity constituted an "economic interest" within the definition set forth in Section 8-13-100 (11)(a). He believed then, and believes now, that his

company's contractual relationship as a sub-contractor on the SLED project is governed by Section 8-13-100(11)(b), because Loveless Commercial Contracting is a member of "a profession, occupation or large class . . ." which has the same economic interest in doing business with Contract Construction "to no greater extent than the economic interest or potential benefit [that] could reasonably be foreseen to accrue to all other members of the profession, occupation or class." Loveless Commercial Contracting's economic interest in the SLED project was no greater than the economic interest of any other bidder, subcontractor or potential subcontractor that may provide services to a general contractor who has been awarded a public or private construction project. Loveless Commercial Contracting is not prohibited from bidding on public or private jobs simply by virtue of Mr. Loveless's membership on the School Board.

The Commission has found on numerous occasions that economic interests involving a "large class" exempt public employees, officers or officials from the "economic interest" prohibition set forth in Section 8-13-700(B). The Commission has stated that questions such as these "must be answered on a case-by-case basis." SEC AO2004-001.[1] In concluding that a town councilman was not required to recuse himself from a vote on development of green space in the municipality "would appear to have an economic interest in taking actions that would directly impact" property he owned in the municipality; "however, the definition of economic interest provides for the large class exception." SEC AO2008-004. In that decision, the Commission referenced an earlier decision, AO92-201 that held "since the four Council Members are either school district employees or married to a school district employee, their interest is potentially no greater or less than that of all other members of the group of school employees." This was so even though the town council voted on the school district budget issue from which their spouses were paid.

The Commission noted "[t]he large class exception. . . has never made a numerical determination of what a large class is. The Commission prefers to review these questions on a case-by-case basis." In applying the large class exception, the Commission found that there were 171 property owners "with an interest in the property" and the public employee was only one and he "may participate in the selection process and award of a contract to a consultant for the management plan for the town-owned green space."

Similarly, based on the large class exception, the Commission allowed a City of Georgetown council member to vote on matters involving the repair and maintenance of a city

[1] A public official could participate in a rezoning decision of the municipality which he serves even though he personally owns property that is in the vicinity of the land being considered for rezoning. The Commission ruled that it would be clear if the public official owned land in the area of the proposed rezoning, he would be required to recuse himself. Since the public official's land was merely in the vicinity of the land under consideration for rezoning but not in the property, "the public official's economic interest. . . is less clear." *Id.* The Commission held that the public official was not required to recuse himself on a rezoning application for property in which he owned property in the same vicinity.

boardwalk when she was one of 56 property owners whose property adjoined the boardwalk. "The Commission prefers to review these questions on a case-by-case basis since each set of facts is unique." SEC AO2010-004.

While carrying out his duties as a Board member, Mr. Loveless is required to address issues to the full Board and the administration regarding provision of existing schoolhouses and construction of additional school facilities, particularly when raised by a member of the community. He has voiced his concerns repeatedly about deficiencies in work performed by Contract Construction to the administration of the District and generally. To require him to recuse himself from his statutory duties because he owns an interest in one of thousands of contractors and subcontractors in the state who work in commercial construction and might bid or be awarded contracts for construction of public buildings would create an opportunity for political abuse fraud by members of the construction industry and their allies. The only way Mr. Loveless has an economic interest by virtue of this company's contract with Contract Construction in an unrelated matter is for this Commission to assist companies such as Contract Construction to force the recusal by a public official and prevent him from doing his statutory duties. It was Contract Construction that created this scenario, not Mr. Loveless. If Contract Construction did so to force Mr. Loveless' recusal (and his criticism of their work for the District) they cannot be allowed to succeed.

When political opponents of Mr. Loveless' attempted to raise the issue of conflict of interest with him in September, 2020, Mr. Loveless requested an opinion from this office to resolve the matter. This office declined, and instead in an informal opinion dated September 25, 2020 your agency opined that Mr. Loveless should recuse himself from "that matter" (which was not defined). In his follow-up with the Commission, Mr. Loveless was advised that "you are correct that the ultimate decision to recuse belongs to the public official." (Letter from Courtney Laster dated 2.22.2021, p. 4).

While Mr. Loveless disagreed with the informal opinion of staff, and out of respect for the Commission's position, he nevertheless wrote the statutorily-required notice to Janis Hammond, Chairperson of the Board of Trustees for the School District in early 2021, in accordance with Section 8-13-700(b)(1), based on the view expressed by Commission staff.

Since that time, Mr. Loveless has not made any votes, nor has he taken any action "that could be perceived as an attempt to influence the government decision." (Laster to Loveless February 22, 2021). He has, however, continued to carry out his official duties, which included a site visit to the construction site at Piney Woods Elementary School, and he has privately observed the defective construction at Piney Woods Elementary Sschool, while not voting or taking any action to interfere with the District's contract with Contract Construction.

"Recusal" is not defined in any of the published advisory opinions that are available for consultation and guidance, but Mr. Loveless has purposefully not voted or taken any action regarding Contract Construction since he complied with Section 7-13-700(b) in early 2021. He is, however, permitted by the First Amendment to make public comment on matters in which he has expertise, and failure to do so would constitute an abandonment of his obligations as a member of the school board. In fact, he cannot be forced to abandon his duties to the District by Contract Construction's attempts, in conjunction with others, to silence him.

If there is existing precedent which prohibits him from voicing his opinion regarding the quality of work being performed for the school district, and therefore expressly allows such an infringe on his first amendment right of free speech, please point those out for our consideration. Similarly, if he is prohibited from listening to discussions about the projects for which he is statutorily required to carry out his duties as a member of the school board (other than voting), please provide that. He has not voted or attempted to influence any vote or any action regarding Contract Construction's involvement with the Piney Woods Elementary School nor taken any other action which would compromise his integrity as a Board member.

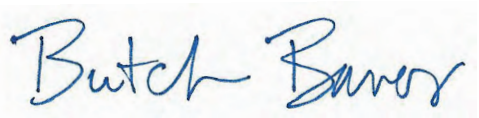
If it was Contract Construction's intent to prevent Mr. Loveless from carrying out his duties as a member of the District Five school board by awarding a contract to his employer in an attempt to silence him, then Contract Construction has violated Section 8-13-705(A) and (C), and I request that the Commission investigate appropriately. The statute provides that if Contract Construction attempted to initiate his recusal by awarding Loveless Commercial Contracting a subcontract for an unrelated project after he was elected to the School Board, they are guilty of a misdemeanor. Section 8-13-705(F). Contract Construction's actions should also be examined under Section 8-13-720.

If you have any specific questions, or wish to modify any of the statements made by yourself or Commission staff, we would be happy to hear from you. Mr. Loveless intends to continue to faithfully discharge the duties of his elected position.

Thank you for the opportunity to respond to the complaint in this matter. We look forward to closure of this matter with all deliberate speed.

Sincerely yours,

BOWERS LAW OFFICE LLC



Karl S. Bowers, Jr.

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	BEFORE THE STATE ETHICS COMMISSION
IN THE MATTER OF:	)	
Complaint C2021-016	)	
Kenneth Loveless Respondent.	)	**NOTICE OF HEARING**
Kim Benson Complainant.	)	

The State Ethics Commission has determined that there is probable cause pursuant to Section 8-13-320(10)(i), Code of Laws, South Carolina, 1976, as amended, to support the allegations made in the above-captioned complaint. The State Ethics Commission will, therefore, convene a formal hearing into the matters, in accordance with Section 8-13-320(10)(i) & (j), Code of Laws, South Carolina, 1976, as amended, and State Ethics Commission Regulations, S.C. Code Ann. Regs. 52-707 (1997 Cum. Supp.) on Thursday, February 16, 2023 at 9:30 a.m. at the State Ethics Commission Hearing Room located at: 201 Executive Center Drive, Suite 150, Columbia, South Carolina 29210.

The following allegations will he heard:

COUNT ONE
FAILURE TO RECUSE FROM A GOVERNMENTAL DECISION IN WHICH A BUSINESS WITH WHICH ASSOCIATED HAD AN ECONOMIC INTEREST SECTION 8-13-700(B), S.C. CODE ANN., 1976, AS AMENDED

That Kenneth Loveless, Lexington-Richland School District Five Board Member, did in Richland County, write a letter dated March 24, 2020 inquiring about construction work of a district facility by Contract Construction, Inc., a business with which he was associated, in violation of Section 8-13-700(B).

COUNT TWO
FAILURE TO RECUSE FROM A GOVERNMENTAL DECISION IN WHICH A BUSINESS WITH WHICH ASSOCIATED HAD AN ECONOMIC INTEREST SECTION 8-13-700(B), S.C. CODE ANN., 1976, AS AMENDED

That Kenneth Loveless, Lexington-Richland School District Five Board Member, did in Richland County, on June 15, 2020, participate in discussion about construction of a district facility by Contract Construction, Inc., a business with which he was associated, in violation of Section 8-13-700(B).

COUNT THREE
FAILURE TO RECUSE FROM A GOVERNMENTAL DECISION IN WHICH A BUSINESS WITH WHICH ASSOCIATED HAD AN ECONOMIC INTEREST SECTION 8-13-700(B), S.C. CODE ANN., 1976, AS AMENDED

That Kenneth Loveless, Lexington-Richland School District Five Board Member, did in Richland County, on September 14, 2020, participate in discussion about construction of a district facility by Contract Construction, Inc., a business with which he was associated, in violation of Section 8-13-700(B).

COUNT FOUR
FAILURE TO RECUSE FROM A GOVERNMENTAL DECISION IN WHICH A BUSINESS WITH WHICH ASSOCIATED HAD AN ECONOMIC INTEREST SECTION 8-13-700(B), S.C. CODE ANN., 1976, AS AMENDED

That Kenneth Loveless, Lexington-Richland School District Five Board Member, did in Richland County, in June of 2020, participate in a site visit of a district facility being constructed by Contract Construction, Inc., a business with which he was associated, in violation of Section 8-13-700(B).

You have the right to be represented by counsel, the right to call and examine witnesses, the right to introduce exhibits, and the right to cross-examine opposing witnesses. This hearing will be open to the public as required by Section 8-13-320(10)(j), Code of Laws, South Carolina,

1976, as amended. The procedures to be followed are set forth in the Administrative Procedures Act, Section 1-23-10, et seq., Code of Laws, South Carolina, 1976 as amended the State Ethics Act, Section 8-13-100, et seq., Code of Laws, South Carolina, 1976, as amended, and State Ethics Commission Regulations S.C. Code Ann. Regs. 52-707 (1997 Cum. Supp.).

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

Meghan L. Walker, Executive Director
State Ethics Commission

Dated this 11th day,
of July, 2022.

Certificate of Service by Certified Mail

I hereby certify that a copy of this **NOTICE OF HEARING** was duly served on Karl S. Bowers, Jr., Esquire, PO Box 50549, Columbia, SC 29250 by depositing said **NOTICE OF HEARING** in the United States mail, Columbia, South Carolina on this 11th day of July 2022, by CERTIFIED MAIL, E-RETURN RECEIPT REQUESTED, appropriate postage affixed, and a return address clearly indicated on said envelope.

Rachael O'Bryan

Rachael O'Bryan, Administrative Assistant
Columbia, South Carolina State Ethics Commission (803) 253-4192

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	BEFORE THE STATE ETHICS COMMISSION
IN THE MATTER OF: Complaint C-2021-016 Kenneth Loveless, Respondent. Kim Benson, Complainant.	)	**MOTION TO RESCHEDULE**

Respondent Kenneth Loveless (hereafter "Loveless") moves for rescheduling of the formal hearing set for February 16, 2023. In support of his motion, Loveless would show:

1. This matter is scheduled for a formal hearing on February 16, 2023, even though the original complaint was filed on or about February 17, 2021.
2. Respondent is a candidate for re-election to his position as a member of the School Board for Lexington-Richland School District No. 5 on November 8, 2022.
3. There has been significant public and social media activity regarding the pendency of this matter, such that delaying a hearing until February 2023 would be extremely detrimental to Loveless.
4. Loveless, through counsel, has consulted with counsel for the Commission and is informed and believes that the current Board schedule will permit this matter to be rescheduled to be heard on October 20 and October 21, 2022.

Wherefore, having fully set forth the grounds for the relief south herein, Loveless moves for the merits hearing to be rescheduled for October 20 and October 21, 2022.

Respectfully submitted,

s/ Desa Ballard

Desa Ballard (S.C. Bar No. 498)
Harvey M. Watson III (S.C. Bar No. 74053)
Haley Hubbard (S.C. Bar No. 103195)
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ATTORNEYS FOR RESPONDENT

August 15, 2022

STATE OF SOUTH CAROLINA
STATE ETHICS COMMISSION

Kim Benson, Complainant, vs. Kenneth Loveless, Respondent.	Case Number: C-2021-016 **MOTION TO DISMISS**

Pursuant to Regulation 52-703(C), Respondent Kenneth Loveless moves to dismiss this pending action. Regulation 52-703(C) provides that the Commission may take "such action as it deems appropriate to accomplish the purposes and intent of the Act, including dismissing . . . violations of the Act with or without the consent of the person . . . filing the complaint." In other words, even if the Commission believes a Respondent may violated the word of a provision of the Act, based on the circumstances, the Commission may still dismiss the complaint.

The complaint arises out of Respondent's criticism of construction work being performed for the Lexington-Richland School District 5. The Act is allegedly implicated because the company of which Respondent is president had an ongoing subcontract with the same contractor on a totally unrelated project at the time Respondent began to question the quality of work being performed for the District. Rather than attempting to use his position as a public official to gain a benefit, Respondent has been critical of the quality of work being performed by the contractor who was building a new elementary school for the district. Far from attempting to gain an advantage for himself of his company, Respondent's criticism of the building contractor would likely have had the opposite effect, *i.e.,* alienating him from the contractor so they never do business together again.

With the knowledge that the kind of conduct proscribed by the act is exactly the opposite of what is alleged to have occurred here, *i.e.,* Respondent criticizing a contractor with whom he had an unrelated subcontract, thereby risking any financial benefit that might come to his company in the future. The acts alleged to form the basis of the complaint in this action are exactly the opposite of the kind of conduct this Commission is required to regulate.

With that factual basis in mind, Respondent moves to dismiss this proceeding, even if there has been a preliminary determination that his conduct may have violated the act. The motion to dismiss is based upon:

(1) the failure of the Commission to allege any misconduct under the state ethics act; and

(2) the failure of the Commission to comply with he statutory mandates prescribed for proceedings before the State Ethics Commission.

This Motion is submitted for consideration by the Full Commission at its meeting to be held on September 15, 2022, at which time another motion by Respondent is scheduled to be heard. In the event this Motion is granted, the motion already pending will be rendered moot.

NO ALLEGATION OF MISCONDUCT UNDER THE STATE ETHICS ACT

On or about February 17, 2021, Kim Benson filed a Complaint Form with the State of South Carolina State Ethics Commission ("SEC") regarding Kenneth Loveless (hereafter "Respondent"), a School Board Member of the Lexington-Richland District 5 ("District"). This complaint was provided to Respondent via U.S. mail by letter dated February 23, 2021, which stated that the Commission had reviewed the complaint and "determined that there are sufficient facts to warrant an investigation."[1]

[1] Based upon the Commission's public records, there was no meeting of the Commission between the receipt of the complaint and the transmittal of the complaint to Respondent, which leaves open the question of when the full Commission could have reviewed the complaint, since its meetings for early 2021 were held on January 21, 2021 (before the complaint was transmitted to the Commission), and March 18, 2021 (after the complaint had been received by the Commission. Moreover, it appears there is no evidence of a review and/or determination by the Commission

Neither the complaint nor the cover letter transmitting it to Respondent cited any provision of the State Ethics Act upon which the investigation was focused, *i.e.,* Respondent was not told what statutory violation was being investigated.

A year later, the SEC requested a written response to the complaint. By letter dated February 28, 2022, Respondent sent a written Response to the Complaint. In that response he waived confidentiality of these proceedings.

By Notice dated July 11, 2022, Respondent was advised that the Commission had determined that "probable cause" existed to support the allegations made in the above captioned complaint.[2] The Notice of Hearing notified Respondent that a hearing would be held on four (4) counts of violation of S. C. Code Ann. § 8-13-700(B), which provides:

> No public official. . . may . . . make, participate in making, or in any way attempt to use his office . . . to influence a **governmental decision** in which he. . . or a business with which he is associated has an economic interest.

Key to an alleged violation of the statutory provision is the existence of a "governmental decision" in which a public official made or participated in making. No such allegation has been made.

The Notice of Hearing[3] sets forth four scenarios for the alleged violation by Respondent of Section 8-13-700(B), none of which alleges a governmental decision was made.[4] According to the Notice of Hearing, the commission will determine whether:

Count One: Whether Respondent "**wrote a letter"** on March 24, 2020.

---

that the investigation should proceed, despite the statement to Respondent in its letter dated February 19, 2021 that such a review and determination had been made.

[2] Notice of Hearing dated July 11, 2022, of record.

[3] The State Ethics Act does not require issuance of a Notice of Hearing. *See* discussion below.

[4] Once a determination of probable cause has been found, the Commission is required to notify a Respondent of "the particulars of the violation" in writing. S.C. Code Ann. § 8-13-320(d).

Count Two: Whether Respondent "**participate[d] in discussion"** about construction of a district[5] facility on June 15, 2020, which discussion was about a facility being built by Contract Construction Inc., "a business with which he was associated. . ."

Count Three: Whether Respondent **participate[d] in discussion"** [on the same topic] on September 14, 2020.

Count Four: Whether Respondent "**participate[d] in a site visit"** [on the same topic] in June of 2020.

None of the "particulars" asserted against Respondent, which form the basis of the Commission's determination of probable cause and determination to proceed with a "formal hearing" against Respondent, alleges Respondent's participation in a "governmental decision." Respondent's participation in a "decision" is the key and fundamental basis for a proceeding against Respondent under the Section 8-13-700(b) of the State Ethics Act.

Respondent is informed and believes the Commission construes the prohibition on participation in a "governmental decision" to prohibit a public official from witnessing, being aware of, or having knowledge of any kind with a project being performed by a "business with which he is associated." Based on past decisions of the Commission, no "governmental decision" is necessary for the statute to have been violated. Prior matters have been addressed as violations when a public official has any awareness of or makes any comment with respect to on an ongoing project being performed for the governmental agency by a "business with which he is associated," even when no governmental decision is pending constitutes a violation S.C. Code. § 8-13-700(B).

The State Ethics Commission lacks the authority to rewrite the statute or initiate an investigation or hearing based on its own expanded view what conduct is prohibited under the Act. The Board may

[5] The "district" referenced in Counts one through four presumably refer to facilities of the Lexington-Richland District 5 School Board, of which Respondent is a member, having been elected to and taken office in November, 2018.

have historically proceeded with investigations or hearings based on an expansive reading of Section 8-13-700(B), which requires participation in a "governmental decision" to investigate or proceed with a hearing on something that is not expressly prohibited by the statute. Doing so, however, was legal error, and allowing these proceedings to continue based on a tortured expansion by the Commission the unambiguous language of the statute is not permitted.

As an agency of the State and a creature of statute, the Commission's authority is dependent upon statute. The Commission is possessed only with those powers specifically delineated or necessarily implied in their enabling legislation. *City of Columbia v. Board of Health and Environmental Control*, 292 S.C. 199, 355 S.E.2d 536 (1987), cited with approval in *Charlotte-Mecklenburg Hospital Authority et al. v. South Carolina Department of Health and Environmental Control et al*., Civil Action No. 06-ALJ-07-0713CC (Order dated December 9, 2009).

> [Administrative] bodies, being unknown to the common law, and deriving their authority wholly from constitutional and statutory provisions, will be held to possess only such powers as are conferred, expressly or by reasonably necessary implication, or such as are merely incidental to the powers expressly granted . . . 'Any reasonable doubt of the existence in the commission of any particular power should ordinarily be resolved against its exercise of the power.'

Mungo v. Smith, 289 S.C. 560,564, 347 S.E.2dd 514, 517 (1986). *See also Stoneledge At Lake Keowee Owners Association Inc. v. Imk Dev. Co.,* 435 S.C. 109, 866 S.E.2d 542 (2021) (Statutes in derogation of the common law are to be strictly construed, and a statute restricting the common law will not be extended beyond the clear intent of the legislature), quoting *Eades v. Palmetto Cardiovascular & Thoracic P.A.*, 422 S.C. 196, 201, 810 S.E.2d 848, 850 (2018).

It is true that Courts generally defer to the opinion of a state agency as to the interpretation of a statute it is charged with the duty of enforcing. *S.C. Coastal Conservation League v. South Carolina Department of Health and Environmental Control*, 380 S.C. 349, 669 S.E.2d 899 (Ct.App. 2008). "It is well established that construction of a statute by the agency charged with its administration will be

accorded the most respectful consideration and will not be overruled absent compelling reasons." *Lloyd v. South Carolina Department of Health and Environmental Control*, 328 S.C. 419, 428-29, 491 S.E.2d 582, 595 (Ct. Ap. 1999), cited with approval *Safety Disposal Systems Inc. v. South Carolina Department of Health and Environmental Control*, No. 01-ALJ-07-012CC, 2002 WL 1354623 at *26.

However, an agency's interpretation of a statute cannot be sustained when it is in violation of the clear language of the statute or constitutes a clear abuse of discretion. *Brown v. Bi-lo Inc.*, 354 S.C. 436, 440, 581 S.E.2d 836, 838 (2003). "South Carolina Courts have long held that however clear the language is in a statute, the courts will not apply a construction that reaches an absurd result the Legislature clearly did not intend." *Charlotte Mecklenburg Hospital Authority v. South Carolina Department of Health and Environmental Control, supra*., citing *Kiriakides v. United Artists Communication Inc.,* 312 S.C. 271, 2275, 440 S.E.2d 364, 366 (1994) ("If possible, the court will construe the statute so as to escape the absurdity and carry the [legislative] intention into effect." *Catawba Indian Tribe of South Carolina v. State of South Carolina*, 372 S.C. 519, 527, 642 S.E.2d 751, 755 (2007).

It is undisputed that the factual basis for the alleged violation of the Act as set forth in the Notice of Hearing do <u>not</u> challenge Respondent's actions in connection with any "governmental decision". Respondent's participation in a governmental decision is a clear prerequisite to a determination that there has been a violation of Section 8-13-700(B). Only under what could best be described as the Commission's widely expanded construction of the "governmental decision" standard, which is strictly prohibited by law, could this matter be allowed to proceed without violating Respondent's rights.

The four counts, which are based on Respondent's alleged conduct, *i.e.,* writing a letter, two counts of participating in discussions, and one count of participating in a site visit, clearly implicate Respondent's constitutional rights of speech and his right to liberty (and free association). The Commission's attempt to inquire into and possibly sanction Respondent based on an expansive, and

unsupported, construction of Section 8-13-700(B) is clearly an illegal attempt to regulate Respondent's freedom of speech. *Greenville Bistro LLC v. Greenville County*, 435 S.C. 146, 866 S.E.2d 562 (2021), citing *Ashcroft v. Free Speech Coalition*, 535 U.S. 234, 245, 122 S. Ct. 1398, 152 L.E.2d 403 (2002) " (. . . the First Amendment bars the government from dictating what we see or read or speak or hear.)". The Commission's actions in further attempting to infringe on Respondent's right to liberty, his right to be from be free from "unwarranted governmental interference" is an equally powerfully protected right that these proceedings attempt to thwart. *State v. Dykes*, 403 S.C. 499, 744 S.E.2d 505 (2013). *See also Sunset Cay LLC v. City of Folly Beach*, 357 S.C. 414, 430, 593 S.E.2d 462, 470 (2004) (a government restriction on liberty must "bear a reasonable relationship to [a] legitimate interest of government.)".

Respondent's election to public office did not deprive him of his right to freedom of speech nor of his protected liberty interests and cannot be restricted in the absence of a legitimate state interest. *Powell v. Keel*, 433 S.C. 457, 860 S.E.2d 344 (2021).

Had the Commission alleged the actual prohibition contained in Section 8-13-700(B), *i.e.* Respondent's participation in a "governmental decision" which compromised his objectivity as a public official or benefitted him in some financial way, the Commission would have every right to proceed with this matter.

However, by not basing its investigation and prosecution on Respondent's participation in a "governmental decision" and instead attempting to apply its unwarranted and expanded construction of the statute in order to pursue these proceedings, the Commission is clearly acting outside its authority.

The Notice of Hearing does not properly allege any violation of S.C. Code Ann. § 8-13-700(B). It is defective on its face. It represents a clearly unwarranted attempt by the Commission to regulate conduct which it has no authority to regulate. The Commission's attempt to do so is especially egregious

when its attempts to sanction Respondent interfere with his constitutional rights, which were not forfeited when he became a public figure.

If this were a civil action, this motion to dismiss would be based on Rule 12(b)(6), *i.e.,* a failure to state a cause of action against Respondent since the Notice of Hearing does not allege facts which would constitute a violation of Section 8-13-700(B). Instead, this motion is based upon Regulation 52-703(C), which permits the Commission to "take such action as it deems necessary and appropriate to accomplish the purposes and intent of the act including dismissing. . . violations of the Act with or without the consent of the person . . . filing the complaint."

Respondent moves for dismissal in full of these proceedings based on the legal insufficiency of the alleged counts alleged, since they do not allege any misconduct.

PROCEDURAL DEFECTS IN THESE PROCEEDINGS

A. Failure to properly authorize investigation

As set forth above, the Commission received a complaint from complainant Kim Benson on or about February 17, 2021.[6] In its letter to Respondent dated February 23, 2021, which provided Respondent with a copy of the complaint, the Commission advised that "the State Ethics Commission reviewed the complaint. . . and determined . . . there are sufficient facts to warrant an investigation." Disturbingly, the letter stated that the Commission's review and determination had occurred on February 17, 2021, the same date the complaint was received.

S.C. Code § 8-13-310(9)(a) permits the Commission to commence an investigation only after "a majority vote of the total membership of the commission."[7]

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[6] February 17, 2021 was a Wednesday. The complaint was forwarded to Respondent on February 23, 2021, the following Tuesday.

[7] S.C. Code §8-13-10(c) permits an investigation to proceed "if the commission, its executive director or staff

It is impossible for the investigation to have commenced on the same date it was received, or even on the date the complaint was forwarded to Respondent, because the Commission's public records reflect no meeting of the Commission between the receipt of the complaint on February 19, 2021 and the transmittal of the complaint to Respondent on February 23, 2021. (Letter to Respondent dated February 23, 2021, attached as **Exhibit A**).

A majority vote of the total membership, as required by S.C. Code § 8-13-310(9)(a), or a vote of the Commission as required by S.C. Code §8-13-310(10)(c) could not have occurred between the receipt of the complaint on February 19, 2021 and prior to the February 23, 2021 letter to Respondent. The Commission records show no Commission meeting at which a majority of the Commission could have reviewed the complaint and authorized the investigation. The Commission's own records for early 2021 were held on January 21, 2021[8] (before the complaint was transmitted to the Commission), and March 18, 2021 (after the complaint had been received by the Commission. The only possible conclusions based on this procedural defect is (1) no review of the complaint occurred in accordance with S.C. Code § 8-13-310(9)(a); no a majority of the Commission had "reviewed the complaint and determined that there are sufficient facts to warrant an investigation;" (3) an illegal meeting was held at which time the complaint was authorized by

designated by the commission determines that the complaint alleges facts sufficient to constitute a violation" an investigation may proceed. Section 8-13-(9)(a) requires a majority vote of the Commission to proceed with an investigation "as provided in item 10(d)" While the two statutes could be seen to conflict, it is undisputed that Respondent was notified that "the Commission" has voted to authorize the investigation" and that was the basis upon which this investigation proceeded. **Exhibit A.**

[8] The minutes of the January 21, 2021 reflect executive session to review "legal and probable cause matters." The minutes further reflect a vote after executive session to "adopt and ratify actions taken on legal and probable cause matters in executive session." The minutes of the March 18, 2021 meeting of the Commission reflect the Commission went into executive session to discuss "a legal matter" but that no action was taken in executive session or after open session reconvened. A second executive session occurred during the March 18, 2021 meeting, and the minutes reflect that the Commission "adopt[ed] and ratify[d] actions taken with regard to probable cause matters in executive session. The minutes of both meetings may be in error, because no "actions" are permitted to be taken in executive session. - S.C. Code § 30-4-70 (no action may be taken in executive session except to (a) adjourn or (b) return to public session.")

someone who would have had authority if done legally; or (4) the complaint was reviewed and authorized by the Executive Director or his designee under Regulation 52-704(A)(1).[9]

If a meeting of the Commission was held on or between February 19 and Feb 23, 2021, the meeting was held in violation of state law since it was not announced to the public with a posted agenda. The Commission's calendar shows a Commission Meeting was scheduled to be held on February 18, 2021, which was the day after the complaint was received. However, there are no minutes of a Commission meeting held on February 18 (or on any date in February). The absence of a February, 2021 meeting is confirmed by the minutes of the Commission meeting held on March 18, 2021, which document a vote of the Commission to approve the minutes of the January 21, 2021 meeting, further verifying no February 2021 meeting of the Commission occurred.

It is clear that any investigation which resulted in the issuance of the Notice of Hearing dated July 11, 2022 was an improper proceeding, because the investigation was not properly authorized in accordance with S.C. Code §8-13-320(9)(a) or § 8-13-320(10)(c). The Notice of Hearing in this matter, and the underlying complaint which ostensibly resulted in the Notice, must be dismissed.

B. Absence of a verified complaint

As discussed above, an investigation which has been properly authorized must be initiated by the issuance of a verified complaint from the Commission. While the complaint by Ms. Benson might have been verified[10], the notification that probable cause had been determined and the counts alleged against

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[9] Regulation 52-704(A)(1) permits the executive director or his designee to review the complaint to determine if there are facts sufficient to warrant going forward with an investigation. Such a regulation, however, is unenforceable, because it directly contradicts the statutory requirements of S.C. § 8-13-9(A). AGO 1988-107. Moreover, the letter to Respondent expressly states that the approval to proceed with the investigation was authorized by a "the Commission," which precludes the reliance by the Commission on Regulation 52-704(A)(1).

[10] Ms. Benson's complaint is signed (and undated) but appears to be notarized by a staff member at the Commission. *See* Page 1 of the complaint, where Ms. Benson's name is written into the first line of the verification by the same

Respondent were contained in a Notice of Hearing transmitted to Respondent's counsel by United States mail on July 11, 2022. There is no "verified complaint" initiating these hearing proceedings, despite the mandate of Section 8-13-320(10)(d) that the Commission issue a verified complaint.

The Commission is required to file its own "verified complaint" following a determination of probable cause, and to serve a copy of that verified complaint along with other information upon Respondent. S.C. Code § 8-13-320(10)(d).

> If the commission .. . . finds probable cause to believe that a violation . . . has occurred, it may, upon an affirmative vote of six or more members of the commission, file a verified complaint. . . . [and it must] forward a copy of the complaint. . . within ten days of the filing of the complaint.[11]

There is no "verified complaint" from the Commission in these proceedings. All that was issued was a Notice of Hearing, which states a finding of probable cause was made, but fails to state when the finding was made. The Notice of Hearing recites the four counts, schedules a hearing for February, 2023, and sets forth "a general statement of the applicable law" as required by Section 8-13-320(9)(d).

It is a mystery as to when the Commission allegedly found probable cause in this case. The verified complaint must be provided to Respondent "within ten days of the filing of the complaint." Section 8-13-320(9)(d). Not only is there no verified complaint filed, there is no notification of when a finding of probable cause occurred.

According to the published calendar of the Commission, the Commission meeting which last preceded the issuance of the Notice of Hearing occurred on Thursday, June 16, 2022. Unfortunately, the last published minutes of the Commission are for a meeting held on March 21, 2022. Those minutes do

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person who notarized it, who is the same person at the Commission who scanned the complaint into the Commission's records. Page 1 of Ms. Benson's complaint is attached hereto as **Exhibit B.**

[11] In a classic demonstration of the artistry of legislation, the statute uses the permissive "may" to address the issuance of a verified complaint, but a mandatory "shall" for service of the verified complaint upon the Respondent. Obviously, if the Commission "shall" serve a copy of the complaint on a Respondent, it has to issue one first.

not contain any indication that the Commission was presented with or considered the approval of any findings of probable cause at that meeting.

There is a published agenda for a Commission meeting on May 19, 2022 which indicates a "probable cause agenda" was scheduled for consideration by the Commission on that date. Since no minutes are published, the public cannot know whether that Commission meeting occurred, or whether a probable cause agenda was considered on that date. There is also a published agenda for a Hearing Panel meeting on June 16, 2022 at which time five (5) individual matters were listed for hearing, but there was no indication that any probable cause determinations were made at that meeting.

If Respondent's matter was presented for a determination of probable cause at the May 19, 2022 Commission meeting, the Notice of Hearing issued on July 11, 2022 is not timely, since it was not served within ten days, and it isn't even a complaint, verified or not verified. There may not even be a complaint, because if there was one, it should have been served on Respondent.

Respondent is unable to locate any further agenda or minutes that might indicate when (if at all) a proper determination of probable cause has ever been made by the Commission as required by Section 8-13-320(10)(d).

As noted, the Commission's calendar shows a Commission meeting was scheduled for June 16, 2022, but there is no evidence[12] an agenda was issued for that meeting nor are there minutes verifying the meeting ever occurred. If it is assumed, despite the complete lack of evidence, that a finding of probable cause was considered by the Commission and made on June 16, 2022, then the service of the Notice of Hearing on July 11, 2022 violates Section 8-13-320(10)(d) since it was not served within ten days of filing of the complaint. There is no evidence a verified complaint from the Commission even

[12] All public entities are required to publish agenda for regular meetings of their governing bodies.

exists. If it was issued in May, 2022, it is a nullity under Section 8-13-320(10)(d) because of the two-month delay in serving it on Respondent.

CONCLUSION

The Commission has failed to allege any violation of law against Respondent in its Notice of Hearing. That, in itself, requires a dismissal of these proceedings.

Moreover, the multiple procedural irregularities in these proceedings to date call into question the propriety of these entire proceedings.

For the reasons set forth above, Respondent moves that this matter be dismissed in its entirety. If the Commission wants to move forward with this matter,[13] assuming a proper complaint is filed by any member of the public or initiated by the Commission itself, it may do so after Respondent's upcoming election on November 8, 2022. Doing so prior to the election would appear to serve an improper attempt to influence an election, and this Commission should not further allow itself to be manipulated by Respondent's political opponents into being a sword for destroying Respondent's commitment to his public duties. The provisions of S.C. Code Ann. §8-13-320(9)(b)(1) prohibit any complaint being initiated against Respondent at this time, and any proceedings between now and November 8, 2022 must be brought in circuit court.

Furthermore, From the content of the motions filed and heard by a Panel of this Commission on September 8, 2022, and from discussion during the hearing, it appears that there is other litigation, unrelated to this Commission, in which some or all of the parties are involved, or may be involved in, in the future. It cannot escape the Commission that these proceedings have formed the basis of a media circus.

[13] As noted, Regulation 52-703(C) permits dismissal of a complaint even if a violation of the Act has occurred (or a finding of probable cause has been made).

The Commission must be aware it is being used by opponents of Respondent, based on whatever grievances they have against him or others. It is apparent from the filings of the moving parties and the discussion on the record on September 8, 2022 that this Commission has unwittingly drawn into what appears to be a political and/or personal disagreement and/or attacks among undefined warring factions. This Commission should do its job as required by the General Assembly, but not allow itself to be used to further private disputes among anyone.[14]

The Commission has an urgent and important job to do to ensure the integrity of the conduct of public employees and officials and candidates for public office. It is an abuse of the Commission to involve it in furthering the private agendas of any individuals and should be recognized as such and shut down now.

Respectfully submitted,

s/ Desa Ballard

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September 11, 2022

ATTORNEYS FOR RESPONDENT

[14] The Commission's investigative file, provided to Respondent with the Notice of Hearing, contains one page of interview notes by Commission staff, but of the approximately 43 pages, more than half are emails from complainant criticizing the Commission because the investigation is taking so long.

Exhibit A

State of South Carolina
State Ethics Commission

CHILDS C. THRASHER, CHAIR
DONALD GIST, VICE CHAIR
ALI H OLLOWAY

DON JACKSON
BRIAN M. BARNWELL
BRANDOLYN THOMAS PINKSTON

201 EXECUTIVE CENTER DRIVE, SUITE 150
COLUMBIA, S.C. 29210

MEGHAN L. WALKER
EXECUTIVE DIRECTOR

February 23, 2021

Mr. Kenneth Loveless
228 Lookout Pointes Dr
Chapin, SC 29036

Certified Mail: 9214896900999790141904882 6

PERSONAL AND CONFIDENTIAL

In the Matter of Kenneth Loveless

RE: Complaint C2021-016

Dear Mr. Loveless:

In accordance with Section 8-13-320(10)(a) of the Ethics Reform Act, we are providing you with a copy of a complaint filed against you.

On February 17, 2021, in accordance with Section 8-13-320(10) Code of Laws for SC 1976 as amended, the State Ethics Commission reviewed the complaint provided and determined that there are sufficient facts to warrant an investigation. You will be contacted in the near future by an investigator concerning any evidence or statements you may desire to make. If you wish, you may provide a written response to the complaint, including any documentation you wish the Commission to consider. Should you retain legal counsel, please advise the Commission.

In accordance with Section 8-13-320(9) and (10), all complaints, investigations, inquires, hearings, and accompanying documents are confidential unless the respondent waives the right to confidentiality in writing to the Commission, or the Commission issues a public disposition. The willful release of confidential information is a misdemeanor, and any person releasing such confidential information, upon conviction, must be fined not more than one thousand dollars or imprisoned for not more than one year.

Complaint procedures are outlined on our website under the link to complaints. We shall keep you informed of the status of this complaint.

Sincerely,

Meghan L. Walker
Executive Director

MLW:rp
Enclosure: Complaint

Kenneth B. Loveless
228 Lookout Pointes Drive
Chapin, SC 29036
February 28, 2022

Mrs. Janis Hammond
Chairperson of the Board of Trustees
School District Five of Lexington-Richland Counties
1020 Dutch Fork Road
Irmo, South Carolina 29063

Re: Recusal of Kenneth B. Loveless

Dear Mrs. Hammond:

As you know, on February 8, 2021 I submitted a statement regarding my affiliation with Contract Construction Inc. as a result of the company by which I am employed and of which I am a stockholder Loveless Commercial Contracting Inc., was operating as a subcontractor on the S.C. Law Enforcement Division Forensic Lab project, Columbia, SC. On that date, I recused myself from any and all votes, deliberations, and other actions on any matter that comes before the Board of Trustees relating to Contract Construction Inc.

Since that time and as a result of consultation with ethical and legal experts, I intend to terminate my recusal effective at the next Board meeting, currently scheduled for March 14, 2022. At the beginning of the next Board meeting, I will submit a statement setting forth the reason my recusal has terminated, and I will participate fully in any matter involving Contract Construction after today's meeting.

However, in recognition that there was no prior notice my recusal was ending, I am not going to participate in anything related to Contract Construction during this meeting, so the Board members and the public will be aware that my recusal will conclude when this meeting is adjourned. I will step out of the room for any discussion or vote on anything involving Contract Construction this evening.

Sincerely yours,

Kenneth B. Loveless
Vice Chairman of the Board of Trustees
Board Member

Exhibit B

STATE OF SOUTH CAROLINA
STATE ETHICS COMMISSION

RECEIVED
2021 FEB 17 AM 11:43
STATE ETHICS COMMISSION

COMPLAINT FORM

FOR COMMISSION USE ONLY:
CASE NUMBER
C-2021-016

COMPLAINANT: Kim Benson
ADDRESS:
TELEPHONE NUMBER: 803-361-9510
TITLE: Parent & Tax Payer

RESPONDENT: Kenneth Loveless
ADDRESS:
TELEPHONE NUMBER: 803-345-0547
TITLE: School Board Trustee

Set forth in detail specific facts upon which you based your complaint against above-named respondent (only detailed, clear factual allegations will be considered. If additional space is needed, attach supplemental sheets).

Address:
1415 Beaver Dam Rd.
Columbia SC 29212

Address:
228 Lookout Pointes DR
Chapin SC 29036.

* Please see attached document which contains various links to additional documents & media.

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

STATE OF SOUTH CAROLINA
COUNTY OF Richland
Personally appeared before me Kim Benson who, first being duly sworn, says that he/she has read and knows the contents of the above complaint and that the allegations contained therein, are true and correct to the best of his/her own knowledge, except for those matters therein based upon information and belief, and as to those he/she believes them to be true.

Sworn to and subscribed before me this
17th day of February, 2021

Notary Public for South Carolina
My Commission expires 8-11-2025

Kim M Benson
Complainant Signature

SEC-7 (Revised 8/2019)

REPLY TO: 201 Executive Center Drive, Suite 150, Columbia, South Carolina 29210 (803)253-4192
FAXED COPIES WILL NOT BE ACCEPTED

C102form

SCANNED

MLW RC 2-17-21 RP

ROA 0137 LOGGED

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	BEFORE THE STATE ETHICS COMMISSION
IN THE MATTER OF: COMPLAINT C2021-016	)	
Kim Benson, Complainant.	)	**RESPONSE TO RESPONDENT'S MOTION TO DISMISS**
Kenneth Loveless, Respondent.	)	

This matter comes before the South Carolina State Ethics Commission (Commission) by way of a Motion to Dismiss (Motion) filed by Respondent Kenneth Loveless (Respondent) on September 12, 2022. As discussed herein, Respondent's Motion should be denied and this matter should proceed to a hearing on the merits.

PROCEDURAL HISTORY

The above-referenced Complaint was filed against Respondent, a member of the Board of Trustees (Board) for School District Five of Lexington and Richland Counties (District), on February 17, 2021. Pursuant to Section 8-13-320(10)(c) of the Ethics, Government Accountability, and Campaign Reform Act (Ethics Act or Act), the Commission's Executive Director determined that the Complaint alleged facts sufficient to constitute a violation of the Act and ordered an investigation. In a certified letter dated February 23, 2021, Respondent was provided with a copy of the Complaint. See Attachment 1. Respondent provided a written response on February 28, 2022. See Attachment 2. On May 19, 2022, following the investigation, the Commission found probable cause to believe Respondent violated the Ethics Act as follows:

> **COUNT ONE FAILURE TO RECUSE FROM A GOVERNMENTAL DECISION IN WHICH A BUSINESS WITH WHICH ASSOCIATED HAD AN ECONOMIC INTEREST SECTION 8-13-700(B), S.C. CODE ANN., 1976, AS AMENDED.** That Kenneth Loveless, Lexington-Richland School

District Five Board Member, did in Richland County, write a letter dated March 24, 2020 inquiring about construction work of a district facility by Contract Construction, Inc., a business with which he was associated, in violation of Section 8-13-700(B).

COUNT TWO FAILURE TO RECUSE FROM A GOVERNMENTAL DECISION IN WHICH A BUSINESS WITH WHICH ASSOCIATED HAD AN ECONOMIC INTEREST SECTION 8-13-700(B), S.C. CODE ANN., 1976, AS AMENDED. That Kenneth Loveless, Lexington-Richland School District Five Board Member, did in Richland County, on June 15, 2020, participate in discussion about construction of a district facility by Contract Construction, Inc., a business with which he was associated, in violation of Section 8-13-700(B).

COUNT THREE FAILURE TO RECUSE FROM A GOVERNMENTAL DECISION IN WHICH A BUSINESS WITH WHICH ASSOCIATED HAD AN ECONOMIC INTEREST SECTION 8-13-700(B), S.C. CODE ANN., 1976, AS AMENDED. That Kenneth Loveless, Lexington-Richland School District Five Board Member, did in Richland County, on September 14, 2020, participate in discussion about construction of a district facility by Contract Construction, Inc., a business with which he was associated, in violation of Section 8-13-700(B).

COUNT FOUR FAILURE TO RECUSE FROM A GOVERNMENTAL DECISION IN WHICH A BUSINESS WITH WHICH ASSOCIATED HAD AN ECONOMIC INTEREST SECTION 8-13-700(B), S.C. CODE ANN., 1976, AS AMENDED. That Kenneth Loveless, Lexington-Richland School District Five Board Member, did in Richland County, in June of 2020, participate in a site visit of a district facility being constructed by Contract Construction, Inc., a business with which he was associated, in violation of Section 8-13-700(B).

On July 11, 2022, a Notice of Hearing was issued setting forth the aforementioned violations. This Motion followed.

ARGUMENTS

I. The Notice of Hearing Alleges Violations of the Ethics Act

Respondent argues the Complaint should be dismissed because the Notice of Hearing fails to allege conduct that violates the Ethics Act. Specifically, Respondent contends (1) there is no

evidence he participated in a "governmental decision" as required by Section 8-13-700; (2) that his actions were permissible because he attempted to harm, rather than benefit, the business with which he was associated; and (3) that the Commission's interpretation of Section 8-13-700 improperly prohibits a public official from "witnessing, being aware of, or having knowledge of any kind with a project being performed by a 'business with which he is associated.'"[1] As discussed herein, these arguments are without merit because (1) the "governmental decision" Respondent improperly interfered with was the District's contract with Contract Construction; (2) Respondent's behavior once he improperly interfered in the matter is irrelevant; and (3) the Commission's interpretation of Section 8-13-700 is supported by the text of the Ethics Act and decades of enforcement actions and Commission guidance.

Section 8-13-700(B) of the Ethics Act provides, in relevant part:

> No [public official] may make, participate in making, or in any way attempt to use his [office] to influence a governmental decision in which he, a family member, an individual with whom he is associated, or a business with which he is associated has an economic interest. A [public official] who, in the discharge of his official responsibilities, is required to take an action or make a decision which affects an economic interest of himself, a family member, an individual with whom he is associated, or a business with which he is associated shall:
>
> . . .
>
> (4) if he is a public official, other than a member of the General Assembly, he shall furnish a copy of the statement to the presiding officer of the governing body of an agency, commission, board, or of a county, municipality, or a political subdivision thereof, on which he serves, who shall cause the statement to be printed in the

[1] Respondent briefly argues that Respondent is being deprived of his First Amendment rights by these proceedings and/or the Commission's interpretation of Section 8-13-700. However, the U.S. Supreme Court has "rejected the notion that the First Amendment confers a right to use governmental mechanics to convey a message." See Nevada Ethics Comm'n v. Carrigan, 564 U.S. 117, 131 S.Ct. 2343 (2011) (finding lower court's "belief that recusal rules violate legislators' First Amendments rights is also inconsistent with long-standing traditions in the State. A number of States, by common-law rule, have long required recusal of public officials with a conflict.").

> minutes and *require that the member be excused from any votes, deliberations, and other actions on the matter* on which the potential conflict of interest exists and shall cause the disqualification and the reasons for it to be noted in the minutes.
>
> (emphasis added).

Section 8-13-100(4) of the Ethics Act defines "business with which he is associated" as:

> A business of which the person or a member of his immediate family is a director, an officer, owner, employee, a compensated agent, or holder of stock worth one hundred thousand dollars or more at fair market value and which constitutes five percent or more of the total outstanding stock of any class.

The Commission is the entity responsible for interpreting the Ethics Act. See S.C. Coastal Conservation League v. S.C. DHEC, 380 S.C. 349, 669 S.E.2d 899 (Ct. App. 2008). The Commission has long held that recusal is required in any matter that implicates the economic interest of a business with which a public official is associated. See also Attachment 3, SEC AO92-072 (advising public servant to disqualify from all matters affecting the economic interests of a business with which he is associated); SEC AO2000-004 (same); SEC AO2000-011 (same). This interpretation is supported by the text of the Ethics Act, which uses the phrase "governmental decision" just once in the main text of Section 8-13-700(B), then clarifies in the following subsections that public officials are required to recuse "from any votes, deliberations, and other actions on the matter" and on all "matters pertaining to that economic interest." This interpretation is also supported by decades of guidance and enforcement actions. See Attachment 3; see also Attachment 4, Complaint Nos. 97-035 and 97-036 (holding discussion by a public servant about a matter in which his wife had an economic interest violated Section 8-13-700(B)).

Here, it is undisputed that Contract Construction entered into a contract with the District in 2018 for the construction of an elementary school. See Attachment 2. It is also undisputed that Respondent became a subcontractor for Contract Construction on February 11, 2020 on a South

Carolina Law Enforcement Division (SLED) construction project, thereby making Contract Construction a business with which Respondent was associated. See Attachment 3, SEC AO2000-004 (defining "compensated agent" as "any ongoing client relationship in which the [public official] receives compensation for services rendered").

Section 8-13-700 prohibited Respondent from participating in any matter in which Contract Construction had an economic interest, to include its contract with the District. It is irrelevant what Respondent did once he improperly interfered in the matter - it is the *participation* that creates the basis for the violation, not the outcome of that participation. Any other interpretation would lead to an absurd result and would defeat the entire purpose of the Ethics Act, which is outlined in the Preamble:

> Whereas, one of the most important functions of any law aimed at making public servants more accountable is that of complete and effective disclosure. Since many public officials serve on a part-time basis, it is inevitable that conflicts of interest and appearances of impropriety will occur. Often these conflicts are unintentional and slight, but at every turn those who represent the people of this State must be certain that it is the interests of the people, and not their own, that are being served. Officials should be prepared to remove themselves immediately from a decision, vote, or process that even appears to be a conflict of interest.

II. The Commission's Complaint and Investigation Processes Comply with the Ethics Act

Respondent argues the Complaint must be dismissed because (1) the full Commission did not vote to open an investigation; (2) the Complaint was not notarized by the Commission; and (3) the Notice of Hearing was not provided to Respondent within ten (10) days of the finding of probable cause. These arguments are without merit because none of these events are required by the Ethics Act.

As an initial matter, Respondent appears to conflate the process for opening a Commission-

generated Complaint (outlined in Section 8-13-320(10)(d)) with a Complaint filed by a member of the public (outlined in Section 8-13-320(10)(c)). Pursuant to Section 8-13-320(10)(c) of the Ethics Act, "if the Commission, its executive director, or staff designated by the commission determines that the complaint alleges facts sufficient to constitute a violation, an investigation may be conducted of the alleged violation." This is exactly what occurred - the Complaint was filed on February 17, 2021, the Executive Director determined the Complaint contained sufficient facts, an investigation was ordered, and Respondent was notified by way of a certified letter dated February 23, 2021. See Attachment 1.

As to whether the Complaint was properly verified, it clearly contains a notarization. See Attachment 5, Complaint Cover Sheet. There is no requirement that the Commission itself verify the Complaint. In fact, to the contrary, Section 8-13-320(10)(a) allows the Commission to "accept from an individual, whether personally or on behalf of an organization or governmental body, a verified complaint . . ."

As to the ten (10) day notice requirement, this applies to the Respondent's receipt of the Complaint, not of the Notice of Hearing. See Section 8-13-320(10)(a) (requiring the Commission to forward a copy of a complaint filed by an individual within ten (10) days); Section 8-13-320(10)(d) (requiring the Commission to forward a copy of a Commission-generated complaint within ten (10) days). There is no timeline set forth in the Ethics Act or the corresponding regulations regarding the Notice of Hearing, aside from Regulation 52-707, which requires the Notice of Hearing to be issued "at least thirty days before the scheduled hearing."

CONCLUSION

For these reasons, Respondent's Motion to Dismiss should be denied and this matter should proceed to a hearing on the merits.

Respectfully submitted,

s/ Courtney M. Laster
Courtney M. Laster
State Ethics Commission
201 Executive Center Dr., Suite 150
Columbia, SC 29210
803-253-4192
claster@ethics.sc.gov

September 26, 2022
Columbia, South Carolina

ATTACHMENT 1

State of South Carolina
State Ethics Commission

CHILDS C. THRASHER, CHAIR
DONALD GIST, VICE CHAIR
AI H OLL O WA Y

DON JACKSON
BRI AN M. B ARNWELL
BRANDOL YN TH OMAS PINKSTON

201 EXECUTIVE CENTER DRIVE, S. ITE 150
COLUMBIA, S.C. 29210

MEGHAN L. WALKER
EXECUTIVE DIRECTOR

February 23, 2021

Mr. Kenneth Loveless
228 Lookout Pointes Dr
Chapin, SC 29036

Certified Mail: 9214896900999790141904882 6

PERSONAL AND CONFIDENTIAL

In the Matter of Kenneth Loveless

RE: Complaint C2021-016

Dear Mr. Loveless:

In accordance with Section 8-13-320(10)(a) of the Ethics Reform Act, we are providing you with a copy of a complaint filed against you.

On February 17, 2021, in accordance with Section 8-13-320(10) Code of Laws for SC 1976 as amended, the State Ethics Commission reviewed the complaint provided and determined that there are sufficient facts to warrant an investigation. You will be contacted in the near future by an investigator concerning any evidence or statements you may desire to make. If you wish, you may provide a written response to the complaint, including any documentation you wish the Commission to consider. Should you retain legal counsel, please advise the Commission.

In accordance with Section 8-13-320(9) and (10), all complaints, investigations, inquires, hearings, and accompanying documents are confidential unless the respondent waives the right to confidentiality in writing to the Commission, or the Commission issues a public disposition. The willful release of confidential information is a misdemeanor, and any person releasing such confidential information, upon conviction, must be fined not more than one thousand dollars or imprisoned for not more than one year.

Complaint procedures are outlined on our website under the link to complaints. We shall keep you informed of the status of this complaint.

Sincerely,

Meghan L. Walker
Executive Director

MLW:rp
Enclosure: Complaint

ATTACHMENT 2

BOWERS LAW OFFICE LLC

Post Office Box 50549
Columbia, South Carolina 29250

Phone: 803-753-1099 **butch@butchbowers.com**

February 28, 2022

Via Electronic Mail (rcaldwell@ethics.sc.gov)
Ryanne Caldwell
Chief Investigator
SC State Ethics Commission
201 Executive Center Drive, Suite 150
Columbia, South Carolina 29210

Re: *In the Matter of Kenneth Loveless*
Complaint No.: C2021-016

Dear Ms. Caldwell:

I hope this finds you well. As we discussed on January 25, 2022, Mr. Loveless wishes to provide a written response to the referenced complaint. However, we respectfully decline your invitation to shift the burden to Mr. Loveless of "address[ing] how his participation in discussions regarding Contract Construction from February 2020 through September 2020 did not violate Section 8-13-700(B)". As you know, the burden of proof is not on Mr. Loveless, it is on the Commission. However, we will submit the following which should be considered as Mr. Loveless's response to the complaint by Kim Benson on February 17, 2021.

Preliminarily, this letter shall serve as Mr. Loveless' direction to the Commission that he waives confidentiality of these proceedings, as he is permitted to do under S.C. Code Ann. Section 8-13-320(10)(b). He reserves the right, therefore, to share any communications between himself and the Commission with whomever he desires to share the materials with.

As you know, Mr. Loveless became a "public official" when he was elected as a member of the Lexington-Richland School Board in November 2018. S.C. Code Ann. Section 8-13-100(27).

Prior to his election, on August 20, 2018, District Five issued a Notice of Intent to Award a contract for Construction Manager-at-Risk for construction of Elementary School #13, which was later named Piney Woods Elementary School.

Once Mr. Loveless was elected, Mr. Loveless did not have any individual authority to decide anything regarding Piney Woods Elementary school, or its construction. As you know, the Board collectively "manage[s] and control[s]" the school district. Section 59-19-10. Statutory duties of School Boards are spelled out by the general assembly, and they include the obligation

to "[p]rovide schoolhouses" and to [t]ake care of, manage and control . . . school property of the district. Section 59-19-90. District Five Board has a code of ethics that obligates its Trustees to "accept the responsibility along with . . . fellow board members of ensuring that optimal facilities and resources are provided for the proper functioning of schools" and "recognizing that authority rests only with the board in official meetings and that the individual member has no legal status to bind the board outside of such meetings." District Five Policy BCA.

This is significant because SEC AO2003-002 relied on the fact that a public official who "has no independent decision-making authority" on his own was not required to recuse himself from providing services of drafting, coordination within the agency, presenting the consensus of the senior staff to the Board and representing the agency in the approval process in the General Assembly, even though his spouse "represents clients seeking permits." The Commission found it significant that the public official's decision-making authority was minimized by a "lengthy [process] that provides for public comment and legislative review" and only the Board as an entity had for initial approval of regulations. There, as here, Mr. Loveless has no individual ability to make decisions for the Board.

As a Board member, however, Mr. Loveless was obligated to the citizenry to bring matters to which he was alerted by citizens and that he personally observed regarding construction at Piney Woods Elementary School to the attention of the school administration. He has carried out his obligations throughout his tenure on the Board, but he has not taken any action with respect to the District's contract with Contract Construction to benefit his economic interest or that of his family.

The company that employs Mr. Loveless was selected as a subcontractor by Contract Construction in connection with a construction project for SLED in late February, 2020. Bids are submitted by lower-level staff at Mr. Loveless's office. In late February or early March 2020, Mr. Loveless became aware that a contract was going to be awarded by Contract Construction for the SLED project. It was Contract Construction that created the alleged "economic interest" by selecting Loveless Commercial Contracting as a subcontractor on the SLED Forensic Lab Project. However, at no time did Mr. Loveless or his employer have an economic interest in Contract Construction's dealings with the school district. Mr. Loveless has no reason to believe that his status as a member of the school board influenced a decision by a private contractor who was performing a construction project for a public entity to choose Loveless Commercial Contracting as a sub-contractor. That is true, unless the private contractor awarded the contract to the company by which Mr. Loveless is employed for the intentional purpose of attempting to prevent Mr. Loveless from commenting on the quality of work by the contractor being performed for the School District, which is apparently what has occurred here.

Mr. Loveless did not believe that his company's status as a subcontractor on the SLED project being constructed by a private entity constituted an "economic interest" within the definition set forth in Section 8-13-100 (11)(a). He believed then, and believes now, that his

company's contractual relationship as a sub-contractor on the SLED project is governed by Section 8-13-100(11)(b), because Loveless Commercial Contracting is a member of "a profession, occupation or large class . . ." which has the same economic interest in doing business with Contract Construction "to no greater extent than the economic interest or potential benefit [that] could reasonably be foreseen to accrue to all other members of the profession, occupation or class." Loveless Commercial Contracting's economic interest in the SLED project was no greater than the economic interest of any other bidder, subcontractor or potential subcontractor that may provide services to a general contractor who has been awarded a public or private construction project. Loveless Commercial Contracting is not prohibited from bidding on public or private jobs simply by virtue of Mr. Loveless's membership on the School Board.

The Commission has found on numerous occasions that economic interests involving a "large class" exempt public employees, officers or officials from the "economic interest" prohibition set forth in Section 8-13-700(B). The Commission has stated that questions such as these "must be answered on a case-by-case basis." SEC AO2004-001.[1] In concluding that a town councilman was not required to recuse himself from a vote on development of green space in the municipality "would appear to have an economic interest in taking actions that would directly impact" property he owned in the municipality; "however, the definition of economic interest provides for the large class exception." SEC AO2008-004. In that decision, the Commission referenced an earlier decision, AO92-201 that held "since the four Council Members are either school district employees or married to a school district employee, their interest is potentially no greater or less than that of all other members of the group of school employees." This was so even though the town council voted on the school district budget issue from which their spouses were paid.

The Commission noted "[t]he large class exception. . . has never made a numerical determination of what a large class is. The Commission prefers to review these questions on a case-by-case basis." In applying the large class exception, the Commission found that there were 171 property owners "with an interest in the property" and the public employee was only one and he "may participate in the selection process and award of a contract to a consultant for the management plan for the town-owned green space."

Similarly, based on the large class exception, the Commission allowed a City of Georgetown council member to vote on matters involving the repair and maintenance of a city

[1] A public official could participate in a rezoning decision of the municipality which he serves even though he personally owns property that is in the vicinity of the land being considered for rezoning. The Commission ruled that it would be clear if the public official owned land in the area of the proposed rezoning, he would be required to recuse himself. Since the public official's land was merely in the vicinity of the land under consideration for rezoning but not in the property, "the public official's economic interest. . . is less clear." *Id.* The Commission held that the public official was not required to recuse himself on a rezoning application for property in which he owned property in the same vicinity.

boardwalk when she was one of 56 property owners whose property adjoined the boardwalk. "The Commission prefers to review these questions on a case-by-case basis since each set of facts is unique." SEC AO2010-004.

While carrying out his duties as a Board member, Mr. Loveless is required to address issues to the full Board and the administration regarding provision of existing schoolhouses and construction of additional school facilities, particularly when raised by a member of the community. He has voiced his concerns repeatedly about deficiencies in work performed by Contract Construction to the administration of the District and generally. To require him to recuse himself from his statutory duties because he owns an interest in one of thousands of contractors and subcontractors in the state who work in commercial construction and might bid or be awarded contracts for construction of public buildings would create an opportunity for political abuse fraud by members of the construction industry and their allies. The only way Mr. Loveless has an economic interest hy virtue of this company's contract with Contract Construction in an unrelated matter is for this Commission to assist companies such as Contract Construction to force the recusal by a public official and prevent him from doing his statutory duties. It was Contract Construction that created this scenario, not Mr. Loveless. If Contract Construction did so to force Mr. Loveless' recusal (and his criticism of their work for the District) they cannot be allowed to succeed.

When political opponents of Mr. Loveless' attempted to raise the issue of conflict of interest with him in September, 2020, Mr. Loveless requested an opinion from this office to resolve the matter. This office declined, and instead in an informal opinion dated September 25, 2020 your agency opined that Mr. Loveless should recuse himself from "that matter" (which was not defined). In his follow-up with the Commission, Mr. Loveless was advised that "you are correct that the ultimate decision to recuse belongs to the public official." (Letter from Courtney Laster dated 2.22.2021, p. 4).

While Mr. Loveless disagreed with the informal opinion of staff, and out of respect for the Commission's position, he nevertheless wrote the statutorily-required notice to Janis Hammond, Chairperson of the Board of Trustees for the School District in early 2021, in accordance with Section 8-13-700(b)(1), based on the view expressed by Commission staff.

Since that time, Mr. Loveless has not made any votes, nor has he taken any action "that could be perceived as an attempt to influence the government decision." (Laster to Loveless February 22, 2021). He has, however, continued to carry out his official duties, which included a site visit to the construction site at Piney Woods Elementary School, and he has privately observed the defective construction at Piney Woods Elementary Sschool, while not voting or taking any action to interfere with the District's contract with Contract Construction.

"Recusal" is not defined in any of the published advisory opinions that are available for consultation and guidance, but Mr. Loveless has purposefully not voted or taken any action regarding Contract Construction since he complied with Section 7-13-700(b) in early 2021. He is, however, permitted by the First Amendment to make public comment on matters in which he has expertise, and failure to do so would constitute an abandonment of his obligations as a member of the school board. In fact, he cannot be forced to abandon his duties to the District by Contract Construction's attempts, in conjunction with others, to silence him.

If there is existing precedent which prohibits him from voicing his opinion regarding the quality of work being performed for the school district, and therefore expressly allows such an infringe on his first amendment right of free speech, please point those out for our consideration. Similarly, if he is prohibited from listening to discussions about the projects for which he is statutorily required to carry out his duties as a member of the school board (other than voting), please provide that. He has not voted or attempted to influence any vote or any action regarding Contract Construction's involvement with the Piney Woods Elementary School nor taken any other action which would compromise his integrity as a Board member.

If it was Contract Construction's intent to prevent Mr. Loveless from carrying out his duties as a member of the District Five school board by awarding a contract to his employer in an attempt to silence him, then Contract Construction has violated Section 8-13-705(A) and (C), and I request that the Commission investigate appropriately. The statute provides that if Contract Construction attempted to initiate his recusal by awarding Loveless Commercial Contracting a subcontract for an unrelated project after he was elected to the School Board, they are guilty of a misdemeanor. Section 8-13-705(F). Contract Construction's actions should also be examined under Section 8-13-720.

If you have any specific questions, or wish to modify any of the statements made by yourself or Commission staff, we would be happy to hear from you. Mr. Loveless intends to continue to faithfully discharge the duties of his elected position.

Thank you for the opportunity to respond to the complaint in this matter. We look forward to closure of this matter with all deliberate speed.

Sincerely yours,

BOWERS LAW OFFICE LLC

Butch Bowers

Karl S. Bowers, Jr.

ATTACHMENT 3

OPINION OVERTUNED IN PART BY AMENDMENT TO SECTION 8-13-740(4) AND (5). EFFECTIVE APRIL 12, 2007. SEE R12, H3226 FROM THE 2007 TERM AT http://www.scstatehouse.net/index.html.

SEC AO92-072 March 25, 1992

SUBJECT: ENGINEER SERVING ON COUNTY PLANNING COMMISSION

SUMMARY:

An engineer would not be prohibited from serving on a County Planning Commission if such service is authorized by local statutes or ordinances. If so authorized, the State Ethics Commission would not find a violation for the engineer to serve and for members of his firm to represent clients before county agencies in order to carry out the functions of their profession.

QUESTION:

A member of the Greenville County Planning Commission is a Civil Engineering Designer and Construction Coordinator for an engineering firm. He questions whether there is a violation in his serving on the Planning Commission.

DISCUSSION:

This opinion is rendered in response to a letter dated January 7, 1992 requesting an opinion from the State Ethics Commission. The Commission's jurisdiction is limited to the applicability of the Ethics, Government Accountability, and Campaign Reform Act of 1991 (Act No. 248 of 1991; Section 8-13-100 et. seq., as amended, 1976 Code of Laws). This opinion does not supersede any other statutory or regulatory restrictions or procedures which may apply to this situation. Section 8-13-730 provides in part as follows:

> Unless otherwise provided by law, no person may serve as a member of a governmental regulatory agency that regulates any business with whicb that person is associated.

Section 8-13-730 basically mirrors Section 8-13-450 of the previous Ethics Act. In S. C. Coastal Council et. al. v. S.C. State Ethics Commission, Op. No. 23496 (S.C. Sup. Ct. filed October 14, 1991), the Supreme Court examined whether Section 8-13-450 applied to members of the Coastal Council. The Court first reviewed in detail the Coastal Management Act (Act) and the regulations promulgated pursuant to that Act. See, S.C. Code Ann. Section 48-39-10, et. seq., (1987) and 23 S.C. Code Ann. Reg. 30-2-11 and 12 (1976). The Court then held based on its reading of the above law that Coastal Council regulated the "use of critical areas hy a business" but not the specific way a particular business is operated. Therefore, the issue pursuant to Section 8-13-

730 is whether the Planning Commission regulates the specific way an engineer operates his business.

However, since the laws and promulgating regulations of the planning Commission are not before this Ethics Commission, it is unclear from the request letter whether the Planning Commission is a regulatory agency. If the Planning Commission specifically regulates the operation of engineers in Greenville County, Section 8-13-730 applies to this situation. Otherwise Section 730 is not applicable.

Upon determination that Section 8-13-730 does not preclude a member of the Planning Commission from serving, the impact of Section 8-13-740 must be considered. Section 8-13-740 provides in part as follows:

> (4) A public official, public member, or public employee of a county, an individual with whom the public official, public member or public employee is associated or a business with which the public official, public member, or public employee is associated may not knowingly represent a person before any agency, unit, or subunit of that county except:
>
> (a) as required by law; or
> (b) before a court under the unified judicial system.

Represent is defined in Section 8-13-100(28) as:

> "Represent" or "representation" means making an appearance, whether gratuitous or for compensation, before a state agency, office, department, division, hureau, board, commission, or council, including the General Assembly, or before a local or regional government office, department, division, bureau, board, or commission.

If an engineer does not serve pursuant to a statute specifically providing for the service of an engineer upon the Planning Commission, then these provisions apply. However, a statutory provision should be given reasonable and practical construction consistent with the purpose and policy expressed in the statute. Hay v. South Carolina Tax Commission, 273 S.C. 269, 255 S.E. 2d 837, (1979). And, "[t]he real purpose and intent
of the law makers will prevail over the literal import of the words." Greenville Baseball, Inc. v. Bearden, Sheriff, et al., 200 S.C. 363, 20 S.E. 2d 813, 815 (1942). Therefore, the Commission finds that if the Greenville County ordinances or regulations authorize that an engineer serves on the Planning Commission and that engineer serves pursuant to that authorization, Section 8-13-740 would not prohibit that person or the individuals or businesses with which the engineer is associated from representing clients before the Planning Commission.

The Commission advises that the provisions of Section 8-13-700(B) would apply to continued service if allowed as mentioned above. Section 8-13-700(B) provides:

> (B) No public official, public member, or public employee may make, participate in making, or in any way attempt to use his office, membership, or employment to influence a governmental decision in which he, a member of his immediate family, an individual with

whom he is associated, or a business with which he is associated has an economic interest. A public official, public member, or public employee who, in the discharge of his official responsibilities, is required to take an action or make a decision which affects an economic interest of himself, a member of his immediate family an individual with whom he is associated, or a business with which he is associated shall:

(1) prepare a written statement describing the matter requiring action or decisions and the nature of his potential conflict of interest with respect to the action or decision;

* * *

(5) if he is a public member, he shall furnish a copy to the presiding officer of any agency, commission, board, or of any county, municipality, or a political subdivision thereof, on which he serves, who shall cause the statement to be printed in the minutes and shall require that the member be excused from any votes, deliberations, and other actions on the matter on which the potential conflict of interest exists and shall cause such disqualification and the reasons for it to be noted in the minutes.

The State Ethics Commission advises that, if the engineer is allowed to serve in accordance with the above discussion, members of his engineering firm would not be prohibited from representing clients before the Planning Commission, provided the member follows the procedures of Section 8-13-700(B) on all matters affecting the economic interests of the engineering firm.

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SEC AO2000-004 July 21, 1999

SUBJECT: COMMUNITY APPEARANCE BOARD MEMBER PARTICIPATING IN MATTER INVOLVING ECONOMIC INTERESTS OF A CLIENT.

SUMMARY: A public member should disqualify himself from all matters in which a business with which he has an ongoing client relationship has an economic interest.

QUESTION: This opinion is issued in response to the ongoing concern the State Ethics Commission has regarding violations of Section 8-13-700(A) and (B) of the Ethics Reform Act of 1991, by public members who participate in, and vote on matters before their board or commission involving the economic interest of a business with which the public member has an ongoing client relationship.

DISCUSSION:

The State Ethics Commission's jurisdiction is limited to the applicability of the Ethics, Government Accountability, and Campaign Reform Act of 1991(Act Number 248 of 1991; Section 2-17-5 et. seq. and Section 8-13-100 et. seq.). This opinion does not supersede any other statutory or regulatory restriction or procedure which may apply to this situation.

Section 8-13-700(A) provides as follows:

(A) No public official, public member, or public employee may knowingly use his official office, membership, or employment to obtain an economic interest for himself, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated. This prohibition does not extend to the incidental use of public materials, personnel, or equipment, subject to or available for a public official's, public member's, or public employee's use which does not result in additional public expense.

Section 8-13-700(B) provides as follows:

(B) No public official, public member, or public employee may make, participate in making, or in any way attempt to use his office, membership, or employment to influence a governmental decision in which he, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated has an economic interest. A public official, public member, or public employee who, in the discharge of his official responsibilities, is required to take an action or make a decision which affects an economic interest of himself, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated shall:

(1) prepare a written statement describing the matter requiring action or decisions and the nature of his potential conflict of interest with respect to the action or decision;

* * *

(5) if he is a public member, he shall furnish a copy to the presiding officer of any agency, commission, board, or of any county, municipality, or a political subdivision thereof, on which he serves, who shall cause the statement to be printed in the minutes and shall require that the member be excused from any votes, deliberations, and other actions on the matter on which the potential conflict of interest exists and shall cause such disqualification and the reasons for it to be noted in the minutes.

Section 8-13-100(3) defines business as:

(3) 'Business' means a corporation, partnership, proprietorship, firm, an enterprise, a franchise, an association, organization, or a self-employed individual.

Section 8-13-100(4) defines business with which he is associated as:

(4) 'Business with which he is associated' means a business of which the person or a member of his immediate family is a director, an officer, owner, employee, a **compensated agent**, or holder of stock worth one hundred thousand dollars or more at fair market value and which constitutes five percent or more of the total outstanding stock of any class. [Emphasis Added]
Also, the Ethics Reform Act, in its Preamble states:

Whereas, tbe trust of the public is essential for government to function effectively. Public policy developed by elected officials affects every citizen of the State, and it must be based on honest and fair deliberations and decisions. This process must be free from all threats, favoritism, undue influence, and all forms of impropriety so that the confidence of the public is not eroded; and

* * *

Whereas, one of the most important functions of any law aimed at making public servants more accountable is that of complete and effective disclosure. Since many public officials serve on a part-time basis, it is inevitable that conflicts of interest and appearances of impropriety will occur. Often these conflicts are unintentional and slight, but at every turn those who represent the people of this State must be certain that it is the interests of the people, and not their own, that are being served. Officials should be prepared to remove

themselves immediately from a decision, vote, or process that even appears to be a conflict of interest;...

Many local boards and commissions are created by statute and require that a certain number of their members be professionals in the field of the area of review. These public members/professionals often must avail themselves of the recusal procedures of Section 8-13-700(B) when a project or plan that they contributed to in some way appears before their board. What the Commission finds troublesome is when there is an ongoing relationship between the public member and a party before the board. The question becomes how can the public member be associated with a business on some projects before the public member's board but not with other projects of the business that come before the public member's board. Additionally, an agent is under a duty to report information he/she receives pertaining to matters the principal needs to be aware of. This runs head long into Section 8-13-725 which prohibits the disclosure of confidential information.

Agents also have a duty not to adversely affect the interest of their principal. If there is an ongoing relationship, the public member must not vote on the matter affecting the principal. He should recuse herself. He is caught between a duty not to act adversely with regard to the principal and a duty to the public to act in its best interest. Even should he be able to clear himself of any actual bias, the appearance of the relationship would serve to taint his vote and cause his actions to be held in question. This would obviously handicap his effectiveness as a member of the public body.

In complaint advisory opinion C89-017, with regard to a procurement matter, the Commission opined that "potential venders by state policy and regulation are to remain at arms-length in transactions with public agencies. This policy is amply illustrated in open bid procedures and limitations on ex parte communications with procurement officials. Any provision of service or goods to either individual agency officials or employees or to groups of such officials or employees does not obliterate the need to maintain this arms-length arrangement".

The reverse, as in this matter, should also be true. A public member who maintains an ongoing business relationship should maintain an arms-length arrangement with any client. The Preamble to the Ethics Reform Act provides that "it is inevitable that conflicts of interests and appearances of impropriety will occur. Often these conflicts are unintentional and slight, but at every turn those who represent the people of this state must be certain that it is the interest of the people, and not their own, that are being served.".

The awarding of contracts, as in the procurement process, charges public officials and public members to objectively and impartially consider and determine contractual matters. The prohibitions contained in Section 8-13-700(A) and (B) serve the public interest in objective, impartial, and effective government by preventing the creation of situations which would tend to impair the objectivity and impartiality, and therefore, the effectiveness of a public member.

CONCLUSION: The Ethics Commission is mindful that the Ethics Act does not define the

term "compensated agent", nor has the Commission specifically defined the term in its prior opinions or decisions. Accordingly, the State Ethics Commission hereby defines "compensated agent" as "any ongoing client relationship in which the public official, public member, or public employee, receives compensation for services rendered".

Further, it is the opinion of the State Ethics Commission that a public official's, public member's, or public employee's participation in a matter involving a business with which the public official, public member or public employee is a "compensated agent", gives rise to a rebutable presumption that to take an action or make a decision which affects the economic interest of the business with which associated would therefore be a violation of Section 8-13-700(A) and (B), South Carolina Code of Laws, 1976, as amended.

KEYWORDS: Compensated Agent, Economic Interest

ANNOTATIONS: 8-13-100 (3) and (4), 8-13-700 (A) and (B), Preamble

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SEC AO2000-011 May 17, 2000

SUBJECT: Conflicts of Interest for County, City and Town Council Members who sit on various boards.

SUMMARY: A public official should recuse himself from all matters in which a business with which he is associated has an economic interest. A business with which associated includes those non-profit agencies and boards on which a public official serves, unless he serves on the agency or board in his official capacity as a council member.

QUESTION: This opinion is issued in response to the ongoing concern the State Ethics Commission has regarding violations of Section 8-13-700(A) and (B) of the Ethics Reform Act of 1991, by public officials who participate in, and vote on matters before their councils involving the economic interest of a business with which the public officials are associated through their employment or membership on the board or other governing bodies, not affiliated with their councils.

DISCUSSION: The State Ethics Commission's jurisdiction is limited to the applicability of the Ethics, Government Accountability, and Campaign Reform Act of 1991 (Act no. 248 of 1991; Section 2-17-5 et seq. and Section 8-13-100 et seq., as amended, 1976 Code of Laws of South Carolina). This opinion does not supersede any other statutory or regulatory restrictions or procedures which may apply to this situation. Failure to disclose relevant information may void the opinion.

Section 8-13-700(A) provides as follows:

> (A) No public official, public member, or public employee may knowingly use his official office, membership, or employment to obtain an economic interest for himself, a member of his immediate family, an individual with whom he is

associated, or a business with which he is associated. This prohibition does not extend to the incidental use of public materials, personnel, or equipment, subject to or available for a public official's, public member's, or public employee's use which does not result in additional public expense.

Section 8-13-700(B) provides as follows:

(B) No public official, public member, or public employee may make, participate in making, or in any way attempt to use his office, membership, or employment to influence a governmental decision in which he, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated has an economic interest. A public official, public member, or public employee who, in the discharge of his official responsibilities, is required to take an action or make a decision which affects an economic interest of himself, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated shall:

(1) prepare a written statement describing the matter requiring action or decisions and the nature of his potential conflict of interest with respect to the action or decision;

* * *

(3) if he is a public employee, he shall furnish a copy of the statement to his superior, if any, who shall assign the matter to another employee who does not have a potential conflict of interest. If he has no immediate superior, he shall take the action prescribed by the State Ethics Commission;

* * *

(4) if he is a public official, other than a member of the General Assembly, he shall furnish a copy of the statement to the presiding officer of the governing body of any agency, commission, board, or of any county, municipality, or a political subdivision thereof, on which he serves, who shall cause the statement to be printed in the minutes and require that the member be excused from any votes, deliberations, and other actions on the matter on which the potential conflict of interest exists and shall cause the disqualification and the reasons for it to be noted in the minutes;

* * *

(5) if he is a public member, he shall furnish a copy to the presiding officer of any agency, commission, board, or of any county, municipality, or a political subdivision thereof, on which he serves, who shall cause the statement to be printed in the minutes and shall require that the member be excused from any votes, deliberations, and other actions on the matter on which the potential conflict of interest exists and shall cause such disqualification and the reasons

for it to be noted in the minutes.

Section 8-13-100(3) defines business as:

> (3) 'Business' means a corporation, partnership, proprietorship, firm, an enterprise, a franchise, an association, organization, or a self-employed individual.

Section 8-13-100(4) defines business with which he is associated as:

> (4) 'Business with which he is associated' means a business of which the person or a member of his immediate family is a director, an officer, owner, employee, a compensated agent, or holder of stock worth one hundred thousand dollars or more at fair market value and which constitutes five percent or more of the total outstanding stock of any class.

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

> (11)(a) `Economic interest' means an interest distinct from that of the general public in a purchase, sale, lease, contract, option, or other transaction or arrangement involving property or services in which a public official, public member, or public employee may gain an economic benefit of fifty dollars or more.
> (b) This definition does not prohibit a public official, public member, or public employee from participating in, voting on, or influencing or attempting to influence an official decision if the only economic interest or reasonably foreseeable benefit that may accrue to the public official, public member, or public employee is incidental to the public official's, public member's, or public employee's position or which accrues to the public official, public member, or public employee as a member of a profession, occupation, or large class to no greater extent than the economic interest or potential benefit could reasonably be foreseen to accrue to all other members of the profession, occupation, or large class.

Section 8-13-100(30) defines official capacity as:

> (30) `Official capacity' means activities which:
>
> > (a) arise because of the position held by the public official, public member, or public employee;
> > (b) involve matters which fall within the official responsibility of the agency, the public official, the public member, or the public employee; and

> (c) are services the agency would normally provide and for which the public official, public member, or public employee would be subject to expense reimbursement by the agency with which the public official, public member, or public employee is associated.

The Commission has issued many Advisory Opinions setting forth the proper procedure to which a public official must adhere when required to take an official action on a matter that would affect the economic interest of a business with which he is associated. See SEC AO92-14, AO92-77, AO92-115, AO92-131, AO92-145, AO92-152, AO92-221, AO95-10 and AO98-09. The Commission in AO92-014 stated"(t)hus on matters affecting the economic interests of business or individual where there is an association, there are three steps which should be taken: 1. The preparation of a written statement describing the matter of potential conflict, which is to be made a part of the meeting minutes, 2. Abstention or recusal from action, vote, and deliberation on the matter, and 3. To avoid any influence, absenting oneself from the meeting location."

In addition, the Commission has reviewed those situations in which the public official has not had to recuse himself because he is a member of a large class. See SEC AO92-64, AO92-92 and AO92-201. The opinions primarily deal with council members who are also school district employees or spouses of school district employees and the question posed is whether those council members could vote on the school board appropriation. The Commission in AO92-201 stated "(s)ince the four Council Members are either school district employees or married to a school district employee, their interest is potentially no greater or less than that of all other members of the group of school employees. Therefore, the State Ethics Commission sees no prohibition against the four Council Members participating in the deliberations and votes on the school district budget issue. **The members are advised, however, that issues directly affecting their own economic interests to greater extent than other members of the school district employee group will necessitate following the procedures of Section 8-13-700(B).**" (Emphasis added.) The large class exception is just that, an exception to the recusal requirements of Section 8-13-700(B) for public officials and businesses with which they are associated and this exception must be reviewed case by case to determine whether a large class exists.

A final exception to the recusal requirement is that situation in which the public official sits on a board in his official capacity as a council member. In order to be serving in his official capacity, the public official must sit on a board, foundation, agency, etc. which is an arm or child of the council, i.e. created by council and existing solely at the discretion of council. In addition the public official must sit on the board, etc based solely on his position on council. Clearly many public officials are asked to sit on boards of non-profits because of their public status, but that status does not, in and of itself, fall within this exception to the recusal requirements. The Commission has issued two Orders dismissing complaints under this exception. See C2000-014 Decision and Order and C2000-049 Decision and Order. In both complaints the Respondent was

an elected member of council who sat in his official capacity on a board which was a creation of council. Finally the prohibitions of Section 8-13-700, as it applies to a business with which a public official is associated, does not include an association of which the official is a member and not an officer, director or employee. See C98-035 Decision and Order.

The Commission is aware that many times public officials are voting on total council budgets which include appropriations to businesses with which they are associated. In those situations, the public official should request that the appropriation be a line item budget matter separate from the total budget. The public official could then vote on the total budget and follow the recusal requirements of Section 8-13-700(B) for the line item budget matter.

CONCLUSION: The Commission is mindful that public officials often sit on various boards and agencies because they are public officials; however, unless they sit on council created boards in their official capacity as council members, then the boards, non-profits, agencies, etc. are businesses with which they are associated. A public official should recuse himself from all matters in which a business with which he is associated has an economic interest.

KEY WORDS: Business With Which Associated, Economic Interest, Official Capacity

ANNOTATIONS: 8-13-100 (3), (4) and (11), 8-13-700 (A) and (B),

ATTACHMENT 4

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	BEFORE THE STATE ETHICS COMMISSION COMPLAINT NO. SEC. NO. 97-035 & 97-036
STATE ETHICS COMMISSION, COMPLAINANT	)	
VS.	)	**CONSENT ORDER**
DR. O. HENDERSON POWELL	)	
AND	)	
DR. JAMES D. GIVENS, RESPONDENTS.	)	

These cases arose out of substantially similar facts and are subject to a joint disposition by consent of the parties. The parties have entered into this Consent Order and request Commission approval as the final disposition of the matter. The State Ethics Commission is represented by Kelly J. Golden, Esquire. The Respondents are represented by Richard J. Breibart, Esquire.

A complaint was filed by the Commission, a finding of facts sufficient was made, and probable cause issued by the Commission alleging the Respondents violated S.C. Code § 8-13-700(A) & (B) (Supp. 1996) while acting in their official capacity of Board members of the Lexington Medical Center.

Pursuant to S.C. Code Regs. 52-708 (1997), the Commission through its attorney, requested remediation of the alleged violations. The request for remediation, to which the Respondents agree, stipulates that the Respondents will cause Lexington Medical Center, a governmental entity, to be reimbursed in the amount of Forty Thousand Eight Hundred Three and 32/100 ($40,803.32) Dollars to be paid in equal shares of Twenty Thousand Four Hundred One and 66/100 ($20,401.66) Dollars each. Upon proof of compliance with the request for remediation, the Commission shall by entry of this Order dismiss the action.

Therefore, in accord with S.C. Code § 1-23-310, et seq; S.C. Code §8-13-320, and

S.C. Code Regs. 52-101 et seq.(Supp. 1997) the undersigned enters the following findings of facts, conclusions of law and Order.

FINDINGS OF FACTS

1. Dr. James D. Givens was a public member as defined in S.C. Code §8-13-100 by virtue of his membership on the Board of Directors of the Lexington Medical Center.

2. Dr. O. Henderson Powell was a public member as defined in S.C. Code §8-13-100 by virtue of his membership on the Board of Directors of the Lexington Medical Center.

3. Dr. James D. Givens is married to Louise M. Givens who at all times relevant hereto was engaged as a real estate sales agent for Bob Capes Realtors, Inc.

4. Dr. O. Henderson Powell is married to Susan M. Powell who at all times relevant hereto was engaged as a real estate sales agent for Bob Capes Realtors, Inc.

5. Louise M. Givens and Susan M. Powell, as sales agents for Bob Capes Realtors, Inc. stood to obtain an economic interest (e.g., a commission) from the certain real estate transactions as more fully discussed herein.

6. Mr. Michael Biediger, President and CEO of Lexington Medical Center, would establish the followings facts if called to testify.

Approximately one year prior to the real estate transaction giving rise to this action[1] (hereinafter property B), an informal decision was made to use the services of real estate sales persons Susan M. Powell and Louise M. Givens.

7. Mr. Biediger would establish that in the last quarter of 1996, he asked Ms. Powell to "be on the look out for property in the Lexington area." The request was not reduced to writing. In October, 1996, Ms. Powell told Mr. Biediger of potentially suitable property.

[1]The real estate transaction giving rise to this action is referred to as property B to distinguish it from a prior unsuccessful attempt to purchase a different parcel of real estate hereinafter referred to as property A.

Ms. Powell organized a meeting in the offices of Bob Capes Realtors, Inc. at which Ms. Powell, Ms. Givens, Melinda Kruzner, CFO of Lexington Medical Center, Mr. Biediger, and Lewis T. Truesdale of Bob Capes Realtors attended. As a result of the meeting, Mr. Biediger obtained preliminary authorization from Bill Colemen, Chairman of the Board, Steven Mungo, Vice Chairman of the Board, and Keith Dooley, Chairman of the Planning Committee to make an offer on property A. The following documents were executed (1) An *Agency Policy and Agency Policy & Acknowledgement* was signed by Lewis Truesdale and Louise Powell as witness to Ms. Kruzner for the Buyer and bears the date of October 8, 1996. (2) An *Information & Disclosure Regarding Real Estate Agency Relationships* form was signed by Lewis Truesdale with Mr. Truesdale signing as the representative of Bob Capes Realtors, Inc., agent for the buyer and Ms. Kruzner signing on behalf of the buyer. Two dates appear on this document, to wit: October 8 & 9, 1996.

8. An offer to purchase property A was extended to the owner's agent and rejected by counteroffer on or about November 20, 1996.

9. On October 24, 1996, the Board of Directors of the Lexington Medical Center met. Dr. Givens was absent. Dr. Powell was present. The minutes from the October 24, 1996 meeting are silent concerning the real estate transaction in general or the actions which took part discussed in the above paragraph.

10. On November 21, 1996, the Board of Directors met. The minutes from November 21, 1996, Executive Committee indicate that Dr. Givens was not present when the committee was advised of the offer and counter offer regarding property A. Dr. Powell was not a member of this committee and was therefore not involved.

11. Hospital administration then turned its attention to property B.

12. With regard to property B, a document entitled *Bob Capes Realtors "Speed Process"* dated December 13, 1996, states that the "selling associate branch or company" is:

"Truesdale, Givens, Powell", the Purchaser's name and address" is "Palmetto Health Systems, Inc.", the "Source of Seller" was "Listing" and the "Source of Purchaser" was "Personal Referral".

13. On December 19, 1996, the Board of Directors met. Dr. Givens and Dr. Powell were in attendance. The executive Committee minutes state that properties A and B were discussed and that Dr. Givens left before property A was discussed and did not return. The minutes do not contain a statutory statement of disqualification. The Executive Committee agreed to discuss property acquisition in Lexington County at the Board of Directors meeting. The accuracy of the Board of Directors meeting minutes is disputed by the Board Chairman and Hospital personnel in the following particulars. The Board of Directors minutes state: "A motion was presentad to pursue the purchase of property in Lexington as discussed in executive session. This was seconded and carried. "A handwritten notes states "Motion deleted in March 27, 1997 mins. see 3/27/97 reg. session.[2]" The executive session minutes state: "The Board agreed to proceed with plans for a medical facility...and to pursue the purchase of property in Lexington. "Both Drs. Givens and Powell were present in Executive Session.

14. William L. Coleman, Carol Dorman, and Shirley Padgett would establish that et the December 19, 1996 meeting, Dr. Powell and Dr. Givens were present and that Dr. Powell discussed in general a need for a facility in Lexington and stated that other physicians in the Lexington area had voiced to him a need for Lexington Medical Center to establish a presence in the Lexington area. Neither Dr. Givens nor Dr. Powell disqualified themselves

[2]An excerpt from the March 27, 1997 minutes states: "Upon detailed review of the executive session and regular minutes of the December 19, 1996 Board meeting, it was found that a motion regarding the purchase of property in Lexington had been recorded in the regular session that was not made. This mistake occurred as a result of staff being excused from the Board to discuss a personnel matter. A motion carried to approve the deletion of this motion from the December 1996 minutes.

from the matter.

15. On December 19, 1996, Dr. Givens and Dr. Powell were present at Board meeting(s) where real property acquisition was discussed by the Respondents, the real property acquisition involved property in which their spouses were associated as sales agents and the Respondents failed to disqualify themselves in writing pursuant to S.C. Code §8-13-700(B). However, the Respondents would testify that they had orally informed the board and/or staff of the board that they would not be involved in the deliberations.

16. On December 20, 1996, a Letter of Intent was executed by Louise Given and Dee Frith as witnesses to Ms. Kruzner for the purchaser regarding property B. Pursuant to this document this agreement would not be legally valid without board approval.

17. On December 20, 1996, check number 399578 was issued by Lexington Medical Center in the amount of $25,000.00 as earnest money for the purchase of property B.

18. On December 31, 1996, Dr. O. Henderson Powell resigned from the Lexington Medical Center Board of Directors. (term expired)

19. On January 13, 1997, Check number 399593 was issued by Lexington Medical Center in the amount of $25,000.00 as additional earnest money for the purchase of property B.

20. On January 13, 1997, a Contract for Sale was executed for the purchase of property B. The contract was contingent on approval by the Board of Directors of Lexington Medical Center.

21. On January 30, 1997, the Board of Directors of Lexington County Health Services District met with Dr. Givens in attendance. The minutes state that "A motion was presented to proceed with the purchase of the Kyzer property (property B) contingent upon environmental studies and that no environmental concerns are found as discussed in executive session. This was seconded and carried with Dr. Givens not participating in the

discussion or the vote." Attached to the minutes is a form entitled Disclosure of Potential Conflict Form, signed by Dr. Givens, dated January 30, 1997, and stating that the nature of the conflict is "Family member is a realtor". The Executive Session minutes of the same date state Dr. Givens did not participate in the discussion to purchase property B. The Executive Committee met the same date with Dr. Givens in attendance. Property B was discussed and the minutes state that "the committee agreed to recommend to the full Board that administration proceed with the purchase of the property." The presiding official did not enter into the record the statement of disqualification executed by Dr.Givens although the statute required it and also did not enter a separate statement of disqualifications into the Executive Session.

22. The transaction to purchase property B closed on February 12, 1997, and Bob Capes Realtors, Inc. paid commissions to Louise M. Givens and Susan M. Powell among others.

23. On February 27, 1997 Board of Directors met. The Executive Committee met and discussed the property acquisition issue. The Minutes state that Dr. Givens left the meeting and did not participate in the discussion.

CONCLUSIONS OF LAW

1. At all times relevant Dr. Givens and Dr. Powell were non-compensated members of the Board. The evidence suggests that they relied upon various staff personnel and legal advice from attorneys employed by the hospital to assist them in complying with all relevant statutes. The record indicates that their wives never solicited any business and that no commissions were ever received as a result of any relationship with Lexington Medical Center except the commission in this case. There was no evidence of any deceitful conduct and the respondents have been fully cooperative with this investigation. There is no evidence of any intent by the respondents to ever influence the board regarding

the purchase of the property in question and, in fact, the commissions were paid to a professional association owned by Mrs. Givens and Mrs. Powell in which the respondents had no financial or pecuniary interest. Furthermore, the evidence suggests that there was information given by the staff of the board of the Lexington Medical Center to the Respondents and their spouses that their presence at the Board meetings were appropriate as long as they did not actively take part in any discussions or votes regarding the acquisition of the property. The Commission specifically finds that there was no intent to violate the State Ethics Act by the Respondents and that there was no attempt by the respondents to gain any financial advantage as a result of their status as board members. Additionally, prior to the votes of the board the respective spouses of the respondents had offered to waive any commission regarding the purchase of property by the hospital in or near Lexington and this offer was specifically rejected by the Lexington Medical Center.

2. The Respondents are public members and are covered by the Ethics Reform Act of 1991. S.C. Code §8-13-100(Supp. 1996). Therefore, jurisdiction is proper.

3. Respondents were timely and properly notified of this matter as required by S.C. Code §8-13-320(Supp. 1996). Therefore, all procedural requirements have been met.

4. S.C. Code §8-13-700 (A) prohibits knowingly using one's public office to obtain an economic interest for one's self or a member of the immediate family. The evidence does not support a finding of knowingly using a public office to obtain an economic interest.

5. S.C. Code §8-13-700(B) prohibits a public member from making, participating in making, or in any way attempting to use one's official office, membership or employment to influence a governmental decision in which the public member, a member of public member's immediate family (e.g., spouse), an individual with whom he is associated or a business with which he is associated has an economic interest.

6. A member of the immediate family is defined at S.C. Code §8-13-100 and economic

interest is defined at S.C. Code §8-13-100(11).

7. Susan Powell and Louise Givens are members of the respective Respondent's immediate family by virtue of their marital status.

8. Respondents had a potential economic interest in real estate transactions in which their spouses were agents for a party to the transaction S.C. Code §8-13-100(11)(a)(Supp. 1996).

9. In construing S.C. Code §8-13-700(B), we find that primary concern in interpreting a statute is to ascertain and effectuate legislative intent if it reasonably can be discovered in the language when construed in light of its intended purpose. All rules of statutory construction are subservient to the one that legislative intent must prevail if it can reasonably be discovered in the language used. If a statute's language is plain and unambiguous, and conveys a clear and definite meaning, there is no occasion for employing rules of statutory interpretation and the court (and this Commission) has no right to look for or impose another meaning. Lester v. S.C. Worker's Compensation Commission, Op. No. 2733 S.C. Ct. App. filed October 6, 1997) Davis Adv. Sh.No. 29 at 18) (citations omitted). We find as a matter of law that the intent of S.C. Code §8-13-700(B) is given in the following quote from the Preamble to the Ethics Reform Act of 1991:

> Whereas, one of the most important functions of any law aimed at making public servants more accountable is that of complete and effective disclosure. Since many public officials serve on a part-time basis, it is inevitable that the conflicts of interest and appearances of impropriety will occur. Often these conflicts are unintentional and slight, but at every turn those who represent the people of this State must be certain that it is the interests of the people, and not their own, that are being served. Officials should be prepared to remove themselves immediately from a decision, vote, or process that even appears to be a conflict of interest;

To achieve the intent of the legislature, we further find that S.C. Code §8-13-700(B) is unambiguous in its requirements.

Therefore, we conclude as a matter of law that statutory disqualification in accord with S.C. Code §8-13-700(B) is a four step process which requires (1) the member prepare a written statement describing the matter requiring action or decision and the nature of the potential conflict of interest with respect to the action or decision; (2) the member furnish the presiding officer with a copy of the written statement; (3) the presiding officer cause the statement of disqualification and the reasons for it to be printed in the minutes; and (4) the presiding officer excuse the public member from any votes, deliberations, and other actions on the matter on which the potential conflict of interest exists.

10. Pursuant to S.C. Code §8-13-700(B) a public member is prohibited from discussing or otherwise affecting a matter in which disqualification is required.

11. Having found the Respondents failed to strictly comply with the statutory formula for disqualification, we conclude as a matter of law that disgorgement of the financial gain from the transaction is appropriate.

12. S.C. Code Regs. 52-708(B) provides that upon receipt of a request for remediation, the Respondent may take the remedial action recommended by the Commission to cure the infraction including payment of a fine or reimbursement to a governmental entity.

(1) Compliance with the request for remediation and proof thereof obviates the need for a hearing and the Commission shall by order dismiss the action. (2) The order shall be a public record and the final disposition of the matter.

ORDER

IT IS, THEREFORE, ORDERED that within ten (10) calendar days of entry of this Order reimbursement must be made to the Lexington Medical Center in the amount of Forty Thousand Eight Hundred Three and 32/100 ($40,803.32) Dollars. Upon proof of compliance with the terms of this order by filing copies of evidence of payment to the Lexington Medical Center in a total amount of Forty Thousand Eight Hundred and Three

and 32/100 ($40,803.32) Dollars with the State Ethics Commission, this matter shall be, and hereby is dismissed.

AND IT IS SO ORDERED!

By: Frederick A. Hoefer, III
Chairman
South Carolina State Ethics Commission

This 13th day of February, 1998

I Consent:

Richard J. Breibart
Attorney for the Respondents

3588.ord

ATTACHMENT 5

RECEIVED
2021 FEB 17 AM 11:43
STATE ETHICS COMMISSION

STATE OF SOUTH CAROLINA
STATE ETHICS COMMISSION

COMPLAINT FORM

FOR COMMISSION USE ONLY:
CASE NUMBER
C-2021-016

COMPLAINANT: Kim Benson
ADDRESS:
TELEPHONE NUMBER: 803-361-9510
TITLE: Parent & Tax Payer

RESPONDENT: Kenneth Loveless
ADDRESS:
TELEPHONE NUMBER: 803-345-0547
TITLE: School Board Trustee

Set forth in detail specific facts upon which you based your complaint against above-named respondent (only detailed, clear factual allegations will be considered. If additional space is needed, attach supplemental sheets).

Address:
1415 Beaver Dam Rd.
Columbia SC 29212

Address:
228 Lookout Pointes DR
Chapin SC 29036.

* Please see attached document which contains various links to additional documents & media.

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

STATE OF SOUTH CAROLINA
COUNTY OF Richland
Personally appeared before me Kim Benson who, first being duly sworn, says that he/she has read and knows the contents of the above complaint and that the allegations contained therein, are true and correct to the best of his/her own knowledge, except for those matters therein based upon information and belief, and as to those he/she believes them to be true.

Sworn to and subscribed before me this
17th day of February, 2021

Notary Public for South Carolina
My Commission expires 8-16-2025

Kimberly M Benson
Complainant Signature

SEC-7 (Revised 8/2019)

REPLY TO: 201 Executive Center Drive, Suite 150, Columbia, South Carolina 29210 (803)253-4192
FAXED COPIES WILL NOT BE ACCEPTED

C102form

SCANNED

MLW RC 2-17-21 KP

LOGGED

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	BEFORE THE STATE ETHICS COMMISSION
IN THE MATTER OF: Complaint C-2021-016 Kenneth Loveless, Respondent. Kim Benson, Complainant.	)	**MOTION FOR EXPEDITED HEARING**

Respondent filed a motion to dismiss this matter on September 12, 2022. The matter was noticed for hearing before the Commission on September 15, 2022 (Agenda attached as **Exhibit A).** Counsel for Respondent appeared via Zoom link and agreed to delay hearing on the motion until counsel for the Commission could return to work from a family emergency, at which time Respondent would request an expedited hearing for consideration of the motion to dismiss.

By email on September 26, 2022, Respondent's counsel received a Response to the Motion to Dismiss filed by Counsel for the Commission, with attachments. Respondent will timely file a reply no later than September 30, 2022.

Pursuant to Reg. 52-209 and 52-703(C), Respondent requests an expedited in-person hearing[1] before the Commission in his motion to dismiss, which was not able to be heard as scheduled on September 15, 2022 through no fault of his own.

[1] Audio during the Zoom appearance on September 15, 2022 was barely perceptible, and Respondent asserts that an in-person hearing (at least for the parties to the matter and their counsel) is necessary for the issues raised in his Motion to Dismiss to be fully explored.

The Commission has denied Respondent's Motion to advance his hearing to October 20 & 21, 2022 despite his waiver of the 50-day prohibition. *See* Order dated September 15, 2022. As a result, this matter, and the media circuit surrounding it, are directly interfering with Respondent's candidacy for re-election to the Lexington-Richland School District 5 School Board, which election is scheduled to occur on November 8, 2022. Through no fault of its own, and on information and belief, this Commission and the proceedings pending before it are being used for political purposes in an effort to harm Respondent during the time period immediately preceding the November 8, 2022 election.[2]

Respondent requests an expedited hearing before the Full Commission be held within two-weeks after his reply (to be filed September 30, 2022), so that the Commission has sufficient time to rule on the Motion to Dismiss antecedent to the election date of November 8, 2022. Since he has waived confidentiality of these proceedings, Respondent requests that the hearing be open to the public (at least virtually) so the media can continue to closely report developments in this matter, for whatever reason it chooses to do so.[3] Respondent himself has refused to comment publicly or to the media on any aspect of the matter pending before this Commission.

s/ Desa Ballard
Desa Ballard (S.C. Bar No. 498)
Harvey M. Watson III (S.C. Bar No. 74053)
Haley Hubbard (S.C. Bar No. 103195)
BALLARD & WATSON
226 State Street
West Columbia, South Carolina 29169

[2] As pointed out in the Motion to Dismiss, the Notice of Hearing in this matter was not issued until after Respondent announced his intent to seek re-election, despite the pendency of more than a year and a half since the complaint was filed. The file produced to Respondent contemporaneously reflects only one interview having been conducted during the investigation phase of this matter, so the record reflects no reason why the investigation was not completed and this matter concluded on the merits long ago.

[3] Respondent lacks knowledge or information as to why The State Newspaper is following and reporting the matter so closely, while other media outlets are ignoring it completely, although it might have something to do with the State's lawsuit pending (through its' executive director Paul Osmundson) against the School District, *see* Case No. 2021-CP-40-03694, pending in Richland County, where The State asserts the district did not comply with FOIA.

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Karl Bowers, Jr. (S.C. Bar No. 16141)
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September 27, 2022

ATTORNEYS FOR RESPONDENT

State of South Carolina
State Ethics Commission

EXHIBIT
tabbies
A

SCOTT E. FRICK
AJ HOLLOWAY
BRANDOLYN THOMAS PINKSTON
F. XAVIER STARKES

MARY HUNTER B. TOMLINSON
NEAL D. TRUSLOW
MATTHEW N. TYLER

201 EXECUTIVE CENTER DRIVE, SUITE 150
COLUMBIA, S.C. 29210

MEGHAN L. WALKER
EXECUTIVE DIRECTOR

COMMISSION MEETING
Open Session
September 15, 2022
9:30 a.m.

AMENDED

Minutes
July 21, 2022, Open & Executive Session Minutes

Office Operations
Budget (**July/August 2022**)
Compliance Report
Pending and Paid Orders

New Business
2021-016 In the Matter of Kenneth Loveless: Respondent's Motion to Reschedule
2021-016 In the Matter of Kenneth Loveless: Respondent's Motion to Dismiss

Executive Session
Employment Matters
Probable Cause Agenda
Legal Advice Related to Regulation Revisions
Return to Open Session

Advisory Opinion 99-003

Adjourn

For all media questions, please use the following e-mail address: mediaquestions@ethics.sc.gov.
The State Ethics Commission's meetings are wheelchair accessible. Any person requiring a disability accommodation should contact Deaven Linen at dlinen@ethics.sc.gov/or 803-253-4192.

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	BEFORE THE STATE ETHICS COMMISSION
IN THE MATTER OF: Complaint C-2021-016 Kenneth Loveless, Respondent. Kim Benson, Complainant.	)	**REPLY TO RESPONSE TO MOTION TO DISMISS**

The Commission's response to Respondent's Motion to Dismiss erroneously asserts that one of the grounds for seeking dismissal is " his actions were permissible because he attempted to harm, rather than benefit, the business with which he is associated." That is not Respondent's position at all. He merely pointed out the *irony* of the Commission proceeding with charges that he violated the Ethics Act in a context where he allegedly made critical statements of work being done by a company with which he is alleged to have been associated.[1]

The grounds for Respondent's motion are clearly set forth in his motion.

1. No allegation of misconduct under the State Ethics Act; and

2. Procedural defects in the proceedings.

NO ALLEGATIONS OF MISCONDUCT UNDER THE ACT

Respondent has carefully pointed out that none of the four charges against him allege he participated in any governmental decision, and the commission's response does not dispute that.

[1] Not included in this Motion to Dismiss is an examination of whether Contract Construction is, in fact, a "business with which [Respondent] is associated," as that term is defined in S.C. Code § 8-13-100(4).

Respondent is charged with (1) sending a letter; (2) participating in a discussion; (3) participating in a discussion; and (4) attending a site visit, none of which events involved the making of any governmental decision.

Instead, the commission cites to prior advisory opinions in which the Commission has make an expansive reading of the actual statute which Respondent is alleged to have violated, suggesting that the prohibition on "participation in a governmental decision" prohibits any actions of any kind, including discussions at which no governmental decision was made. With all due respect to the prior precedent of the commission, that is simply incorrect.

All charges against Respondent are alleged to be violation of S.C. Code Ann. 8-13-700(B), which makes it a violation of the Act to "make, participate in making, or in any way attempt to use his [office] to influence a governmental decision in which he . . . or a business with which he is associated has an economic interest."

The statute is clear. So is the Notice of Hearing. Respondent is charged with four (4) counts of "failure to recuse from a governmental <u>decision</u> in which a business [words missing] with which associated had an economic interest".

Respondent is not charged with attempting to use his office to influence a government decision. He is charged with failure to recuse "from a governmental decision." However, no governmental decisions are cited in the facts set forth in support of the charges.

Had the Notice of Hearing been filed in a civil action, it would be subject to dismissal pursuant to Rule 12(b)(6), SCRCP, because it cites the alleged violation, but the facts set forth below the charge clearly show that Respondent did <u>not</u> participate in a governmental decision"

with respect to any of the four (4) charges. The factual summaries as to each count charge Respondent with:

1. Writing a letter.
2. Participating in a discussion.[2]
3. Participating in a discussion.
4. Participating in a site visit.

The Notice of Hearing does not even allege that governmental decisions were made with respect to any of the four (4) counts. Only in the Response to Respondent's Motion to Dismiss does the Commission even suggest what "governmental decision" Respondent is alleged to have participated in, *i.e.,* "the District's contract with Contract Construction. . ." on some unspecified date in 2018 (and certainly not on any of the dates set forth in the Notice of Hearing. The Notice of Hearing does not allege that any governmental decisions were made on the dates set forth in the Notice. As to Count 1, writing a letter is not a governmental decision. As to Count 4, attending a site inspection is not a governmental decision.

The Commission asserts that § 8-13-700(B) goes further, and it does. It addresses requirements that exist when "a public officer . . . is required to make a decision or take an action. . ." (emphasis added). There is no allegation Respondent did any of those things or was "required to take an action.

The first question that must be addressed is whether § 8-13-700(B) is ambiguous. "Under the plain meaning rule, it is not the court's [or the agency's] place to change the meaning of a clear and unambiguous statute. *In re: Vincent J.*, 333 S.C. 233, 509 S.E.2d (1998). "Where the statute's

[2] The published minutes of the Board meetings from the June 15, 2020 and September 14, 2020 meeting reflect that no decisions were made with reference to Contract Construction on either of those occasions. *See* attached **Exhibits A and B**, both of which contain detailed voting tabulations on all votes taken at those meetings.

language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court [or agency] has no right to impose another meaning." *Id.* at 233, 509 S.E.2d at 262 (citing *Paschal v. State Election Commission*, 317 S.C. 434, 454 S.E.2d 890 (1995).

"What a legislature says in the text of a statute is considered the best evidence of the legislative intente or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature." *Norman J. Singer,* Sutherland Statutory Construction §46/03 at 94 (5th Ed. 1992), cited in South Carolina Attorney General Opinion No. 2467 (May 31. 2022).

The Response memo states "[t]he Commission is the entity responsible for interpreting the Ethics Act," with a *See* cite to *S.C. Coastal Conservation League v. SCDHEC*, 380 S.C. 349, 669 S.E.2d 899 (Ct.App. 2008). That statement appears nowhere in the Court of Appeals' decision.[3] Moreover, the Supreme Court reversed the Court of Appeals' decision in full at 390 S.C. 418, 702 S.E.2d 246 (2010). In reversing the Court of Appeals' decision, the Supreme Court stated:

> Statutory interpretation is a question of law. . . the primary rule of statutory construction is to ascertain and give effect to the intent of the legislature. . . Unless there is something in the statute requiring a different interpretation, the words used in a statute must be given their ordinary meaning. . . When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning.
>
> *S.C. Coastal Conservation League v. SCDHEC*, 390 S.C. 418, 426-427, 702 S.E.2d 246.

As set forth in Respondent's motion, an administrative agency lacks the authority to construe or interpret a statute unless the statute is ambiguous. (Page 5). Respondent also noted

[3] Respondent's counsel attempted to locate the statement set forth in the brief in the text of the Court of Appeals decision, to no avail. Counsel followed with a word search for "responsible" and "interpreting" and neither word appeared. To the contrary, the Court of Appeals' decision echoes the Supreme Court in stating "All rules of statutory constructions are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be constructed in the light of the intended purpose of the statute." *Id.* 669 S.E.2d 907.

that courts give deference to an agency's interpretation of a statute, but the agency's interpretation must be rejected when it deviates from the legislature's intent. *Id.*

The statute under which Respondent is charged is clear. No statutory interpretation is necessary. No construction by the Commission is necessary. The Notice of Hearing charges Respondent with participating in making a governmental decision which we now know, per the Commission's memorandum in opposition to the memorandum is a contract with Contract Construction Inc. is on some unknown date in 2018.

In support of the Commission's position that is free to extrapolate its own meaning into the plain language of the statute, the Commission's states "The Commission has long held that recusal is required in any matter that implicates the economic interest of a business with which a public official is associated." Response p. 4. However, there is no citation to any authority to support this bald statement. Further, as set forth above, neither the agency nor the courts can "construe" or "interpret" a statute that is clear on its face, as is § 8-13-700(B).

Instead, the response cites to numerous advisory opinions of the Commission that have expanded on the meaning of the term "governmental decision" and prior decisions in which the Commission has found violations where public officers or officials participated in discussions but neither made nor participating in making governmental decisions. That is precisely what the Commission cannot do when the statute is clear. "[W]here . . . the plain language of the statute is contrary to the agency's interpretation; the Court will reject the agency's interpretation. . . We defer to an agency interpretation unless it is 'arbitrary, capricious or manifestly contrary to the statute." *Sierra Club v. South Carolina Department of Health and Environmental Control*, 426 S.C. 236, 256, 826 S.E.2d 595 (2019).

The Commission's interpretation of § 8-13-700(B) in advisory opinions or in prior cases is completely irrelevant, because the statute did not need to be construed or interpreted: it is clear on its face. The citations provided by the Response to the Motion to Dismiss are all based on expansive construction of a statute which required no construction, and an agency has no authority to expand the meaning of a clear and unambiguous statute. *Brown v. Bilo*, *supra.*

Even if the statute under which Respondent is charged is ambiguous in any way (which Respondent disputes), an agency's interpretation of a statute cannot be sustained when it is in violation of the clear language of the statute. A Question of Deference to Final Decisions of State Agencies, South Carolina Lawyer, July 2015. That article makes clear that, while courts give deference to agency interpretations of a statute, "[a]t most, administrative practice . . . is . . . not to be inevitably followed. . . while [courts] are . . . bound to weigh seriously such rulings, [agency constructions] are never conclusive . . .the final responsibility for the interpretation of the law rests with the courts." *Stone Manufacturing Co. v. S.C. Employment Security Commission,* 219 S.C. 239, 64 S.E.2d 644 (1951), citing *Etiwan Fertilizer Co. v. S.C. Tax Commission*, 217 S.C. 354, 60 S.E.2d 682 (1950).

Statutory construction is only required when a statute is not clear on its face. Rules of statutory construction do not even become relevant unless it is determined that the statute is unclear, or needs interpretation. *Books a Million v. S.C. Department of Revenue,* Op. No. 28110 (Supreme Court September 14, 2022). Where, as here, the statute is clear, interpretation or construction is not necessary.[4]

[4] The rule is the same with reference to contract construction. ". . . if the language is unambiguous, the language alone determines the contract's force and effect." *Poly-Med Inc. v. Novus Scientific Pte. Ltd.,* Op. No. 28111 (Supreme Court, September 14, 2022), citing *McGill v. Moore*, 381 S.C. 179, 185, 672 S.E.2d 571, 574 (2009).

The statute regulates participating in governmental "decisions" or official actions that require a public official to "take an action." S.C. Code Ann. §8-13-700(B). Respondent is not charged with participating in making any governmental decision or taking any "required. . . action." *See also* School District 5 Board policy BCB which prohibits a Board member who is burdened with a conflict with "deliberating or voting" on the matter. Moreover "[a]ll powers of the board lie In its actions as a body. Board members acting as individuals have no authority over personnel or school affairs." Board Policy BB. Respondent is not prohibited from writing a letter, participating in general discussions which lead to no action or vote being taken, or attending a site visit.

Respondent's Response to the Complaint in this matter, attached to the Commission's response as Exhibit 2, discusses numerous SEC Advisory opinions that state "a public officer who has no independent decision-making authority on his own" is not required to recuse himself from interacting with the agency in matters as they progress through the agency. SEC AOO-2003-002. *See also* SEC AO2004-001 and SEC AO-2008-004; SEC AO-92-201, SEC AO2010-004, all cited in Respondent's Response to the Complaint, before any determination of probable cause was made by the Commission.

The Commission jests at Respondent's reference to his First Amendment rights, which are clearly implicated by the prosecution of this action. Respondent is charged with a violation of the Act, based on writing a letter, participating in two discussions, and attending a site visit. The United States Supreme Court discussed the difference between a public official's public statements, participation in discussions, and other participation in his public duties, all of which he is elected to do, versus conflicts rules which prohibit him from actually voting when he is burdened by conflict [or in this case participating in a governmental decision]. Attempting to ban

speech versus votes that are burdened by conflicts, "raises constitutional concerns of the first magnitude." *Nevada Commission on Ethics v. Carrigan*, 564 U.S. 117, 131 S. Ct. 2343,2354, 180 L.Ed.2d 150 (2011).

The statute at issue here prohibits a public official from participating in making a government decision, not from voicing his opinion on matters of concern to his constituents, which he is elected and required to do. As set forth in Respondent's Answer to the Complaint in this matter, the Commission cannot prohibit him from carrying out his mandatory duties as a member of the school board, which includes stating his opinion on matters which affect the school district. He may not participate in a governmental decision in certain cases, but there is no allegation that he did so.

The Commission's expansive interpretation of a prohibition on making decisions and participating in making decisions to include any activity that does not involve decision-making clearly implicates First Amendment rights. Because, however, this proceeding fails on the unambiguous language of the statute as to the conduct that is prohibited, and the resulting failure of the charges against Respondent to allege any wrongdoing prohibited by the act, makes consideration of Respondent's First Amendment rights academic, at least at this point in the proceedings.

The Notice of Hearing and charges against Respondent do not allege a violation of S.C. Code Ann. §8-13-700(B) based on the language of the statute. While the Commission may have issued advisory opinions or found violations in prior cases by public officials based on an improper expansion or interpretation of the statute, it is absolutely clear that the Commission lacks the authority to expand the clear statutory language set forth in § 8-13-700(B).

PROCEDURAL DEFECTS IN THESE PROCEEDINGS

The Response memorandum suggests that Respondent "conflate[s] the process for opening a Commission-generated Complaint. . . with a Complaint filed by a member of the public." (Response p. 6). The response suggests that the Commission has to proceed in one manner when a complaint is made by members of the public and an entirely different way when the complaint is generated by the Commission itself. That is an absurd interpretation of S.C. Code Ann. § 8-13-320(10) and not supported by the language of the statute.[5] The statute does not provide the Commission or its staff a multiple-choice option.

Subsection (10) empowers the Commission "to conduct . . . investigations, inquiries and hearings in this manner" and provides subsections (a) through (o) for how the process must occur regardless of the source of the complaint. None of the subsections suggests different tracts for a complaint from an outside individual versus a commission-generated complaint and neither the Commission nor its staff is permitted to pick and choose which of the statutory steps it will follow depending on whether the complaint is filed by an individual or by the commission itself. All complaints must be handled in the same way.[6]

(a) The Commission receives "the complaint" from "an individual". . .

(b) The Commission determines whether "the complaint" does or does not "allege facts sufficient to constitute a violation. ."

(c) If the "commission, its executive director or staff designated by the commission determines that the complaint alleges facts sufficient to constitute a violation, an investigation may be conducted. . ."

[5] Authority regarding the Commission's inability to deviate from the clear and unambiguous language of the statutes which mandate its procedure is discussed above.

[6] It may be that the Commission and/or its staff has elected to follow different procedures depending on whether the complaint is initiated by "an individual" as opposed to "the commission" but subparagraph (10) of the statute clearly does not permit separate handling depending on the source of the complaint.

(d) "If the commission, upon receipt of any information" -- which necessarily includes a complaint from an individual—"finds probable cause to believe a violation of the chapter has occurred, it may, upon its own motion and an affirmative vote of six or members of the commission, file a verified complaint" and take other steps. Any complaint filed by the Commission must be verified by the Commission, even if it originated with a complaint from an individual.

(e) "If the Commission determines that assistance is needed in conducting an investigation" regardless of the source of the complaint. . .

(f) "The commission may order testimony to be taken in any investigation or hearing by deposition. . ." regardless of the source of the complaint.

(g) Confidentiality provision and provisions for waiver regardless of the source of the complaint.

(h) Requirement that public official be given an opportunity to be heard regardless of the source of the complaint.

(i) At the conclusion of the investigation Commission staff must provide a written decision with findings of fact and conclusions of law, and must make a recommendation of whether probable cause exists regardless of the source of the complaint. Additional steps are set forth if probable cause has been determined.

(j) Requirement that the Commission provide Respondent the right to "examine and make copies of all evidence e in the commissions possession relating to the charges" regardless of the source of the complaint.

(k) After a hearing, the Commission must issue its ruling within 60 days regardless of the source of the complaint.

(l) Requirements for a decision under subsection (k) regardless of the source of the complaint.

(m) Process for appealing a decision under subparagraph (k) for "full Commission review" regardless of the source of the complaint.

(n) Terms for when and what becomes public after the matter is concluded regardless of the source of the complaint.

(o) More about what becomes public regardless of the source of the complaint.

The suggestion in the Response that the Commission handles complaints by individuals differently from complaints generated by the Commission itself is ridiculous. No section of subsection (10) is optional.

As set forth his Motion to Dismiss, there are multiple procedural defects in the proceedings to date, including an absence of evidence that an investigation was ever properly authorized (see pp. 8-12 of the Motion). In general, the procedural defects of which Respondent is aware are summarized below:

1. The Notice of Hearing,[7] was not accompanied by a complaint verified by the Commission,[8] and was not filed on Respondent "within ten days of the filing of the complaint"[9] and is therefore defective pursuant to § 8-13-320(10)(d).

2. The Notice of Hearing does not state on what date probable cause was determined by "an affirmative vote of six or more members of the commission" so it cannot be determined whether the Notice of Hearing (without verified complaint) was filed within ten (10) days of the filing of the complaint.[10] As pointed out in the motion, the probable cause determination must have been made in May, 2022 based on the published minutes of the meetings of the Commission. The last probable cause agenda considered by the Commission prior to issuance of the Notice of Hearing was May 19, 2022. There was no meeting in June, 2022, and the Notice of Hearing is dated July 11, 2022. The next probable cause agenda considered by the Commission was on July 21, 2022, after the Notice of Hearing (without verified complaint) was transmitted.

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[7] Interestingly, the statute does not require a Notice of Hearing.

[8] In forwarding the Notice of Hearing to Respondent's Counsel, staff sent another copy of the original notarized complaint filed by Kim Benson a year and a half ago. However, there is no verified complaint from the Commission as required by subsection (10)(d). The verification from the Commission is not optional, or is the issuance of a complaint.

[9] As of today, there is no complaint from the Commission, verified or otherwise.

[10] See footnote 8. No complaint from the Commission has ever materialized and it is not known whether one exists.

3. It is clear the Notice of Hearing (without verified complaint) was sent to Respondent's counsel by U.S. mail only on July 11, 2022, well beyond the ten days required by subsection 10(d). There is no explanation as to why the Commission or staff held the Notice of Hearing (without verified complaint) for almost two months after probable cause was found at the Commission meeting on May 19, 2022 (and no verified complaint issued) before serving the Notice of Hearing (without verified complaint) was served on Respondent's counsel on July 11, 2022.[11] Regardless, the delay in transmittal[12] violates the statutory requirement that the complaint be served within "ten days of the filing of the complaint." § 8-13-320(10(d).

CONCLUSION

As set forth in more detail in the Motion to Dismiss and in this Reply, Respondent renews his Motion to Dismiss and asserts there are multiple substantive and procedural defects in these proceedings which require dismissal.

Respectfully submitted,

s/ Desa Ballard

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[11] It is, however, curious that the Notice of Hearing (without verified complaint) was provided to a reporter to the State Newspaper via email at 1:47 p.m. on July 11, 2022, in response to his email inquiry at 9:21 a.m. that morning, which stated "I've heard that the Ethics Commission has completed its investigation into . . . Ken Loveless . . and that the investigation has found cause to schedule a hearing on ethics charges in the near future. . ." **Exhibit C.** The public calendar on www.ethics.sc.gov does not reflect any Commission meetings on July 11, 2022.

[12] The two-month delay assumes the Notice of Hearing is the equivalent the "verified complaint" required by § 8-13-320(10)(d), which Respondent disputes. As noted, no verified complaint has ever been served on Respondent by the Commission.

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September 28, 2022

ATTORNEYS FOR RESPONDENT

District Five OF LEXINGTON & RICHLAND COUNTIES

Minutes
Board Meeting – June 15, 2020

The Board of Trustees of School District Five of Lexington and Richland Counties conducted an in-person meeting at The Center for Advanced Technical Studies with the following members present:

Mr. Michael Cates, Chairman
Ms. Beth Hutchison, Vice Chairman
Mr. Robert Gantt, Secretary (via video/phone conference call)
Mrs. Nikki Gardner (via phone/conference call)
Mrs. Jan Hammond
Mr. Ken Loveless
Mr. Ed White
Dr. Christina Melton, District Superintendent

The following staff members attended in person or virtually via video/phone conference call:

Mrs. Katrina Goggins, Director, Office of Communications
Mr. Michael Guliano, Chief Instructional Officer
Dr. Michael Harris, Chief Planning and Administrative Officer
Dr. Allison Jacques, Chief Human Resources Officer
Mr. Len Richardson, Chief Finance Officer

A livestream video link was provided to the public for the meeting.

Chairman Cates called the meeting to order at 7:03 p.m. and offered welcoming remarks.

The Invocation and Pledge of Allegiance were given by Jan Hammond, Board of Trustees.

During the Superintendent's Report, Dr. Christina Melton reported on the successful graduation ceremonies that took place during the week of June 1, 2020. Dr. Melton provided information regarding the start of summer feeding sites. Mr. Greg Hughes and Mr. Dan Neal provided an update on Elementary School 13. Following the Elementary School 13 update, Board of Trustees member, Mr. Ed White, submitted items for the record that include: a letter (dated March 24, 2020) from Board of Trustees member, Mr. Ken Loveless (Attachment #1); response letters (dated April 20, 2020) from Mr. Dan Neal (Attachment #2) and Contract Construction (Attachment #3); a letter (dated March 31, 2020) from ADC Engineering (Attachment #4); and FOIA documentation regarding board members' roles in construction (Attachment #5).

The minutes from both the May 18, 2020 board meeting, and the May 28, 2020 special-called board meeting were approved.

This meeting marked the return to unmodified, in-person public participation. During public participation: Eleanor Howe spoke regarding CDC guidelines; Kim Murphy spoke regarding budget transparency; Deana Berley spoke regarding what the 2020-2021 school year may look like, as well as construction taking place at Nursery Road and Harbison West elementary schools; and, Albert Jones spoke regarding social injustice and Black Lives Matter.

Action Agenda – the following items were presented:

Action was taken as necessary or appropriate on matters discussed in Executive Session: a. Selected employment items (*Exhibit A*) (Action); b. Selected employment items (*Exhibit B*) (Information Only).

Rescind Emergency Resolution Re: 2019 Novel Coronavirus Response, Adopted April 6, 2020.

Proposed revisions to board policy IHBF "Homebound Instruction" (*Exhibit C*) were presented for approval.

Proposed revisions to board policy EF "Food Services" were presented for approval (*Exhibit D*).

A request to Suspend board policy JFABB "Admission of Foreign Exchange Students" due to COVID-19 Mandated Closure (*Exhibit E*) was presented for approval.

DISCUSSION AGENDA

The FY2020-21 General Fund Budget was presented for discussion by Len Richardson (*Exhibit F*).

The meeting was adjourned at 8:48 p.m.

INFORMATION AGENDA

Administrative Rule GDBC-R "Support Staff Supplementary Pay/Overtime" was provided with revisions.

Administrative Rule JFABB-R "Admission of Foreign Exchange Students" was provided with Exhibit E.

Title I, Title II, and Title IV Programs for 2020-2021 was provided.

The next regular scheduled board meeting will be July 13, 2020 at a location to be determined.

Record of Voting

School District Five
of
Lexington and Richland Counties

Meeting of June 15, 2020

	Cates	Gantt	Gardner	Hammond	Hutchison	Loveless	White
1. M. Hutchison S. Hammond Approve the agenda	X	A	A	X	X	X	A
2. M. Hutchison S. Loveless Return to unmodified Board Policy BEDH "Public Participation"	X	A	A	X	X	X	A
3. M. Loveless S. Hammond Enter executive session to consider the following: a. Selected employment items (*Exhibit A*) (Action); b. Selected employment items (*Exhibit B*) (Information Only)	X	A	A	X	X	X	A
4. M. -- S. – (*consent approval of minutes as presented*) Approve the minutes of the May 18, 2020 board meeting	X	X	X	X	X	X	X
5. M. -- S. -- (*consent approval of minutes as presented*) Approve the minutes of the May 28, 2020 special-called board meeting	X	X	X	X	X	X	X
6. M. Loveless S. Hammond Approve selected employment items shown in Exhibit A	X	X	X	X	X	X	X
7. M. Hammond S. Hutchison Rescind Emergency Resolution Re: 2019 Novel Coronavirus Response, adopted April 6, 2020	X	X	X	X	X	X	X

A = Absent
AB = Abstain
N = No
X = Yes
R = Recuse

	Cates	Gantt	Gardner	Hammond	Hutchison	Loveless	White
8. M. Hutchison S. Hammond Second reading approval of proposed revisions to board policy IHBF "Homebound Instruction" as shown in Exhibit C	X	X	X	X	X	X	X
9. M. Hutchison S. Hammond Second reading approval of proposed revisions to board policy EF "Food Services" as shown in Exhibit D	X	X	X	X	X	X	X
10. M. Hutchison S. Hammond Suspend board policy JFABB "Admission of Foreign Exchange Students" due to COVID-19 Mandated Closure as shown in Exhibit E	X	X	X	X	X	X	X
11. M. White S. Hammond Adjourn the meeting at 8:48 p.m.	X	X	X	X	X	X	X

A = Absent
AB = Abstain
N = No
X = Yes
R = Recuse

District Five OF LEXINGTON & RICHLAND COUNTIES

Minutes
Board Meeting – September 14, 2020

The Board of Trustees of School District Five of Lexington and Richland Counties conducted an in-person meeting at Irmo High School with the following members present:

Mr. Michael Cates, Chairman
Ms. Beth Hutchison, Vice Chairman
Mr. Robert Gantt, Secretary (via video/phone conference call)
Mrs. Nikki Gardner
Mrs. Jan Hammond
Mr. Ken Loveless
Mr. Ed White
Dr. Christina Melton, District Superintendent

The following staff members attended in person or virtually via video/phone conference call:

Mrs. Katrina Goggins, Director, Office of Communications
Mr. Michael Guliano, Chief Instructional Officer
Dr. Michael Harris, Chief Planning and Administrative Officer
Dr. Allison Jacques, Chief Human Resources Officer
Mr. Len Richardson, Chief Finance Officer

A livestream video link was provided to the public for the meeting.

Chairman Cates called the meeting to order at 7:03 p.m. and offered welcoming remarks. Mr. Cates also gave the invocation and led the Pledge of Allegiance.

During the Superintendent's Report, Dr. Christina Melton provided an update entitled: *2020-2021 School Reentry Overview: Part V*, which highlighted reentry for the 2020-2021 school year.

During public participation, the following people spoke regarding the school reentry plan: Trey Hodges, Matt Hogan, Jennifer Weed, Cali Foxworth, Amye Hawkins, Lisa Harris, Todd Howell, Kim Stutts, Jessica Loudermilk, Shannon Boyd, Susan Snyder, Brian Bilbro, Jason Valek, Brittney Conrad, Rebecca Blackburn Hines, Deana Berley, Chad Stefaniak, Catherine Huddle, James Ryan and Kevin Scully. In addition, Jondy Loveless spoke regarding construction policy, and Danny Brabham spoke regarding land purchases.

At the conclusion of public participation, a short recess (approximately 10 minutes) was called by Chairman Cates.

ACTION AGENDA

Action was taken as necessary or appropriate on matters discussed in Executive Session: Selected employment items shown in Exhibit A, for Action; and, selected employment items shown in Exhibit B, for Information Only.

By acclamation, Nikki Gardner was elected as the delegate, and Ken Loveless was elected as the alternate, for the 2020 SCSBA Delegate Assembly as shown in Exhibit C. The certification of the delegates was approved unanimously.

DISCUSSION AGENDA

An update on the construction of Piney Woods Elementary School was given by Dan Neal, consultant, and Greg Hughes, of Contract Construction. A discussion regarding concrete testing took place between board members and included questions directed to Mr. Neal, Mr. Hughes, Mr. (Doug) Quackenbush, of Quackenbush Architects, and Mr. (Mike) Montgomery, of Montgomery Willard, LLC.

Following the Piney Woods Elementary School discussion, Chairman Cates tabled the final two agenda items, District Construction and Legal Services, due to the late hour.

The meeting was adjourned at 11:22 p.m.

INFORMATION AGENDA

The next regular scheduled board meeting will be September 28, 2020. Location to be determined.

Record of Voting

School District Five
of
Lexington and Richland Counties

Meeting of September 14, 2020

	Cates	Gantt	Gardner	Hammond	Hutchison	Loveless	White
1. M. Hammond S. Hutchison Approve the agenda	X	X	X	X	X	X	X
2. M. Hutchison S. Hammond Enter Executive Session to consider selected employment items, Exhibit A, Action, and Exhibit B, Information	X	X	X	X	X	X	X

A = Absent
AB = Abstain
N = No
X = Yes
R = Recuse

	Cates	Gantt	Gardner	Hammond	Hutchison	Loveless	White
3. M. Hammond S. Loveless I move we direct the Superintendent to move forward with the re-entry plan presented on July 23rd which provided for face to face 5 days a week on October 8th. Furthermore, if there is evidence of an increase in COVID numbers within Lexington County that may cause greater safety issues, a revision can be made to the board but only after the evidence is presented, discussed and approved by the entire board.	N	N	X	X	N	X	N
M. White S. Hammond Support moving to 5 day face to face as soon as possible and we encourage the Superintendent to work towards 5 day face to face on the target date of October 8 or such other date as Superintendent deems safe to do so.	X	X	N	N	X	N	X
M. Gardner S. Hammond Amend Mr. White's motion to add "with board approval"	N	N	X	X	N	X	N
4. M. Hutchison S. Loveless Approval of the minutes from the August 24, 2020 board meeting	X	X	X	X	X	X	X
S. M. Loveless S. Hammond Action as necessary on appropriate matters discussed in Executive Session to approve selected employment items as shown in Exhibit A	X	X	X	X	X	X	X
6. M. Hammond S. Hutchison By acclamation, elect Nikki Gardner as delegate, and Ken Loveless as alternate, for the 2020 SCSBA Delegate Assembly as shown in Exhibit C	X	X	X	X	X	X	X

A = Absent
AB = Abstain
N = No
X = Yes
R = Recuse

	Cates	Gantt	Gardner	Hammond	Hutchison	Loveless	White
7. M. Hutchison S. Hammond Adjourn at 11:22 p.m.	X	X	X	X	X	X	X

A = Absent
AB = Abstain
N = No
X = Yes
R = Recuse

Walker, Meghan

From: Media Questions
Sent: Monday, July 11, 2022 1:47 PM
To: Marchant, Bristow
Subject: RE: [External] Hearing in Loveless ethics case
Attachments: lovelesscomplaint.pdf; lovelessreponse.pdf; lovelessresponse.pdf; NOH Lovevless 2-16-23.pdf

Bristow,

Please see the attachments.

From: Marchant, Bristow <bmarchant@thestate.com>
Sent: Monday, July 11, 2022 9:21 AM
To: Media Questions <mediaquestions@ethics.sc.gov>
Subject: [External] Hearing in Loveless ethics case

Ms. Laster,

I've heard that the Ethics Commission has completed its investigation into Lexington-Richland 5 school board member Ken Loveless (I believe it's case 2021-016), and that the investigation has found cause to schedule a hearing on ethics charges in the near future. Can the commission confirm it has completed its investigation and what the determination is? Can you forward any relevant documents to me? Thank you,

- Bristow Marchant
Reporter
The State
(803) 603-7051
@BristowatHome

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	BEFORE THE STATE ETHICS COMMISSION
IN THE MATTER OF: Complaint C-2021-016 Kenneth Loveless, Respondent. Kim Benson, Complainant.	)	**SECOND MOTION FOR EXPEDITED HEARING ON MOTION TO DISMISS**

Respondent filed a motion to dismiss this matter on September 12, 2022. The matter was noticed for hearing before the Commission on September 15, 2022 (Agenda attached as **Exhibit A).** Counsel for Respondent appeared via Zoom link and agreed to delay hearing on the motion until counsel for the Commission could return to work from a family emergency, at which time Respondent would request an expedited hearing for consideration of the motion to dismiss.

By email on September 26, 2022, Respondent's counsel received a Response to the Motion to Dismiss filed by Counsel for the Commission, with attachments. Respondent filed a timely reply on September 28, 2022.

Respondent filed a Motion for Expedited Hearing on September 27, 2022, requesting an expedited hearing before the Full Commission. By order dated September 28, 2022, the Commission denied Respondent's Motion for Expedited Hearing with leave to refile the Motion for consideration by the hearing panel as opposed to the Full Commission.

Pursuant to Reg. 52-209 and 52-703(C), Respondent requests an expedited in-person hearing[1] before the Commission in his motion to dismiss, which was not able to be heard as scheduled on September 15, 2022, through no fault of his own.

The Commission has denied Respondent's Motion to advance his hearing to October 20 & 21, 2022 despite his waiver of the 50-day prohibition. *See* Order dated September 15, 2022. As a result, this matter, and the media circuit surrounding it, are directly interfering with Respondent's candidacy for re-election to the Lexington-Richland School District 5 School Board, which election is scheduled to occur on November 8, 2022. Through no fault of its own, and on information and belief, this Commission and the proceedings pending before it are being used for political purposes in an effort to harm Respondent during the time period immediately preceding the November 8, 2022 election.[2]

Respondent requests an expedited hearing before the Commission be held as soon as possible, so that the Commission has sufficient time to rule on the Motion to Dismiss antecedent to the election date of November 8, 2022. Since he has waived confidentiality of these proceedings, Respondent requests that the hearing be open to the public (at least virtually) so the media can continue to closely report developments in this matter, for whatever reason it chooses to do so.[3] Respondent himself has refused to comment publicly or to the media on any aspect of the matter pending before this Commission.

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[1] Audio during the Zoom appearance on September 15, 2022 was barely perceptible, and Respondent asserts that an in-person hearing (at least for the parties to the matter and their counsel) is necessary for the issues raised in his Motion to Dismiss to be fully explored.

[2] As pointed out in the Motion to Dismiss, the Notice of Hearing in this matter was not issued until after Respondent announced his intent to seek re-election, despite the pendency of more than a year and a half since the complaint was filed. The file produced to Respondent contemporaneously reflects only one interview having been conducted during the investigation phase of this matter, so the record reflects no reason why the investigation was not completed and this matter concluded on the merits long ago.

[3] Respondent lacks knowledge or information as to why The State Newspaper is following and reporting the matter so closely, while other media outlets are ignoring it completely, although it might have something to do with the State's lawsuit pending (through its' executive director Paul Osmundson) against the School District, *see* Case No. 2021-CP-40-03694, pending in Richland County, where The State asserts the district did not comply with FOIA.

Respectfully submitted,

s/ Desa Ballard

Desa Ballard (S.C. Bar No. 498)
Harvey M. Watson III (S.C. Bar No. 74053)
Haley Hubbard (S.C. Bar No. 103195)
BALLARD & WATSON
226 State Street
West Columbia, South Carolina 29169
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desab@desaballard.com
harvey@desaballard.com
haley@desaballard.com

Karl Bowers, Jr. (S.C. Bar No. 16141)
BOWERS LAW OFFICE
Post Office Box 50549
Columbia, South Carolina 29250
Telephone 803.753.1099
butch@butchbowers.com

ATTORNEYS FOR RESPONDENT

September 29, 2022

State of South Carolina
State Ethics Commission

EXHIBIT
tabbies
A

SCOTT E. FRICK
AJ HOLLOWAY
BRANDOLYN THOMAS PINKSTON
F. XAVIER STARKES

MARY HUNTER B. TOMLINSON
NEAL D. TRUSLOW
MATTHEW N. TYLER

201 EXECUTIVE CENTER DRIVE, SUITE 150
COLUMBIA, S.C. 29210

MEGHAN L. WALKER
EXECUTIVE DIRECTOR

COMMISSION MEETING
Open Session
September 15, 2022
9:30 a.m.

AMENDED

Minutes
July 21, 2022, Open & Executive Session Minutes

Office Operations
Budget (**July/August 2022**)
Compliance Report
Pending and Paid Orders

New Business
2021-016 In the Matter of Kenneth Loveless: Respondent's Motion to Reschedule
2021-016 In the Matter of Kenneth Loveless: Respondent's Motion to Dismiss

Executive Session
Employment Matters
Probable Cause Agenda
Legal Advice Related to Regulation Revisions
Return to Open Session

Advisory Opinion 99-003

Adjourn

For all media questions, please use the following e-mail address: mediaquestions@ethics.sc.gov.
The State Ethics Commission's meetings are wheelchair accessible. Any person requiring a disability accommodation should contact Deaven Linen at dlinen@ethics.sc.gov/or 803-253-4192.

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	BEFORE THE STATE ETHICS COMMISSION
IN THE MATTER OF: Complaint C-2021-016 Kenneth Loveless, Respondent. Kim Benson, Complainant.	)	**THIRD MOTION FOR EXPEDITED HEARING ON MOTION TO DISMISS**

Respondent filed a motion to dismiss this matter on September 12, 2022. The matter was noticed for hearing before the Commission on September 15, 2022. Counsel for Respondent appeared via Zoom link and agreed to delay hearing on the motion until counsel for the Commission could return to work from a family emergency, at which time Respondent would request an expedited hearing for consideration of the motion to dismiss.

By email on September 26, 2022, Respondent's counsel received a Response to the Motion to Dismiss filed by Counsel for the Commission, with attachments. Respondent filed a timely reply on September 28, 2022.

Respondent filed a Motion for Expedited Hearing on September 27, 2022, requesting an expedited hearing before the Full Commission. By order dated September 28, 2022, the Commission denied Respondent's Motion for Expedited Hearing with leave to refile the Motion for consideration by the hearing panel as opposed to the Full Commission.

Respondent filed a Second Motion for Expedited Hearing on September 29, 2022, pursuant to the Commission's order, in which he requested a hearing on the Motion to Dismiss before the hearing

panel. By order dated September 30, 2022, the Commission denied Respondent's Second Motion for Expedited Hearing.

Respondent requests an expedited hearing before the Commission be held as soon as possible, so that the Commission has sufficient time to rule on the Motion to Dismiss antecedent to the election date of November 8, 2022. In its most recent Order, the Commission states, "Section 8-13-320(9)(b)(2) of the Act requires that the Motion to Dismiss be scheduled, heard, and that an Order be issued before October 7, 2022." Pursuant to Section 8-13-320(9)(b)(2), Respondent specifically requests that this hearing be held as soon as possible so that a ruling can be made no later than October 7, 2022.

Respectfully submitted,

s/ Desa Ballard
Desa Ballard (S.C. Bar No. 498)
Harvey M. Watson III (S.C. Bar No. 74053)
Haley Hubbard (S.C. Bar No. 103195)
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October 3, 2022

ATTORNEYS FOR RESPONDENT

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	BEFORE THE STATE ETHICS COMMISSION
IN THE MATTER OF: Complaint C-2021-016 Kenneth Loveless, Respondent. Kim Benson, Complainant.	)	**RESPONDENT'S REQUEST FOR REVIEW OF ORDER DENYING MOTION TO DISMISS**

A hearing on Respondent's Motion to Dismiss was held before Commissioner and panel chair F. Xavier Starkes on October 7, 2022. Following the hearing, the Commissioner Starkes issued an Order denying Respondent's Motion to Dismiss. Pursuant to Reg. 52-801 and 52-805, Respondent submits this request for review of Commissioner Starkes's Order dated October 7, 2022, by the full Commission. It is respectfully asserted that Commissioner Starkes erred in his decision in the following respects:

1. Commissioner Starkes erred in finding that the Notice of Hearing alleges conduct that violates the Ethics Act. Specifically, Commissioner Starkes erred in finding that Respondent's actions constitute a "governmental decision" that implicates § 18-13-700. By erroneously reading the statute to expand on the acts prohibited by § 8-13-700(B), the Commission has asserted counts against Respondent based on conduct that is not prohibited by the statute. Since those acts are not prohibited by the applicable statute, they are not actionable under § 8-13-700(B).
2. Commissioner Starkes erred in applying an expansive interpretation of S.C. Code Ann. § 8-13-700(B) which does not comport with the express and unambiguous language of the statute. During the hearing on Respondent's motion, Respondent set forth the evolution of the Commission's application of § 18-13-700(B) and provided Commissioner Starkes with past

Advisory Opinions evidencing the beginning of the Commission's expansive abut erroneous interpretation of the statute. These Advisory Opinions are not binding on the Commission or Respondent and have been used as an improper basis to expand the language of the statute, which the Commission has already held to be unambiguous in its requirements. *State Ethics Commission v. OHP and JDG,* Complaint No. 97-035 & 036 (order dated February 13, 1998). Since the language of § 8-13-700(B) is unambiguous, the Commission erroneously construed the statute by adding to it language that does not appear in the statute. *Hodges v. Rainey*, 341 S.C. 79, 533 S.E.2d 578 (2000). In his Order, Commissioner Starkes cites to past opinions in which the Commission has erroneously stated its more expansive reading of § 8-13-700(B). However, prior precedent or opinions which violate the express and unambiguous language of the statute cannot be allowed to perpetuate when they are clearly in error.

3. The Commission erred in finding that the Commission's complaint process complies with the Ethics Act. Commissioner Starkes's Order states that "the Commission's Executive Director determined that the Complaint alleged facts sufficient to constitute a violation of the Act and ordered an investigation." However, during the hearing on Respondent's motion, Respondent submitted a copy of the Commission's letter to Respondent dated February 17, 2021 (Exhibit G) which states, "On February 17, 2021, in accordance with Section 8-13-320(10) Code of Laws for SC 1976 as amended, the *State Ethics Commission* reviewed the complaint provided and determined that there are sufficient facts to warrant an investigation." (Emphasis added). Commissioner Starkes's Order directly contradicts the Commission's letter to Respondent, which was admitted into evidence at the hearing before Commissioner Starkes.

4. The Commissioner erred in finding that the Commission's complaint process complies with the Ethics Act despite the fact that the Notice of Hearing was not served on Respondent within ten

(10) days after determination of probable cause as required by the Ethics Act. Commissioner Starkes's Order indicates that a probable cause determination was made by the Commission on May 19, 2022,[1] however, it is undisputed that Respondent was not served with the Notice of Hearing until July 11, 2022, almost two months after probable cause was determined.

5. The Commissioner erred in concluding that S.C. Code § 8-13-700(B) has two different tracks, one for complaints by third parties and another for complaints by the Commission itself. It was this error that caused the procedural defects which occurred in this case, and which the Commissioner found was the proper construction of § 8-13-700(B)

Wherefore, for the reasons set forth above, Respondent requests an order granting a review by the full Commission of Commissioner Starkes's Order dated October 7, 2022, denying Respondent's Motion to Dismiss.

Respectfully submitted,

s/ Desa Ballard

Desa Ballard (S.C. Bar No. 498)
Harvey M. Watson III (S.C. Bar No. 74053)
Haley Hubbard (S.C. Bar No. 103195)
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October 17, 2022

ATTORNEYS FOR RESPONDENT

[1] While Commissioner Starkes's Order confirms that a probable cause determination was made on May 19, 2022, there is no public record to support this when the Commission made this determination.

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	BEFORE THE STATE ETHICS COMMISSION
IN THE MATTER OF: Complaint C2021-016	)	
Kim Benson, Complainant.	)	**RESPONDENT'S REQUEST FOR REVIEW OF DECISION AND ORDER**
Kenneth Loveless, Respondent.	)	

Pursuant to Reg. 52-801 and 52-805, Respondent Kenneth Loveless submits this request for review of the hearing panel's Decision and Order dated March 24, 2023, by the full Commission. It is respectfully asserted that the hearing panel erred in its decision in the following respects. He urges that the decision of the hearing Panel be vacated and the charges against him be dismissed.

1. The Panel erred in failing to address the scope of the Commission's statutory authority. As argued in Respondent's Motion to Dismiss, and in Respondent's proposed order, the Commission's "historical interpretation" of the statutes expand on the clear language of unambiguous statutes and constitute the imposition of sanctions for conduct that is not prohibited by the State Ethics Act. Respondent incorporates his Motion to Dismiss, as more fully addressed in Respondent's Request for Review filed October 17, 2022, which is incorporated herein as fully as if repeated verbatim.
2. The Panel erred in finding that the Commission established by a preponderance of the evidence that Respondent violated three counts of § 8-13-700(B) when the evidence presented clearly established that Respondent did not "make, participate in making, or in any way attempt to use his office…to influence a governmental decision…" of any kind. The evidence established without dispute that Respondent did not "make, participate in making or in any way attempt to

use his office" in any way as it related to the construction contracts between District 5 and Contract Construction Inc.

3. The Panel erred in finding that Respondent's March 24, 2020 letter to District Superintendent Christina Melton inquiring about construction work of a district facility by Contract Construction, Inc. constitutes a violation of § 8-13-700(B) when Melton's own employment contract with the District required that any questions Respondent had regarding the District must be addressed to the Superintendent.
4. The Panel erred in concluding that Respondent's participation in District Board meeting discussions regarding the construction of Piney Woods Elementary School by Contract Construction Inc. violate S.C. Code § 8-13-700(B) when the Commission did not identify or present evidence of any government decisions which Respondent attempted to or did influence.
5. The Panel erred in failing to recognize that it was Contract Construction Inc., and not Respondent, that created the contractual relationship which formed the basis of these charges. The undisputed testimony is that Respondent personally had nothing to do with bidding the SLED job, and knew nothing about it until the competitive bid process was concluded and the subcontract awarded to Loveless Commercial Contracting Inc.
6. The Commission erred in failing to recognize that the contract between Loveless Commercial Contracting Inc. and Contract Construction Inc. was exempt from the State Ethics Act because it was the subject of a competitive bid process. S.C. Code § 8-13-775.
7. The Panel erred in recommending the assessment of a fine against Respondent, because the Commission lacks the statutory authority levy a fine on someone unless they are a "public officer, public member or public employee to pay a civil penalty. . ." at the time the fine is assessed. S.C. Code § 8-13-320 (L)((i). It is undisputed that Respondent ceased being a public officer in

November, 2022, which deprived the Commission of any statutory authority to fine him after that date. Had the Commission expedited the hearing as Respondent had requested earlier, he would have remained a public official at the time of the hearing in this matter.

8. The Panel erred in finding that Respondent was required to recuse himself, pursuant to § 8-13-700(B), from discussions regarding the construction of Piney Woods Elementary School by Contract Construction Inc when S.C. Code § 8-13-775 expressly permits Board members to participate in discussion of vendors with which they have unrelated contracts, as long as the Board member does not "perform[] an official function" regarding the contract. SEC AO93-054.
9. The Panel erred in finding that Respondent's conduct violated § 8-13-700(B) when there was no evidence presented that Respondent performed any official function regarding the district's contract with Contract Construction Inc. or Respondent's own company's contract with Contract Construction Inc. on the SLED project.
10. The Panel erred in finding that Respondent's conduct violated 8-13-700(B) when it was undisputed that Respondent did not take action or vote on anything regarding Contract Construction at any time during his service on the Board.
11. The Commission's recommendation violates Respondent's First Amendment rights to speak on issues of public concern regarding District 5 when he is a sitting member of the Board. The logic that a professional with expertise in a field must leave his expertise behind when carrying out his duties as a public official is perverting the entire purposes of the State Ethics Act.

For the reasons set forth above, Respondent respectfully requests an order finding the recommendations of the Panel dated March 24, 2023 to be in error, and a decision by the full Commission vacating the Panel's findings and recommendations and dismissing the charges against Respondent.

Respondent requests a public hearing before the Full Commission, after full briefing, to present arguments on the errors committed by the Hearing Panel.

Respectfully submitted,

s/ Desa Ballard
Desa Ballard (S.C. Bar No. 498)
Harvey M. Watson III (S.C. Bar No. 74053)
Haley Hubbard (S.C. Bar No. 103195)
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haley@desaballard.com

ATTORNEYS FOR RESPONDENT

April 3, 2023

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	BEFORE THE STATE ETHICS COMMISSION
IN THE MATTER OF:	)	
Complaint C2021-016	)	
Kim Benson, APPELLATE.	)	**NOTICE OF APPELLATE HEARING**
Kenneth Loveless, APPELLANT.	)	

Desa Ballard, Attorney for Appellant Kenneth Loveless, served a Request for Review of Decision and Order on the State Ethics Commission on April 3, 2023. The State Ethics Commission will, therefore, convene a formal appellate hearing into the matter, in accordance with State Ethics Commission Regulations, 52 S.C. Code Ann. Regs. 802 (2013 Cum. Supp.) on January 18, 2024 at 9:30 a.m. at the State Ethics Commission Hearing Room located at: 201 Executive Center Drive Suite 150, Columbia, South Carolina 29210.

Pursuant to 52 S.C. Code Ann. Regs. 803, the Appellant shall file any additional briefs within ten (10) days of the date of service of this notice. In the event the Appellant fails to appear, he will have waived his hearing and judgment will stand.

Meghan Walker Dayson
Executive Director

Dated this 30th day,
of October 2023.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND) BEFORE THE STATE ETHICS COMMISSION
)
IN THE MATTER OF:)
)
Complaint C2021-016)
)
Kim Benson,) **AMENDED**
APPELLATE.) **NOTICE OF APPELLATE HEARING**
)
Kenneth Loveless,)
APPELLANT.)
)

Desa Ballard, Attorney for Appellant Kenneth Loveless, served a Request for Review of Decision and Order on the State Ethics Commission on April 3, 2023. The State Ethics Commission will, therefore, convene a formal appellate hearing into the matter, in accordance with State Ethics Commission Regulations, 52 S.C. Code Ann. Regs. 802 (2013 Cum. Supp.) on March 21, 2024 at 9:30 a.m. at the State Ethics Commission Hearing Room located at: 201 Executive Center Drive Suite 150, Columbia, South Carolina 29210.

Pursuant to 52 S.C. Code Ann. Regs. 803, the Appellant shall file any additional briefs within ten (10) days of the date of service of this notice. In the event the Appellant fails to appear, he will have waived his hearing and judgment will stand.

Meghan W Dayson

Meghan Walker Dayson
Executive Director

Dated this 17th day,
of January 2024.

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	BEFORE THE STATE ETHICS COMMISSION
IN THE MATTER OF: Complaint C-2021-016 Kenneth Loveless, Respondent. Kim Benson, Complainant.	)	**REQUEST FOR SUBPOENAS**

Pursuant to S.C. Code § 8-13-320(f) and (j), Respondent Kenneth Loveless (hereafter "Loveless") requests the issuance of subpoenas for documents and depositions to the following individuals and/or entities to appear at the final hearing in this matter to offer additional evidence and testimony, pursuant to SEC Regulation 52-807, relevant to the matters currently pending:

1. To the custodian of the records of the Office of Inspector General for any and all documents, correspondence, and communications contained on a compact disc sent by Brian D. Lamkin to Representative Jay Kilmartin on October 19, 2023 in OIG File No. A-4-0139 as described in **Exhibit A**, attached hereto and incorporated herein.
2. To the Office of Inspector General commanding the deposition of State Inspector General Brian D. Lamkin.
3. To the State Ethics Commission and its Executive Director, Meghan Walker, for any and all documents, correspondence, and communications sent to or received from any employee, agent, investigator, or staff of the Office of Inspector General as set forth on page 1 of the August 18, 2023 report of the Office of the State Inspector General regarding Piney Woods Elementary School Construction; and a list setting forth all individuals from

the State Ethics Commission who were interviewed in connection with OIG's report described above.

4. To Thomas William McGee III, Nelson Mullins, 1320 Main Street, Columbia, SC 29201 for all documents provided by Gregory Hughes of Contract Construction Inc. as described in the letter dated September 13, 2023 from Brian D. Lamkin, attached hereto as **Exhibit B** and incorporated herein by reference.

Respectfully submitted,

s/ Haley Hubbard
Desa Ballard (S.C. Bar No. 498)
Harvey M. Watson III (S.C. Bar No. 74053)
Haley Hubbard (S.C. Bar No. 103195)

BALLARD & WATSON
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haley@desaballard.com

ATTORNEY FOR RESPONDENT

February 13, 2024

State of South Carolina
Office of the Inspector General

October 19, 2023

OIG File No.: A4-0139

Representative Jay Kilmartin
South Carolina House of Representatives
320-A Blatt Building
Columbia, SC 29201

Dear Representative Kilmartin,

The Office of the State Inspector General (SIG) is in receipt of your request for records, received 10/6/23, pursuant to the Freedom of Information Act, South Carolina Code of Laws, §30-4-10 et seq. The request specifically sought all notes, documentation, emails and other communications supporting the statement contained in the SIG *Review of Project Management and Internal Controls – Piney Woods Elementary School Construction, School District Five of Lexington & Richland Counties*, "A subsequent SIG review of supporting documentation provided by CCI identified sufficient documentation that reduced the final total of questioned disbursements to $38,362.69." You have also asked for all correspondence and documents shared with district officials related to the determination.

Following an examination and review conducted at no charge, I have determined this office possesses records responsive to your request. Please find enclosed a compact disc containing work papers associated with the review of questioned disbursements.

I hope this response satisfies any concerns you may have had.

Sincerely,

Brian D. Lamkin
State Inspector General

BDL/lw

Encl: One (1) compact disc

OFFICE OF THE INSPECTOR GENERAL • ENOREE BUILDING • 111 EXECUTIVE CENTER DRIVE, SUITE 204 • COLUMBIA, SOUTH CAROLINA 29210
OFFICE: 803.896.4729 • FAX: 803.896.4309 • EMAIL: OIG@OIG.SC.GOV • TOLL FREE HOTLINE: 1.855.SCFRAUD (1.855.723.7283)

EXHIBIT
tabbies
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State of South Carolina
Office of the Inspector General

Sent via Electronic Delivery

September 13, 2023

OIG File NO: 2023-6169-I

Thomas William McGee, III
Nelson Mullins
1320 Main Street
Columbia, SC 29201

Re: Verification of Return/Destruction of Client Privileged Materials – Contract Construction, Inc.

Dear Mr. McGee:

Please accept this letter as attestation that the Office of the State Inspector General (OIG) has destroyed and no longer retains any privileged business record or other material provided for review by your client Mr. Gregory Hughes of Contract Construction, Inc. (CCI)

On June 19, 2023, Mr. Hughes voluntarily agreed to provide access to the OIG through your office to certain business records related to invoices and supporting documentation as part of CCI's construction of the Piney Woods Elementary School (PWES). The purpose of the business records review was to assist the OIG in the identification of additional supporting documentation related to the PWES project.

This access was limited in duration to the period of the OIG's investigation of LR5 with the understanding the OIG would not retain copies of the records. The OIG released its report to the public on August 18, 2023. South Carolina Code of Laws, §1-6-35 (E) established that information gathered during the OIG investigation was confidential up to ten days after the public release of the report. It is the OIG's practice not to retain privileged or sensitive records, e.g., HIPPA, FERPA or PII, but to return or destroy the records at the direction of the owner of the records at the conclusion of the investigation. At your direction on behalf of your client, the OIG has destroyed and no longer retains these records.

I want to extend my appreciation to you, and in particular Mr. Hughes, for working with the OIG and bringing closure to this matter. If you or Mr. Hughes have any questions regarding this matter do not hesitate to call me.

Sincerely,

Brian D. Lamkin
State Inspector General

OFFICE OF THE INSPECTOR GENERAL • ENOREE BUILDING • 111 EXECUTIVE CENTER DRIVE, SUITE 204 • COLUMBIA, SOUTH CAROLINA 29210
OFFICE: 803.896.4729 • FAX: 803.896.4309 • EMAIL: OIG@OIG.SC.GOV • TOLL FREE HOTLINE: 1.855.SCFRAUD (1.855.723.7283)

Wiser, Leslie - OIG

From: Billy McGee <billy.mcgee@nelsonmullins.com>
Sent: Monday, June 19, 2023 3:24 PM
To: Wiser, Leslie - OIG
Cc: Lamkin, Brian
Subject: [External] RE: CCI records

Les,
I talked with Greg and he has a lot of staff out now and is not able to get everything pulled this week. He said he would be happy to talk with you sometime this week if that would be of help given your timeframe – would you be open to this?
Best,
Billy

From: Wiser, Leslie - OIG <LeslieWiser@oig.sc.gov>
Sent: Monday, June 19, 2023 10:06 AM
To: Billy McGee <billy.mcgee@nelsonmullins.com>
Cc: Lamkin, Brian <BrianLamkin@oig.sc.gov>
Subject: CCI records

Billy,

If this helps, we are not interested in taking possession of CCI documents. Viewing them will be satisfactory.

Can you provide an estimate of when we can meet to look at the backup records? We hope to complete our report this week.

Les

Sent from my iPhone

Confidentiality Notice
This message is intended exclusively for the individual or entity to which it is addressed. This communication may contain information that is proprietary, privileged, confidential or otherwise legally exempt from disclosure. If you are not the named addressee, you are not authorized to read, print, retain, copy or disseminate this message or any part of it. If you have received this message in error, please notify the sender immediately either by phone (800-237-2000) or reply to this e-mail and delete all copies of this message.

Wiser, Leslie - OIG

From: Lamkin, Brian
Sent: Tuesday, September 12, 2023 8:22 AM
To: Billy McGee
Cc: Wiser, Leslie - OIG
Subject: Quick Question regarding CCI documents

Importance: High

Mr. McGee:

I left you a v/m yesterday regarding the documents you permitted us to review under a confidentiality/privileged understanding.

When you have a moment would you call me on my cell phone regarding these items? I will be in Manning most of the day, but will be available for the next 1 ½ hours while in the car, and available after 2pm.

Thank you,

Brian D. Lamkin
State Inspector General
SC Office of the Inspector General
111 Executive Center Drive, Suite 204
Columbia, SC 29210
(803) 896-1287 (direct)
(803) 605-3161 (c)
www.oi .sc. ov

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	BEFORE THE STATE ETHICS COMMISSION
IN THE MATTER OF: Complaint C-2021-016 Kenneth Loveless, Respondent. Kim Benson, Complainant.	)	**MOTION TO ADMIT ADDITIONAL EVIDENCE AND MOTION TO STAY PROCEEDINGS**

Pursuant to SEC Reg. 52-807(B), Respondent Kenneth Loveless (hereafter "Respondent") seeks an order from the Commission allowing the admission of additional evidence into the Record on Appeal, and further moves for a stay of the formal hearing set for March 21, 2024 to permit him to gather the evidence, the existence of which was not known of at the time of the original hearing. In support of his motion, Loveless would show:

1. This matter was initiated by the State Ethics Commission following a complaint from a member of the public. Respondent moved to dismiss the matter on September 11, 2022, and the motion was denied by order dated October 6, 2022.
2. This matter was tried before a sub-panel of the Commission on February 16, 2023, and the subpanel issued its report entitled "Decision and Order" on March 24, 2023.[1]
3. Respondent filed a Request for Review of Decision and Order on April 3, 2023, and the Executive Director has scheduled a hearing before the Full Commission to occur on March 21, 2024.

[1] None of the Complainant's issues formed the basis for the findings that were asserted in the Notice of Hearing or the Decision and Order.

4. Respondent has requested the issuance of certain subpoenas, which request was submitted to the Commission on February 13, 2024. Each of the subpoenas seeks documents and/or testimony of which Respondent was not aware, nor could he have been aware, prior to the hearing held before the subpanel on February 16, 2023.

5. Respondent seeks to admit into the record any relevant evidence produced in response to those subpoenas as additional evidence to be considered by the full Commission, pursuant to SEC Regulation 52-807.

6. Among other things, Respondent is informed and believes that the Commission and the Office of the State Inspector General ("OIG") have exchanged communications and/or documents pertaining to Respondent and the instant matter pending before the Commission and the OIG's investigation into the construction of Piney Woods Elementary School as indicated in the OIG's report issued in August 2023. A copy of the OIG's report, which Respondent seeks to add to the record before the full Commission, is attached and incorporated herein as **Exhibit A**.

7. On page 1, Paragraph C of the OIG's report it states that the State Investigator General "conducted interviews of current and former District leadership…as well as…the State Ethics Commission" in the course of its investigation.

8. Respondent submitted a FOIA request to the Commission on or about January 23, 2024 seeking to obtain all documents sent to and received from the OIG concerning Respondent's matter. In response, the Commission produced an email between an investigator from the OIG and the Commission in which the OIG requested a recording of the hearing in this matter held on February 16, 2023, and exhibits related to this case. This request was made, and a copy of the recording was provided to the OIG before the

Commission issued a final order on March 24, 2023. Further, the Commission provided the recording to the OIG without providing notice to Respondent.

9. The Commission has advised that the only item it provided to the OIG was the audio recording from the hearing. Respondent is seeking the issuance of certain subpoenas to the OIG in order to independently verify this claim and obtain any information that was exchanged between the Commission and the OIG since the OIG asserts in its report that it interviewed the State Ethics Commission in connection with its investigation into the construction of Piney Woods Elementary School. The Executive Director of the Commission has denied that the OIG interviewed any witnesses employed by or associated with the Commission in connection with the OIG's investigation.

10. Respondent is informed and believes that the information and communications exchanged between the OIG and the Commission are relevant and should be admitted into the record because Respondent was a sitting member of the Lexington-Richland School District Five School Board during the construction of Piney Woods Elementary School, and the allegations made against Respondent in this matter stem primarily from the construction of this specific District Five facility.

11. The record before the Commission also contains information regarding Respondent that was inappropriately placed on the record by Thomas McGee and Tucker Player in bad faith that are wholly irrelevant to the matter before the Commission or the OIG's investigation. (See Motion to Quash Subpoena of Michael Cates and Kim Benson and attachments; See Motion to Quash Subpoena of Greg Hughes and attachments).

12. Additionally, Respondent is informed and believes that an employee of the OIG signed the registry and attended the hearing concerning Respondent's matter of February 16, 2023.

13. To provide sufficient time for Respondent to obtain and review any evidence following the issuance of the requested subpoenas and prepare a brief including that evidence, if granted, Respondent requests a stay of the proceedings in this matter.

14. This request is made to ensure that Respondent is afforded the opportunity to discover and include all relevant evidence in the record for a final and full hearing on this matter.

Wherefore, having fully set forth the grounds for the relief south herein, Respondent moves for an order admitting additional evidence into the Record on Appeal and further moves for the merits hearing to be stayed until Respondent has the opportunity to complete the discovery of additional evidence to be considered at the final hearing in this matter.

Respectfully submitted,

s/ Haley Hubbard
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ATTORNEYS FOR RESPONDENT

February 20, 2024

Exhibit A

Office of the State Inspector General

Brian D. Lamkin

Review of Project Management and Internal Controls – Piney Woods Elementary School Construction School District Five of Lexington & Richland Counties

Case #2023-6169-I

August 2023

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District Response to the Report

Introduction

The South Carolina Office of the State Inspector General (SIG) was established by the South Carolina General Assembly in 2012 (Act No. 105) for the purpose of investigating and addressing allegations of fraud, waste, abuse, mismanagement, misconduct in agencies, specifically the executive branch of state government. The SIG's authorities are found in South Carolina Code of Laws, §1-6-10 et seq.

In 2022, the South Carolina General Assembly passed S. 202 (Act No. 223) which expanded the SIG's authority, with limitations (§1-6-35), to investigate public schools and school districts, public charter schools and authorizers, and voluntary associations that establish and enforce bylaws or rules for interscholastic sports competition for public secondary schools.

The purpose of this report is to provide a road map for the School District Five of Lexington & Richland Counties' (District) leadership and Board of Trustees (Board) to improve in its delivery of quality education to its students in a unified effort. This investigation focused specifically on procurement matters related to the Piney Woods Elementary School construction and the District's overall project management.

The SIG extends its appreciation to Dr. Akil Ross, District staff and Board members for their cooperation, providing access to documents and business records, and their intentionality of seeking solutions to the issues identified by the SIG. The SIG also extends its appreciation to current and former teachers, administrators, Board members and contractors for the valuable input and access to supporting documentation provided to the SIG during this investigation.

I. Background

A. Predicate

At the request of the Board of Trustees for School District Five of Lexington & Richland Counties (District), South Carolina Governor Henry McMaster, by letter dated 1/17/23, requested the Office of the State Inspector General (SIG) to initiate and conduct a review or investigation of the District's procurement-related issues associated with the Piney Woods Elementary School (PWES) construction project pursuant to South Carolina Code of Laws, §1-6-35. In addition, the request provided for the SIG to initiate and conduct a review or investigation of any different or additional allegations of fraud, waste, abuse, mismanagement, misconduct, violations of state or federal law, or wrongdoing as the SIG deemed appropriate. *(See Appendix A)*

B. Scope and Objectives

The scope and objectives of this limited review examined contractor billing, actions of the procurement selection committee, the District's compliance with its procurement code, and contractor-related transactions in light of the issues described below regarding the PWES construction project:

- Internal controls over contractor billing and unexplained discrepancies in invoices, payments, and contingency allowances;
- Internal controls over the procurement selection committee;
- Potential conflicts of interest between or among the procurement selection committee members, the general contractor or subcontractors;
- Potential violations of the District's procurement code or policy; and
- Compliance with the "agreed upon procedures" for school district procurement audits as approved by the Division of Procurement Services, State Fiscal Accountability Authority.

C. Methodology

The SIG reviewed relevant documentation, including emails, provided by the District, and applicable state and federal laws, regulations, and policies. The SIG conducted interviews of current and former District leadership, trustees, employees, representatives, project managers, and contractors for the PWES project, as well as the state's Division of Procurement Services, the Office of State Engineer officials, the South Carolina Department of Education (SCDE) officials, the Office of the State Auditor, the State Ethics Commission, external auditors that provided audit services to the District, and other persons associated with the PWES project.

Reviews and investigations by the SIG are conducted in accordance with professional standards set forth by the Association of Inspectors General's *Principles and Standards for Offices of Inspector General*, often referred to as the "Green Book." This investigation used the preponderance of evidence standard.

D. School District Five of Lexington & Richland Counties

The District serves an enrollment of approximately 17,000 students. The District has thirteen elementary schools, two intermediate schools, three middle schools, four high schools, a career and technology center, one Center for Advanced Technical Studies and one alternative school. Currently, the District employs a full-time equivalent professional staff of approximately 2,500 employees.

E. Board of Trustees

A seven-member Board of Trustees (Board) governed the District and had fiscal autonomy to approve and administer the District's budget. The Board operated in accordance with the SC Code of Laws Section 59-19-

90 as referenced in the District's Board policy BBA Board Powers and Duties. The District trustees and superintendents for the period of this review are depicted in Table A.

Table A

Trustees Nov. 2016 - Nov. 2018	Trustees Nov. 2018 - Nov. 2020	Trustees Nov. 2020 - Nov. 2022
Mr. Robert Gantt (chair)	Mr. Robert Gantt (chair) resigned chair position 2/20*	Mrs. Jan Hammond (chair)
Mrs. Jan Hammond	Mrs. Jan Hammond	Mrs. Catherine Huddle
Ms. Beth Hutchison	Ms. Beth Hutchison	Mrs. Rebecca Blackburn Hines
Mrs. Ellen Baumgardner	Mr. Ken Loveless	Mr. Ken Loveless
Mr. Larry Haltiwanger	Mrs. Nikki Gardner	Mrs. Nikki Gardner
Mr. Ed White	Mr. Ed White	Mr. Matt Hogan
Mr. Michael Cates	Mr. Michael Cates *served as chair 3/20-11/20	Mr. Ed White resigned 6/21, replaced by Tifani Moore 11/21
Superintendent Dr. Stephen Hefner thru 6/18 Dr. Christina Melton 7/18	**Superintendent** Dr. Christina Melton	**Superintendent** Dr. Christina Melton thru 6/21 Dr. Akil Ross. Sr. interim until 1/22

II. Piney Woods Elementary School Contract Management

The SIG reviewed various contract documents related to the PWES construction project, contract requirements and conditions, payment requirements, and payment/support documents. The review identified deficiencies in contract management, including lack of contract oversight and questioned disbursements. An example of a lack of contract oversight involved a contractor related-party matter, which was identified at the outset of the contract but remained unaddressed by the contract management staff and legal counsel. The PWES contract management is more fully discussed below.

A. Summary of Piney Woods Elementary School Contracts

On 5/3/18, the District issued a Request for Qualifications (RFQ) for architectural design and engineering services (Solicitation #2018-044) to design Elementary School #13 (ES-13) on the Amicks Ferry Road property. On 7/16/18, the Board unanimously approved the selection (7–0 vote) of Quackenbush Architects + Planners, LLC (Quackenbush) as the architectural design professional for the project. On 12/18/18, the District executed a contract with Quackenbush.

On 8/9/18, the District issued an RFQ/Request for Proposals (RFP) for Construction Manager [sic] at Risk (CMAR) Services for ES-13 (Solicitation #2019-007). On 12/10/18, the Board approved the selection (5–2 vote) of Contract Construction, Inc. (CCI). On 12/19/18, the District executed a contract with CCI to be the CMAR for ES-13, subsequently named the Piney Woods Elementary School. The guaranteed maximum price, after amendments, was $26,569,355, which was below the bond cap of $30,000,000 set by the Board.

The Office of School Facilities (OSF), SCDE reviewed the design development and construction plans, conducted in-process and final inspections based on applicable building codes, and issued a certificate of occupancy to the District on 7/30/21.

B. Construction Management at Risk (CMAR) Services Contract

The District utilized the CMAR delivery method for the construction of the PWES. The South Carolina Consolidated Procurement Code of the South Carolina Code of Laws, §11-35-2910 (5) defined CMAR as:

> *"…a project delivery method in which the governmental body awards separate contracts, one for architectural and engineering services to design an infrastructure facility and the second to a construction manager at-risk for both construction of the infrastructure facility according to the design and construction management services."*

The Associated General Contractors of America described the CMAR method as:

> *"Under a CM-at-Risk contract, the Agency engages a project Designer and qualified CM under a negotiated contract to provide both preconstruction services and the construction of the project with a fixed fee and Guaranteed Maximum Price ("GMP")…. CM-at-Risk allows for the early project involvement of a CM who can partner with the A/E and Agency to provide constructability assistance, estimating, design review and early procurement opportunities. Additionally, the start of construction can begin prior to 100% complete design documents. The CM at-Risk typically also provides detailed cost estimates early in the design phase, so that value engineering and cost reduction ideas can be considered when they are the most easily addressed."*[1]

On 12/19/18, the District and CCI executed American Institute of Architects (AIA) Document A133-2009 "Standard Form of Agreement Between Owner and Construction Manager as Constructor" for the PWES construction project. This established the basis of payment as the cost of work plus a fee with a "Guaranteed Maximum Price (GMP)."

The award included a pre-construction services fee of $50,000 and a construction management fee of 3.85% of the GMP. The total GMP of the District/CCI contract was $26,569,355. General conditions of the CCI contract are detailed in the AIA Document A201-2007, "General Conditions of the Contract for Construction," and Amendment 1, and Amendment 2.

The Sitework Guaranteed Maximum Price (SGMP) Amendment included the cost of work and the construction manager's fee of $3,656,858. The Building Guaranteed Maximum Price (BGMP) Amendment included the cost of work and the construction manager's fee of $22,862,497, District-accepted enhancements of $542,842, and substantial completion of work by 5/31/21, with final completion of work 60 days later. On 1/27/22, CCI returned $369,467.25 in savings to the District, which reduced the final outlay/cost to the District to $26,199,887.75, as set forth in Table B.

Table B

Summary of CCI CMAR Contract Reconciliation	
Pre-construction services fee	$50,000.00
Amendment 1 SGMP	$3,656,858.00
Amendment 2 BGMP	$22,862,497.00
Contractual GMP	**$26,569,355.00**
Funds Returned to the District	$369,467.25
Final Outlay by the District	**$26,199,887.75**

[1] "Construction Management at Risk Benefits, Criteria and Justification Criteria," Associated General Contractors of America and National Association of State Facilities Administrators, June 2020, p.8.

On 9/27/22, CCI also returned $14,868.62 with interest based on the $369,467.25 reduction of the GMP in the construction manager's fee.

C. Billing Exceptions Identified by the SIG

Billing to the District was documented in the Contractor's Application for Payment (pay app), an AIA form[2] commonly used in the construction industry. The form contained the contractor's application for payment, a change order summary, certifications by both the contractor and the architect, and detailed costs. Each pay app contained a monthly Schedule of Values (SOV) Update and Job Cost Breakdown, and periodically contained a Contingency Accounting Activity Log.

During the contract delivery period, the District received 26 pay apps totaling $26,199,887.75 that included $963,020 for the construction management fee based on 3.85% of the GMP. The final adjustment of $1,013,164 within the GMP on pay app #26 resulted in the contingency balance of $369,467.25 returned to the District on 1/27/22.

An initial examination and assessment of the District's PWES records identified exceptions to sound contract management that resulted in $418,556.38 of questioned disbursements. At the SIG's request, the current chief financial officer (CFO) identified and analyzed existing District documentation that satisfied $21,855.73 of the foregoing amount, resulting in questioned disbursements of $396,700.65. The documentation identified by the CFO was available to the PWES contract management team during the construction of the school. A subsequent SIG review of supporting documentation provided by CCI identified sufficient documentation that reduced the final total of questioned disbursements to $38,362.69, which is more fully described below.

Unsupported Payment of Travel Expenses

For 18 of the 26 pay apps, the District paid $20,088.58 to CCI for fuel, travel and phone costs, and per diem travel expenses for the project manager and supervisor without proper supporting travel expense reports or documentation.

Best practices for internal controls require that all travel documents should be signed and approved. In addition, a credit for "Fuel & Travel" was applied in pay app #20 for $3,304.95 with no documentation or explanation referenced. Set forth in Table C is the summary detail of unsupported fuel and travel/per diem expenses.

Table C

Item Code & Description		Expense
1210	Fuel & Travel	$20,627.86
1212	Per Diem Expense	$2,765.67
Total		$23,393.53
1210	Fuel & Travel [pay app #20]	($3,304.95)
Total Net		**$20,088.58**

Lack of Invoices in Support of Payments

The District made 14 payments totaling $1,939.50 without sufficient supporting invoice documentation for vendors as set forth in Table D.

[2] AIA Document G702-1992. AIA Document A201-2007 Section 9.3.1.3 provided, "…Each Application for Payment shall be accompanied by all information and materials required to comply with the requirements of the contract… or reasonably requested by the Owner or the Architect."

Table D

Code	Subcontractor	Total	Invoices
1552	Carolina Connect Internet	$956.74	11
1209	Lowes	$982.76	3
	Total Payments	**$1,939.50**	**14**

Incorrect Billing

The SIG determined that eight of the 70 invoices provided by CCI for services rendered by Owens Cleaning Services, reflected hours billed for various hourly rates were incorrect, as shown in Table E.

Table E

Pay App	Invoice #	Invoiced Amount	Corrected Amount	Variance	Explanation
14	26	$6,350	$6,728	($378)	underbilled
17	38	$6,870	$6,278	$592	overbilled
17	40	$5,910	$6,062	($152)	underbilled
17	41	$5,716	$5,868	($152)	underbilled
19	42	$6,816	$7,024	($208)	underbilled
19	43	$7,468	$7,688	($220)	Underbilled
22	55	$5,168	$5,344	($176)	Underbilled
23	69	$1,701	$1,627	$74	Overbilled
Total Charged		**$45,999**	**$46,619**	**($620)**	**Underbilled**

Business License Fees

The District paid CCI for business license fees on two occasions totaling $28,221 to the Town of Irmo, the location of the CCI Office. However, CCI determined that the business license fee for pay app #25 for $11,266.39 was for another project and should not have been included in the cost of the work for PWES.

Table F

Pay App	Business License Fees	
4	Town of Irmo	$16,954.61
25	Town of Irmo	$11,266.39
	Total	$28,221.00
	Reimbursement for Pay App 25	($11,266.39)
	Total Net	**$16,954.61**

CCI reimbursed the District $11,926.55 via check #60099, dated 10/27/22, for the errant invoicing of the Irmo business license and included interest in its reimbursement. In doing so, the business license questioned costs decreased to $16,954.61 as shown in Table F.

D. Internal Controls Over Contract Payments

Payments made by the District followed CCI's submission of pay apps. The SIG determined the District relied upon the certifications provided by CCI and the architect (Quackenbush) that the work was completed in accordance with the contract. The CCI certification on the pay app specifically provided that:

"The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due."

The architect's certification on the pay app specifically provided that:

"In accordance with Contract Documents, based on on-site observations and the data comprising this application, the Architect certified to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor was entitled to payment of the AMOUNT CERTIFIED."

The SIG determined the architect's representative walked the site every two weeks to review progress of work performed and documented the results in a report for the District. The representative reviewed the pay apps and distributed them to the various project engineers for review to ensure accuracy and appropriateness. Furthermore, the representative merely confirmed the work was completed and that the receipts seemed reasonable, but did not verify the amounts. [SIG emphasis]

A District official stated to the SIG, *"The pay application submitted by CCI served as the invoice for the District. The District's project manager approved each invoice and verified that the items included were complete."* The District's director of facilities and the construction management consultant both advised they reviewed the pay apps to ensure they were consistent with the construction progress, but did not verify the pay app amounts were supported by the appropriate documentation/invoices.

The architect's certifications occurred in a relatively short timeframe after the CCI certifications, either the same day or the following. The current CFO found no evidence the District utilized additional scrutiny over the construction progress and payments.

The close-in-time pay app certifications are highlighted in Table G.

Table G

App #	CCI Certification Date	Architect Certification Date	Inv. Date	Voucher	Total PO 2002969 Payments
2	11/25/2019	11/25/2019	11/30/2019	1426	$370,527.77
3	1/20/2020	1/20/2020	12/31/2019	1493	$593,030.50
12	10/6/2020	10/7/2020	10/7/2020	1248	$2,070,280.21
13	11/11/2020	11/11/2020	11/11/2020	1372	$2,071,760.56
14	12/3/2020	12/3/2020	12/3/2020	1426	$1,620,486.42
16	2/1/2021	2/2/2021	2/2/2021	1583	$1,042,283.70
17	2/24/2021	2/25/2021	2/28/2021	1655	$519,774.00
18	4/13/2021	4/14/2021	3/31/2021	1730	$760,291.41
20	6/4/2021	6/4/2021	6/4/2021	1886	$500,986.89
21	7/2/2021	7/2/2021	6/30/2021	2063	$221,298.13
22	8/3/2021	8/4/2021	7/31/2021	1123	$878,647.78
23	9/2/2021	9/2/2021	9/22/2021	1230	$465,188.62
				Total	**$11,114,555.99**

E. Summary Analysis of Questioned Costs

The District missed opportunities to provide effective oversight that resulted in questioned costs of $396,700.65, which constituted 1.5% of the total amount paid for the PWES project. Subsequent investigation by the SIG identified sufficient documentation provided by CCI that reduced the final total questioned costs to $38,362.69.

To put this in perspective, the $38,362.69 in questioned costs amounted to 0.14% of the overall GMP of $26,569,355.

The SIG assessed that District officials did not secure sufficient documentation that supported the pay app requests and that the District failed to provide proper contract management and oversight of the payment process. These questioned costs by themselves, however, are not indicative of fraud or illegitimate reimbursements; rather, they point to weaknesses in the District's internal controls over contract management.

F. Contingency Allowances and Change Orders

Board minutes from the 12/10/18 meeting reflected a 5-2 vote to contract with CCI for an amount *"not exceeding $30 million dollars of general obligation bonds."* CCI presented a budget status report at each level of the design and construction progress to the Board. CCI did not exceed the contractual GMP amount of $26,569,355 approved by the Board.

As part of the contract, CCI established the $26,569,355 GMP that included contingency allowance items in the SOV. Each pay app submitted by CCI identified SOV expenditures. CCI rendered contractual services within the established GMP and returned to the District $369,467.25 in unused contingency funds. On 7/30/21, the OSF, SCDE issued a Certificate of Occupancy for the PWES project, the contracted date for final completion of the work.

As established in the CMAR contract, contingency allowances were permissible and normal among CMAR industry standards. Additionally, the CMAR contract provided for the following:

- § **2.2.3** *A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, allowances, contingency, and the Construction Manager's Fee.*
- § **2.2.4** *In preparing the Construction Manager's Guaranteed Maximum Price proposals, the Construction Manager shall include its contingency for the Construction Manager's exclusive use to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order.*
- § **5.2.1** *The Construction Manager guarantees that the Contract Sum shall not exceed the Overall Guaranteed Maximum Price, as it is amended from time to time. To the extent the Cost of the Work exceeds the Overall Guaranteed Maximum Price, the Construction Manager shall bear such costs in excess of the Overall Guaranteed Maximum Price without reimbursement or additional compensation from the Owner.*
- § **5.2.2** *The Overall Guaranteed Maximum Price is subject to additions and deductions by Change Order as provided in the Contract Documents and the Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.*

CCI did not use change orders to adjust the monthly SOV, but included a Contingency Accounting Activity Log along with the SOV Update and Job Cost Breakdown with the pay apps.

By contrast, the AIA in its publication The Fundamentals of Change Orders in Construction provides in part:

> *"The change order is fundamental to construction contracting as the primary means to modify the contract for construction…. Common reasons for construction change orders [include] unforeseen or differing site conditions…discovery of hazardous materials…delays beyond the contractor's, architect's or owner's control…which may lead to reasonable delays and associated costs…. Lastly, at closeout, contract adjustments may be required to account the aforementioned items, back charges, liquidated damages or early completion bonuses, and any punch list credits due the owner for incomplete or unsatisfactory work not remedied."*[3]

To ensure compliance with the CMAR contract, the District contracted with Mead & Hunt for a closeout assessment of the completed project in November 2021, in accordance with a new policy the Board adopted on 10/11/21, Policy FED: Close-Out of Construction Projects. The assessment included the verifications of change orders, contingency allowances, completion of deficiency items, completion of final list items (punch list), receipt of closeout documents, final payment documents, and other items as indicated in the project manual.[4]

The District did not have a change order or contingency allowance policy in effect during the PWES construction contract period. Any reference to a District change order policy that formed the basis of an opinion in an external audit or report of the District prior to 5/9/22 was based on an unapproved "draft" change order policy dated 1/19/22. [SIG emphasis]

The SIG identified the Board's Policy Committee reviewed and proposed a change order and contingency allowance policy on 1/19/22, six months after the completion of the PWES construction project and occupancy of the school. After two revisions to the draft policy, the Board adopted Policy FGG: Facility Construction Project Administration on 5/9/22, which states in part:

> *"Purpose: To establish the basic structure for use of Change Orders as well as Contingency Allowances included in school construction contracts after the effective date of this Policy."*

G. Leadership in Energy and Environmental Design (LEED) Certification

Questions arose about the omission of LEED from the CMAR contract even though LEED was a component of the RFQ/RFP solicitation. Consequently, the SIG assessed whether CCI wrongfully omitted LEED certification from its construction of PWES.

The United States Environmental Protection Agency (EPA) defines LEED certification as:

> *"A series of rating systems aimed at increasing the environmental and health performance of buildings' sites and structures and of neighborhoods. LEED covers the design, construction, and operation of all types of buildings...EPA uses it as an umbrella term to encompass model codes, rating systems, and other publications that provide criteria for the design, construction, and maintenance of buildings."*

The CMAR RFQ/RFP identified project objectives for the construction of ES-13, which included Project Objective 1.2.1:

> *"Sustainability: The Owner expects to have the project designed to be certified by the Green Building Initiative (GBI) for a minimum of two (2) Globes or a project designed to achieve*

[3] Verrastro, Salvatore and Baum, Mark I., "The Fundamentals of Change Orders in Construction." Retrieved from https://learn.aiacontracts.com/articles/6378493-the-fundamentals-of-change-orders-in-construction on 7/3/23.
[4] Mead & Hunt Final Report with Deficiency Corrections - Construction Closeout on Piney Woods Elementary School Dated 4/22/22

LEED Silver status. Special attention is being given to energy efficiency, water conservation, photovoltaic panels, storm water quality and quantity, indoor air quality, recycling and renewable resources in addition to other sustainable practices. The requirement for the availability of Green Globes certification of this project scope will be combined with the site development package of a separate scope. Coordination with the separate site development package is required for the Green Globes certification."

During the solicitation and RFP process, the District evaluated the contractor's ability to deliver a product, rather than define the scope of work. With a CMAR contract, the architect (Quackenbush) is the agent for the project design, and the contractor only builds according to the architect's design specifications.

The Quackenbush contract specified in Section 12.4, the following meeting schedule as a part of the basic services of the architect:

- Schematic Design: two meetings with the architect and District's project team;
- Design Development: three meetings with the architect and District's project team;
- Construction Documents: two meetings with the architect and District's project team;
- Construction Administration: 36 site visits by the architect; and
- Twelve meetings with the District's Board of Trustees.

In addition, during the programming and design phases to initiate the schematic design, members of the Quackenbush design team held three programing workshops to elicit input/feedback from District representatives and the community. Participants (43) in the workshops included the superintendent, Board trustees (2), District office staff (14), principals and teachers (15), parents and community members (4), and consultants (7), which included the District's construction management consultant for the PWES project.

The SIG determined the omission of the LEED requirement from the CMAR contract occurred during the negotiation phase between the District, Quackenbush, and CCI as the District sought to reduce the GMP. Both the District's coordinator of facilities operations and the construction management consultant expressed the lack of desire to pursue the LEED certification. Regardless, the SIG determined that none of the contractor-candidate finalists was disadvantaged in the solicitation and evaluation process.

Quackenbush explained that many K-12 clients believed that LEED certification added unnecessary costs to construction projects. For example, under LEED the contractor was required to track all lift tickets and track the number of dumpsters used to haul construction debris. The LEED certification for a middle school recently designed by the same PWES architect included a sustainability fee of $30,000 and a registration fee of approximately $20,000. In addition, LEED practices have at times conflicted with energy efficiency, such as ventilation requirements that required more cycles. Finally, LEED scoring may include impractical items for a site like Amicks Ferry such as bike racks to encourage less reliance on automobiles.

The PWES design contract negotiated by the District specifically excluded LEED certification in order to save the costs of LEED registration, submission, implementation, and review estimated at $150,000. The estimated savings to the District of $150,000 permitted the acquisition of additional equipment and amenities for the school.

The SIG determined that the PWES architect's design contract with the District, Section 1.1.6 indicated that LEED or Green Globes certifications were anticipated sustainable objectives for the project. In support of this possibility, Section 4.1 of the contract identified additional sustainable project services in Section 4.1.1.24 that contained the statement, "O*nly in Design by Architect. Any actual Certification to be an Additional Service*" as illustrated in the contract excerpt [page 15] below.

Included Additional Services	Responsibility
§ 4.1.1.11 Value analysis	Architect
§ 4.1.1.12 Detailed cost estimating beyond that required in Section 6.3	Not Provided by Architect
§ 4.1.1.13 Continuous On-site project representation	Not Provided by Architect
§ 4.1.1.14 Conformed documents for construction	Architect
§ 4.1.1.15 As-designed record drawings	Architect
§ 4.1.1.16 As-constructed record drawings	Architect
§ 4.1.1.17 Post-occupancy evaluation	Not Provided by Architect
§ 4.1.1.18 Facility support services	Not Provided by Architect
§ 4.1.1.19 Tenant-related services	Not Provided by Architect
§ 4.1.1.20 Architect's coordination of the Owner's consultants	Architect
§ 4.1.1.21 Telecommunications/data design	Architect, but compensation outlined in Attachment B
§ 4.1.1.22 Security evaluation and planning	Not Provided by Architect
§ 4.1.1.23 Commissioning	Not Provided by Architect
§ 4.1.1.24 Sustainable Project Services pursuant to Section 4.1.3	Only in Design by Architect. Any actual Certification to be an Additional Service
§ 4.1.1.25 Fast-track design services	Not Provided by Architect
§ 4.1.1.26 Multiple bid packages	Not Provided by Architect
§ 4.1.1.27 Historic preservation	Not Provided by Architect
§ 4.1.1.28 Furniture, furnishings, and equipment design	Architect, but compensation outlined in Attachment B
§ 4.1.1.29 Other services provided by specialty Consultants	Not Provided by Architect
§ 4.1.1.30 Other Supplemental Services	Not Provided by Architect

Section 4.1.3 of the contract reflected, "*[intentionally omitted]*."

The SIG determined the PWES architect's design incorporated sustainability and energy conservation principles, including materials, energy-efficient mechanical systems, proper shading and glazing to avoid glare and heat retention, and sustainable practices on site. In consultation with the Office of the State Engineer the SIG determined that while state law has given agencies the option to pursue LEED/Green Globe, it is not a requirement for school districts.

II. Piney Woods Elementary School Selection Committee

The District established a selection committee for the purpose of evaluating and selecting qualified contractors for the design, engineering and construction of PWES. Specifically, the selection committee was tasked with evaluating responses for the following solicitations:

- Design and Engineering Services Solicitation #2018-044, and
- CMAR Services for a "New Elementary School" Solicitation #2019-007.

A. Selection Committee Composition

The South Carolina Consolidated Procurement Code established the procedures and qualifications for members of a procurement selection committee. Specifically, South Carolina Code of Laws, §11-35-3220 (*Qualifications based selection procedures)* states,

> *"Agency Selection Committee. A governmental body shall establish its own architect-engineer, construction management, and land surveying services selection committee, referred to as the agency selection committee, which must be composed of those individuals the agency head determines to be qualified [emphasis added] to make an informed decision as to the most competent and qualified firm for the proposed project. The head of the governmental body or his qualified responsible designee shall sit as a permanent member of the agency selection committee for the purpose of coordinating and accounting for the committee's work. To assist an agency selection committee in the selection of firms to be employed for significant or highly technical projects and to facilitate prompt selections, the agency selection committee may invite the State Engineer or his designee to sit as a nonvoting member of the committee."*

The District's procurement code (*3220.1 District Selection Committee)* in effect at the time of the PWES procurement, stated in part:

> *"The District shall establish its own architect-engineer, construction management, and land surveying services selection committee, referred to as the "District Selection Committee", that must be composed of those individuals whom the Board of Trustees or its designee determines to be qualified to make an informed decision as to the most competent and qualified firm for the proposed project. The Superintendent or his qualified responsible designee shall sit as a permanent member of the District Selection Committee for the purpose of coordinating and accounting for the committee's work. Final selection and award of contracts for architect/engineer and surveying services must be approved by the Board of Trustees."*[5]

The composition of the selection committee, which included the Board chair, is set forth in Table H.

Table H

6/21/18 Meeting	7/10/18 Meeting	9/18/18 Meeting	10/25/18 Meeting	District relationship as a Selection Committee member
Scott Carlin	Scott Carlin	Scott Carlin	Scott Carlin	District Coordinator of Facilities
Anna Miller	Anna Miller	Anna Miller	Anna Miller	District Director of Academic Affairs
Bruce Shealy	Bruce Shealy	Bruce Shealy	Bruce Shealy	District Director of Finance
	Robert Gantt	Robert Gantt	Robert Gantt	District Board Chair
Larry Haltiwanger	Larry Haltiwanger		Larry Haltiwanger	District Board Trustee
The following ad hoc members were in attendance: [non-voting]				
A. Len Richardson	A. Len Richardson	A. Len Richardson	A. Len Richardson	District CFO, Committee Chair
Lynda Robinson		Lynda Robinson	Lynda Robinson	District Procurement Officer
Dan Neal	Dan Neal	Dan Neal	Dan Neal	District Consultant
		P. Douglas Quackenbush	P. Douglas Quackenbush	Design Architect & Principal Quackenbush Architects
		Barbara Haller	Barbara Haller	Principal Quackenbush Architects

[5]The South Carolina Division of Procurement Services (DPS) approved the District's procurement code by letter dated 6/4/08.

B. Internal Controls Over the Selection Committee

The internal controls over the selection committee included the appointment of the qualified members, certification of no actual or apparent conflict of interest, the recording of minutes of the committee proceedings, the use and retention of work papers related to the evaluation of contractor-candidates, and approval by the District's Board. On 9/11/18, each member of the selection committee executed an acknowledgement and certification document titled, "Confidentiality and Conflict of Interest Policy."

The SIG determined the District did not maintain documentation to support the appointment of qualified committee members. Specifically, the District was unable to provide the identity of the appointing official, documentation regarding the appointments, the timing of the appointments, or the criteria used for determining qualified committee members.

1. Selection Committee Evaluations and Board Approvals

Selection committee actions were recorded in the approved minutes and posted on the District's website. The minutes for the 10/25/18 meeting were marked "DRAFT" as no additional meeting was held to approve the minutes. Committee members received minutes of the final meeting by email to review for accuracy with a request to respond with any changes. The committee's work papers were retained and each evaluator certified the use of the RFP's evaluation criteria along with a narrative explanation of the evaluator's scoring.

The selection committee presented the results to the Board in executive session on 12/10/18, which the Board subsequently approved in a 5-2 vote during the public session to approve the architect contract, the CMAR agreement, and the issuance of general obligation bonds not to exceed $30 million. A detailed timeline of the committee's actions and Board approvals is set forth in Appendix B.

C. Conflict of Interest Disclosures by Selection Committee Members

In May 2018, subsequent to the appointment to the selection committee, one member provided a written disclosure of a potential conflict of interest for consideration by the chair of the selection committee prior to conducting any evaluation of potential respondents to the procurement solicitations. The SIG determined that the District's counsel and Board chair reviewed the matter and deemed the committee member qualified to serve on the selection committee. The member made a similar disclosure in 2016 on an unrelated procurement matter and was deemed qualified to serve on that selection committee.

Subsequent to the PWES committee's review of respondent submissions to the CMAR solicitation a 2016 letter of reference, included in the CCI submission was identified as having been authored by another committee member. The letter of reference was general in nature and not specific to the 2018 CMAR solicitation. The SIG determined the Board chair and another Board member, as representatives on the selection committee, reviewed the matter and determined that no conflict of interest existed and the committee member was deemed qualified to serve on the selection committee.

Further analysis of the committee's evaluations of CMAR submissions determined that CCI remained the highest-rated contractor-candidate even with the exclusion of both committee members' scoring from the aggregate scores.

Notwithstanding the determinations made by the Board chair and the District's counsel at that time, a minority number of Board members continued to question the composition of the PWES selection committee even after the Board approved the contract award for the PWES construction to CCI in December 2018.

Throughout 2020 and into 2021, the same minority number of Board members continued to question the composition of the selection committee. Between August 2021 and October 2021, a separate District counsel conducted an investigation of the same selection committee member for the same potential conflict of interest previously disclosed and evaluated. The District counsel briefed the Board in executive session in October 2021 and opined that no conflict of interest existed for the committee member.

Contemporaneous to the second investigation the District retained a third attorney in August 2021 to conduct an independent review of the same matter. On 11/15/21, the independent, third attorney briefed the superintendent and concluded the investigation did not support a finding of conflict of interest by the committee member. Furthermore, no documentation was provided to the SIG by the District that sought an official or unofficial opinion from the State Ethics Commission on this matter.

D. SIG Summary Analysis

The SC Code of Laws, §8-13-700 (B) (1) requires that, *inter alia*, public employees shall:

> "*…prepare a written statement describing the matter requiring action or decisions and the nature of his potential conflict of interest with respect to the action or decision…"*

The statute further provides that *"…a public employee…shall furnish a copy of the statement to his superior, if any, who shall assign the matter to another employee who does not have a potential conflict of interest."*

The SIG determined the committee member prepared written statements as required by South Carolina Code of Laws, §8-13-700 (B) that provided written notice to the selection committee of a potential conflict of interest, and the agency head was apprised of the potential conflict who deemed the committee member was qualified to serve on the committee.

In support of this determination, between May 2018 and November 2021, the District and the Board received three separate legal reviews from District attorneys each of whom opined that no conflict of interest existed with respect to the selection committee member.

The SIG assessed that the Board's disregard of three legal reviews, including two investigations constituted a waste of District resources and Board interference in violation of Board Policy BBA, "Board Powers and Duties."

E. Change in Board Policy FEC: Selection of Professionals in Facilities Construction

On 5/9/22, the Board adopted a change to Policy FEC: Selection of Professionals in Facilities Construction for establishing *"…the basic structure for the selection of professionals by the district."* The revised policy further provided that:

- *Members of the Board of Trustees be* [sic] *barred from voting or ad Hoc* [sic] *membership on professional selection committees;*
- *Candidates for voting or ad hoc membership of the selection committee be [sic] vetted to determine apparent or actual conflicts of interest and* [sic] *conflicts of interest are determined, that candidates must withdraw their name from consideration;*
- *Voting or ad hoc members of selection committees be required to sign and adhere to the Districts'* [sic] *Confidentiality and Conflict of Interest Policy.*

III. District Procurement Code Compliance

The District's procurement code in effect during the PWES project received approval from the Division of Procurement Services (DPS), State Fiscal Accountability Authority by letter dated 6/4/08. On 2/7/22, the District amended its procurement code, which also received approval from DPS on 4/5/22.

A. Unapproved Brokerage Service Agreement

On 9/23/15, the District's chief financial officer, on behalf of the District, executed a Buyer Agency Agreement with The Educational Group, Inc. (TEG) to act as a buyer's exclusive agent to locate real property for purchase as a suitable site for an elementary school. The District's procurement code and list of exemptions provided that brokerage services were subject to Board approval.[6]

On 7/17/17, the Board approved, by a vote of 6-1, the District's purchase of real estate, previously optioned, near the intersection of Amicks Ferry Road and Lake Tide Drive for $932,950. However, the Board did not vote on the brokerage services agreement as required by the District's procurement code.

The SIG determined that while the Board approved the District's purchase of the Amicks Ferry Road on 7/17/17 the District failed to comply with its procurement code when it executed a brokerage services agreement with TEG without Board approval in 2015.

B. Procurement Audit Services Solicitation #2022-011

The District issued an RFP (Solicitation #2022-011) on 10/6/21, for procurement audit services for fiscal years (FY) 2018-19, 2019-20, 2020-21, with optional years of 2016-17 and 2017-18. The District selected the Jaramillo Accounting Group (JAG), LLC, of Albuquerque, New Mexico to perform the audit.

By letter dated 12/16/21, the Division of Procurement Services approved JAG to perform an Agreed Upon Procedures (AUPs) audit for the District *"contingent upon the firm following our School District AUPs as revised on May 24, 2021."* Specifically, the approval of JAG to perform an AUP procurement audit was solely for FY 2020-21.

Amendments to the solicitation could occur at any time prior to opening the bids. By doing so, all bidders that requested a bid package would receive copies of all amendments. This in turn allowed bidders to modify their response to the solicitation prior to the opening of the bids. The SIG verified the District did not amend the scope and intent of the solicitation, which sought to acquire a certified public accounting firm to provide "independent procurement audit services" for the District.

By letter dated 1/15/22, the Board, District and JAG entered into an agreement that diverged from the RFP's original scope and intent of "procurement audit [emphasis added] services" to "procurement consulting services" for FYs 2017-2020. The agreement acknowledged the RFP required that the procurement audit *"…must be performed in accordance with…the audit procedures issued by the South Carolina State Fiscal Accountability Authority, Division of Procurement Services,"* among others. Moreover, the agreement recognized the District received procurement audits for FYs 2017-2020, but added:

> *"…Eliminating this requirement [SFAA, DPS audit procedures] is necessary since the procurement audits have already been performed (except for fiscal year 2021, which has a separate attestation examination engagement letter). The scope is hereby changed to consulting services, for fiscal years 2017-20 and includes providing recommendations for*

[6] School District Five of Lexington & Richland Counties Procurement Code, §710 (effective 6/4/08).

improvement over various risk areas reported to JAG during our planning and testing samples of risk areas."

Over the course of the engagement, the District paid a total of $105,650 on the consulting services contract. As of 6/30/23, invoices totaling $50,582.81 remained unpaid for lack of sufficient detail, including time, dates, and description of work performed by JAG.

In response to the auditor findings [conditions], the District published a corrective action plan to address the issues and promote financial accountability and transparency.

C. Annual Financial and Procurement Audit Solicitation #2022-035

On 2/16/22, the District issued an RFP (Solicitation #2022-035) for financial and procurement audit services for FY 2021-22 with renewal options for FYs 2022-23 and 2023-24. On 3/28/22, the Board voted unanimously to authorize a contract with JAG for financial and procurement audit services for FYs 2021-2022, 2022-2023, and 2023-2024.

On 11/29/22, JAG issued the District's FY 2021-22 Annual Comprehensive Financial Report.[7] The auditor issued a single finding of material non-compliance and material weakness.[8]

In response to the finding, the District published a corrective action plan that included a plan to change organizational culture, starting with tone at the top, including training, employee evaluations, consequences for violations, rewards for ethical behavior, posting a fraud hotline in the District, implementing an audit committee, hiring an internal auditor, and carefully choosing procurement committee members.

D. SIG Summary Analysis

Consulting service vendors listed on the statewide contract are available for use by state agencies, public school districts, and other governmental entities. Inasmuch as the scope of the JAG engagement letter with the District diverged from the RFP's solicitation for procurement audit services, the SIG determined this solicitation for procurement audit services was an unnecessary expenditure of District resources.

The District only needed the most recent fiscal year (2020-21) audited, not the prior five fiscal years. While JAG's winning bid of $46,000 included procurement audits for five fiscal years (2017 – 2021) the SIG noted the District only needed to spend $9,500 quoted by JAG for the FY 2020-21 procurement audit. As a result, the change in scope from the original RFP to a consulting services engagement resulted in Board-approved increases totaling $105,650.

The SIG determined that the change in scope from a procurement audit to a consulting services contract constituted:

- A substantial departure from the RFP scope and the approval granted by DPS;
- The standard audit reporting procedure required by DPS did not contain provisions for examination of campaign contributions, ethics issues, and legal conclusions;
- The RFP solicited procurement audit services for four prior fiscal years that previously received procurement audits consistent with the audit procedures required by the DPS; and
- The consulting services agreement constituted waste amounting to $105,650.

[7] Per South Carolina Code of Laws §59-17-100, school districts must submit their annual single audit report to the South Carolina Department of Education by December 1st of each year.
[8] Schedule of Findings and Questioned Costs, pp. 138-140

IV. Way Forward

This review identified procurement and contract management issues over an eight-year span of the PWES construction project. The District's students have utilized the new PWES and its amenities for the past two school years. Without question, the District is moving forward through the proactive strategies, policies, and efforts implemented by the District's Board, superintendent, and CFO to be ahead of a problem as opposed to reacting to one.

Over the past two years, the following policy changes related to this review enhanced the District's internal controls and Board oversight:

- On 10/11/21, the Board adopted Policy FED: Close-Out of Construction Projects to ensure that district construction projects are completed in compliance with the specifications of the project.
- On 1/24/22, the Board adopted a revised Policy FEE: Site Acquisition to establish the basic structure for the acquisition of sites for school construction.
- On 5/9/22, the Board adopted Policy FGG: Facility Construction Project Administration to establish the basic structure for use of change orders as well as contingency allowances.
- On 5/9/22, the Board adopted a revised Policy FEC: Selection of Professionals in Facilities Construction to establish basic structure for the selection of professionals by the district.
- On 1/23/23, the Board adopted a revised Policy AR DI/DIE-R: Fiscal Accounting/Audits - External Auditor Selection.
- On 2/13/23, the Board adopted a revised Policy DI/DIE: Fiscal Accounting/Audits to establish the basic structure for accounting and reporting of the district's financial resources, enhanced internal controls, external audits, and the role of an internal auditor.

In addition, on 2/7/22 the Board adopted a revised District Procurement Code that was submitted to DPS for approval. The new District Five Procurement Code received approval from DPS on 4/5/22, which is substantially similar to the provisions of the South Carolina Procurement Code and Regulations.

The District initiated other process improvements as advised by the District's CFO, in response to identified weaknesses in internal controls to include:

- In July 2023, the finance office completed two training classes with bookkeepers and secretaries who performed finance/procurement functions in preparation for the new school year;
- The District developed a mechanism to consolidate and track procurement violations by employees to assess and prevent repeated occurrences;
- The District is developing a new financial services procedures manual and a revised procurement manual that is expected to be completed in the fall of 2023 and shared on the District's website; and
- The District is in the process of hiring an internal auditor.

During this review, the SIG conducted extensive interviews and studied large volumes of documents. The SIG did not identify where the District, its personnel, and its Board had anything but the best intentions for the success of the procurement process for the construction of the PWES. However, as a public body tasked as a steward of state and federal monies, the District could have done better.

The SIG identified several areas of concern as detailed in the Findings and Recommendations section of this report, for which most have been addressed through the initiation of new policies or the implementation of policy changes that enhanced the District's internal controls and processes through the District's efforts.

The SIG extends its appreciation to the District's current and former leadership, Board members, employees, representatives, project managers, and contractors for the PWES project. In addition, the SIG is appreciative of the collaboration with the state's Division of Procurement Services, the Office of State Engineer, the South Carolina Department of Education, the Office of the State Auditor, the State Ethics Commission, the District's external auditors, and other persons associated with the PWES project for their assistance and cooperation provided during this review.

V. Findings and Recommendations

Finding #1: The SIG determined the District's accounts payable officials and project managers did not ensure sufficient documentation was provided by CCI to support the amount requested for payment in the pay apps and that the District failed to provide proper contract management and oversight of the payment process. This resulted in missed opportunities to ensure stewardship of taxpayer funds and questioned costs of $396,700.65 for the PWES project. Subsequent investigation by the SIG identified sufficient documentation that reduced the final total of questioned disbursements to only $38,362.69.

> **Recommendation #1:** The SIG recommends that the District ensure sufficient supporting invoices or other documentation are provided by the contractor to support the amount requested for payment, provide proper contract management and oversight of the contract payment process, and remediate and strengthen internal controls. Based on policy changes, internal controls, and training initiated by the District's Board, superintendent, and CFO over the past two years this matter has been addressed. **No further action is required.**

Finding #2a: The SIG determined that a selection committee member prepared written statements as required by the South Carolina Code of Laws §8-13-700 (B)(3) that provided notice to the selection committee of his/her potential conflict of interest, and the agency head was apprised of the member's potential conflict and deemed him/her qualified.

Finding #2b: The SIG determined District officials and selection committee members were unable to provide the identity of the appointing official, documentation regarding the appointments, the timing of the appointments, or the criteria used for determining qualified committee members.

> **Recommendation #2:** The SIG recommends that the agency head ensure any delegation of authority, the appointment of selection committee members, and the criteria used for selection be documented and retained in the procurement file. Based on policy changes, and internal controls implemented by the District's Board, superintendent, and CFO over the past two years this matter has been addressed. **No further action is required.**

Finding #3: The SIG determined that the Board's disregard of at least three legal reviews, including two investigations, in order to pursue ethics actions against a selection committee member constituted waste of District resources, amounting to at least $12,605 and Board interference in violation of Board policy BBA.

> **Recommendation #3:** The SIG recommends that the Board should adhere to all Board policies.

Finding #4a: The SIG determined that the District's execution of a Buyer Agency Agreement with The Education Group, Inc. without Board approval was a violation of the District's procurement code.

Finding #4b: The SIG determined that the District issued an RFP (Solicitation #2022-011) seeking a certified public accounting firm to provide procurement audit services for FYs 2019 - 2021, with the option to also audit FYs 2017 and 2018. As specified in the Scope of Work of the RFP, the procurement audit was required to be performed in accordance with the agreed upon audit procedures issued by the DPS. However, the audit agreement was changed by Board and District representatives from a procurement audit to a procurement consulting services contract, which was a substantial departure from the RFP requirements that resulted in the waste of $105,650 in District resources.

Recommendation #4: The SIG recommends that the Board and District leadership receive training regarding the District's procurement code and the role and authority of the procurement officer in awarding contracts.

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	BEFORE THE STATE ETHICS COMMISSION
IN THE MATTER OF: Complaint C2021-016	)	
Kim Benson, Complainant.	)	**RESPONSE TO RESPONDENT'S MOTION TO ADMIT ADDITIONAL EVIDENCE**
Kenneth Loveless, Respondent.	)	

In response to Respondent's Motion to Admit Additional Evidence, Commission staff provides the following:

FACTS

This Complaint matter was filed against Respondent, a former member of the Board of Trustees (Board) for School District Five of Lexington and Richland Counties (District), on February 17, 2021. The Complaint alleged, among other things, that Respondent improperly participated in Board discussions and/or other activities that involved a District contract with Contract Construction, a business with which Respondent was associated, for the construction of Piney Woods Elementary School (PWES). The Commission subsequently found probable cause existed to believe Respondent violated the Ethics Act as follows:

> **COUNT ONE FAILURE TO RECUSE FROM A GOVERNMENTAL DECISION IN WHICH A BUSINESS WITH WHICH ASSOCIATED HAD AN ECONOMIC INTEREST SECTION 8-13-700(B), S.C. CODE ANN., 1976, AS AMENDED.** That Kenneth Loveless, Lexington-Richland School District Five Board Member, did in Richland County, write a letter dated March 24, 2020 inquiring about construction work of a district facility by Contract Construction, Inc., a business with which he was associated, in violation of Section 8-13-700(B).
>
> **COUNT TWO FAILURE TO RECUSE FROM A GOVERNMENTAL DECISION IN WHICH A BUSINESS WITH WHICH ASSOCIATED HAD AN ECONOMIC**

INTEREST SECTION 8-13-700(B), S.C. CODE ANN., 1976, AS AMENDED. That Kenneth Loveless, Lexington-Richland School District Five Board Member, did in Richland County, on June 15, 2020, participate in discussion about construction of a district facility by Contract Construction, Inc., a business with which he was associated, in violation of Section 8-13-700(B).

COUNT THREE FAILURE TO RECUSE FROM A GOVERNMENTAL DECISION IN WHICH A BUSINESS WITH WHICH ASSOCIATED HAD AN ECONOMIC INTEREST SECTION 8-13-700(B), S.C. CODE ANN., 1976, AS AMENDED. That Kenneth Loveless, Lexington-Richland School District Five Board Member, did in Richland County, on September 14, 2020, participate in discussion about construction of a district facility by Contract Construction, Inc., a business with which he was associated, in violation of Section 8-13-700(B).

COUNT FOUR FAILURE TO RECUSE FROM A GOVERNMENTAL DECISION IN WHICH A BUSINESS WITH WHICH ASSOCIATED HAD AN ECONOMIC INTEREST SECTION 8-13-700(B), S.C. CODE ANN., 1976, AS AMENDED. That Kenneth Loveless, Lexington-Richland School District Five Board Member, did in Richland County, in June of 2020, participate in a site visit of a district facility being constructed by Contract Construction, Inc., a business with which he was associated, in violation of Section 8-13-700(B).

On February 16, 2023, a hearing was held before a Commission Hearing Panel (Panel). Following the hearing, the Panel dismissed Count Four (4) of the Notice of Hearing and found Respondent had violated the Ethics Act as outlined in the remaining three (3) counts. See Attachment A. Respondent timely requested a review of the Panel's Decision and Order (Order) and the appeal hearing was ultimately scheduled for March 21, 2024.

On February 13, 2024, Respondent filed a "Request for Subpoenas" asking the Commission to issue subpoenas, in relevant part, as follows:

1. To the custodian of the records of the Office of Inspector General for any and all documents, correspondence, communications contained on a compact disc sent by Brian D. Lamkin to Representative Jay Kilmartin on October 19, 2023 in OIG File No. A-4-0139 . . .

2. To the Office of the Inspector General commanding the deposition of State Inspector General Brian D. Lamkin.

3. To the State Ethics Commission and its Executive Director, Meghan Walker, for any and all documents, correspondence, and communications sent to or received from any employee, agent, investigator, or staff of the Office of Inspector General as set forth in page 1 of the August 18, 2023 report of the Office of the State Inspector General regarding [PWES] Construction; and a list setting forth all individual from the State Ethics Commission who were interviewed in connection with OIG's report described above.

4. To Thomas William McGee III, Nelson Mullins, 1320 Main Street, Columbia, SC 29201 for all documents provided by Gregory Hughes of Contract Construction Inc. . . .

Following additional contact with Commission staff, Respondent filed a "Motion to Admit Additional Evidence and Motion to Stay Proceedings" on February 20, 2024. This response follows.

ARGUMENT

In his Motion, Respondent asks the Commission to supplement the record with an August 2023 report issued by the State Inspector General (OIG) related to the construction of PWES. Respondent further seeks to engage in additional discovery by way of the aforementioned subpoenas.[1] Based on his Motion, Respondent appears to believe that the OIG investigation and report are somehow relevant to his complaint matter.[2] Commission staff asks the Commission to deny Respondent's Motion for the reasons set forth herein.

[1] Respondent also sought to stay the appellate proceedings during the pendency of this Motion. However, given the timing of the oral arguments for this Motion, this issue appears moot.

[2] The genesis for this belief appears, at least partially, to be an erroneous statement inserted into page three (3) of the OIG report indicating that the OIG conducted interviews of Commission employees during its investigation. It did not. Based on a recent Freedom of Information Act request submitted to the Commission, Respondent is aware that the only correspondence the Commission received from the OIG was a request for the audio file and exhibits from the February 16, 2023 public hearing. See Attachment B.

First, staff brings Regulation 52-807 to the Commission's attention. Regulation 52-807 provides, in relevant part:

> A. When additional evidence is necessary for the completion of the record in a case on review, the Commission may, in its discretion, order such evidence taken before a single commissioner or a panel. (emphasis added).
>
> B. A party seeking to admit additional evidence into the record shall file a motion and affidavit with the Commission. (emphasis added).

Here, Respondent has not demonstrated why the record established before the Panel is incomplete. Moreover, Respondent failed to file an affidavit alongside his Motion as is required by Regulation 52-807(B).

Second, in ruling on an application to submit additional evidence, two factors should be considered: (1) the materiality of the proposed additional evidence; and (2) the existence of a good reason for the failure to introduce such evidence at the original hearing. See Brown v. Peopleplease Corp., 402 S.C. 476, 741 S.E.2d 761 (Ct. App. 2013); see also Wright v. Strickland, 306 S.C. 187, 410 S.E.2d 596 (Ct. App. 1991) (finding the moving party did not proffer any testimony or show that the evidence could make any difference to the outcome of the case). Material evidence is that which would present a reasonable possibility of a different outcome. See DeHart v. SCDHHS, No. 98-ALJ-08-0096-AP, 1998 WL 682496 (S.C. Admin. L. Ct. Sept. 14, 1998).

Here, as to the first factor, Respondent has failed to point to a single fact that would create a reasonable possibility of a different outcome in Respondent's complaint matter. There are no facts in the OIG report that relate to Respondent's relationship with Contract Construction, nor is there any indication in the OIG report that Respondent did not engage in the conduct found to be violative of the Ethics Act by the Panel's Order. As to the second factor, Respondent cannot establish a good reason for failing to introduce any fact set forth in the OIG report because,

according to the report, the period of review was from 2016-2022. Respondent's hearing did not occur until February 16, 2023, meaning any fact uncovered by the OIG could have also been discovered by Respondent prior to the hearing. Indeed, Respondent had the ability to engage in discovery prior to the hearing and he exercised that right by issuing numerous subpoenas and conducting several depositions. In fact, one of the subpoenas currently sought by Respondent relates to Greg Hughes, an individual he has already deposed.

In sum, Commission staff asserts that Respondent's Motion[3] is an attempt at a fishing expedition for information that has no bearing on the matter pending before the Commission. Staff therefore asks the Commission to deny Respondent's Motion and order the appeal to be heard at the next available Full Commission meeting.

Respectfully submitted,

Courtney M. Laster

Courtney M. Laster
State Ethics Commission
201 Executive Center Drive, Suite 150
Columbia, SC 29210

March 14, 2024
Columbia, SC

[3] Respondent's Motion briefly raises the issue of information being "inappropriately placed" in Motions to Quash filed by individuals who were served with Commission subpoenas at Respondent's request during the discovery phase of this Complaint matter. To the extent Respondent is requesting that portions of these documents should be stricken from the record, this request should be denied. Pleadings are not evidence. Hamilton v. Reg. Med. Ctr., 440 S.C. 605, 891 S.E.2d 682 (Ct. App. 2023). Moreover, if they were objectionable, Respondent should have filed a Motion to Strike the offending portions at the time they were submitted.

ATTACHMENT A

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	BEFORE THE STATE ETHICS COMMISSION
IN THE MATTER OF: COMPLAINT 2021-016	)	
Kim Benson Complainant.	)	**DECISION AND ORDER**
Kenneth Loveless Respondent.	)	

Pursuant to Section 8-13-320(10) of the South Carolina Ethics, Government Accountability, and Campaign Reform Act of 1991 (Ethics Act), the State Ethics Commission (Commission) reviewed the above-captioned complaint and found probable cause to charge Kenneth Loveless (Respondent) with four (4) counts of violating Section 8-13-700(B). Present at the hearing held on February 16, 2023, were Commissioners AJ Holloway, Scott E. Frick, and F. Xavier Starkes, Hearing Panel Chair. Respondent was represented by Desa Ballard and the Commission was represented by Courtney M. Laster. The following charges were considered:

COUNT ONE
FAILURE TO RECUSE FROM A GOVERNMENTAL DECISION IN WHICH A BUSINESS WITH WHICH ASSOCIATED HAD AN ECONOMIC INTEREST SECTION 8-13-700(B), S.C. CODE ANN., 1976, AS AMENDED

That Kenneth Loveless, Lexington-Richland School District Five Board Member, did in Richland County, write a letter dated March 24, 2020 inquiring about construction work of a district facility by Contract Construction, Inc., a business with which he was associated, in violation of Section 8-13-700(B).

COUNT TWO
FAILURE TO RECUSE FROM A GOVERNMENTAL DECISION IN WHICH A BUSINESS WITH WHICH ASSOCIATED HAD AN ECONOMIC INTEREST SECTION 8-13-700(B), S.C. CODE ANN., 1976, AS AMENDED

That Kenneth Loveless, Lexington-Richland School District Five Board Member, did in Richland County, on June 15, 2020, participate in discussion about construction of a district facility by

Contract Construction, Inc., a business with which he was associated, in violation of Section 8-13-700(B).

COUNT THREE
FAILURE TO RECUSE FROM A GOVERNMENTAL DECISION IN WHICH A BUSINESS WITH WHICH ASSOCIATED HAD AN ECONOMIC INTEREST SECTION 8-13-700(B), S.C. CODE ANN., 1976, AS AMENDED

That Kenneth Loveless, Lexington-Richland School District Five Board Member, did in Richland County, on September 14, 2020, participate in discussion about construction of a district facility by Contract Construction, Inc., a business with which he was associated, in violation of Section 8-13-700(B).

COUNT FOUR
FAILURE TO RECUSE FROM A GOVERNMENTAL DECISION IN WHICH A BUSINESS WITH WHICH ASSOCIATED HAD AN ECONOMIC INTEREST SECTION 8-13-700(B), S.C. CODE ANN., 1976, AS AMENDED

That Kenneth Loveless, Lexington-Richland School District Five Board Member, did in Richland County, in June of 2020, participate in a site visit of a district facility being constructed by Contract Construction, Inc., a business with which he was associated, in violation of Section 8-13-700(B).

FINDINGS OF FACT

Having carefully reviewed the evidence presented, the Panel finds as fact:

1. Respondent served on the Lexington Richland School District Five (District) Board of Trustees (Board) from 2018-2022.
2. Respondent has owned and operated Loveless Commercial Contracting, Inc. (Loveless) for approximately thirty-six (36) years. He serves as President and personally carries the line of credit for Loveless.
3. Contract Construction, Inc. (Contract Construction) is a general contractor located in South Carolina. Greg Hughes (Hughes) is the President of Contract Construction.

4. On December 19, 2018, the District retained Contract Construction as its Construction Manager for the building of Piney Woods Elementary School (PWES).

5. Contract Construction subsequently hired Loveless to perform work as a subcontractor on a State Law Enforcement Division (SLED) Forensic Services Laboratory in Columbia, SC. The agreement was signed by Respondent and was fully executed no later than March 12, 2020.

6. On March 24, 2020, Respondent submitted a letter to District Superintendent Christina Melton (Melton) raising perceived problems with the construction of PWES and criticizing terms of the District's contract with Contract Construction. Respondent requested "action and a reply on these matters within the next two weeks."

7. During a June 15, 2020, District Board meeting, Hughes provided an update on PWES to the Board. Following the update, Respondent questioned Hughes and District representative Dan Neal (Neal) about contract change orders and owner/contractor contingencies. Board member Ed White (White) then questioned Hughes and Neal about the issues raised in Respondent's March 24, 2020 letter to Melton. Respondent engaged in discussions with White and made additional comments to the Board, noting he had received unsatisfactory answers to his letter and stating, "I'm a contractor, I know things like this."

8. During a September 14, 2020 District Board meeting, Hughes provided an additional update on PWES to the Board. Board member White questioned Hughes about the issues raised in Respondent's March 24, 2020 letter. White also addressed Loveless's subcontract with Contract Construction and questioned whether it was proper. Respondent engaged in discussion with Hughes and other PWES subcontractors about the cost of specific soil and concrete work at PWES. Hughes replied, in relevant part, as follows:

> . . . I don't have any problem with the questions. And we're going to give you the best facility you've had, and it will be under budget. And I do want to speak to Mr. Loveless's abilities as a contractor. He is

> doing a fantastic job on the project we're working together on. He was selected for his qualifications and doing a fantastic job. And there's similar type issues out there, but they're minor in the scheme of things. And we're pleased with what he's doing for us.

9. During the February 8, 2021 District Board meeting, Respondent submitted a letter to the Board Chair acknowledging his affiliation with Contract Construction and vowing to "recuse [him]self from any and all votes, deliberations, and other actions on any matter that comes before the Board of Trustees relating to Contract Construction, Inc." The aforementioned letter was submitted by Respondent after he requested and received an informal opinion from the State Ethics Commission (SEC). The Informal Opinion from the SEC opined, in pertinent part, as follows: "Based on the facts presented, the general contractor for which Loveless Construction subcontracts is a "business with which (you are) associated" for the purposes of the Ethics Act. This means that whenever you are faced with a scenario in which the general contractor has an economic interest, you must recuse yourself from that matter following the instructions in Section 8-13-700(B)."

CONCLUSIONS OF LAW

Based upon the Findings of Fact, the Panel concludes, as a matter of law:

1. At all times relevant, Respondent was a public official as defined by Section 8-13-100(27). Accordingly, the Commission has personal and subject matter jurisdiction.
2. Section 8-13-100(4) defines "business with which he is associated" as:

> a business of which the person or a member of his immediate family is a director, an officer, owner, employee, a compensated agent, or holder of stock worth one hundred thousand dollars or more at fair market value and which constitutes five percent or more of the total outstanding stock of any class.

3. Upon execution of the agreement between Contract Construction and Loveless, Respondent became a compensated agent of Contract Construction. See SEC AO2000-004 (defining "compensated agent" as "any ongoing client relationship in which the [public official] receives

compensation for services rendered."). Accordingly, Contract Construction was a "business with which [Respondent was] associated" pursuant to Section 8-13-100(4).

4. Section 8-13-700 provides, in relevant part:

> (B) No [public official] may make, participate in making, or in any way attempt to use his [public office] to influence a governmental decision in which he, a family member, an individual with whom he is associated, or a business with which he is associated has an economic interest. A [public official] who, in the discharge of his official responsibilities, is required to take an action or make a decision which affects an economic interest of himself, a family member, an individual with whom he is associated, or a business with which he is associated shall:
>
> > (1) prepare a written statement describing the matter requiring action or decisions and the nature of his potential conflict of interest with respect to the action or decision;
> >
> > . . .
> >
> > (4) if he is a public official, other than a member of the General Assembly, he shall furnish a copy of the statement to the presiding officer of the governing body of an agency, commission, board, or of a county, municipality, or a political subdivision thereof, on which he serves, who shall cause the statement to be printed in the minutes and require that the member be excused from any votes, deliberations, and other actions on the matter on which the potential conflict of interest exists and shall cause the disqualification and the reasons for it to be noted in the minutes.

5. Sections 8-13-130 and 8-13-320(10) allow the Panel to levy an administrative fee and to require payment of a civil penalty of up to $2,000 for each violation of the Ethics Act.

DECISION

NOW, THEREFORE, based on the foregoing Findings of Fact and Conclusions of Law, the Panel has determined, based on a preponderance of the evidence, that Respondent Kenneth Loveless is in violation of three (3) counts of Section 8-13-700(B) as outlined in Count One (1), Count Two

(2), and Count Three (3) of the Notice of Hearing. Specifically, the Panel finds that Respondent's (1) March 24, 2020 letter to Melton; (2) participation in the June 15, 2020 District Board meeting discussion regarding PWES; and (3) participation in the September 14, 2020 District Board meeting discussion regarding PWES were matters that required recusal pursuant to Section 8-13-700(B). The Panel finds that the Commission failed to establish by a preponderance of the evidence that Respondent participated in a PWES site visit in June of 2020 and therefore dismisses Count Four (4).

Regarding conflicts of interest, the Commission has long held that recusal is required in any matter that implicates the economic interest of a business with which a public official is associated. See SEC AO92-072 (advising public servants to disqualify from all matters affecting the economic interest of a business with which he is associated); SEC AO2000-004 (same); SEC AO2000-011 (same); see also SEC AO96-003 ("it is clear that the restrictions on the activities of a public official are broader than merely prohibiting a vote on a matter which affects the official's economic interest"). Here, Respondent owns, operates, and personally carries the line of credit for Loveless. Accordingly, when Loveless and Contract Construction entered into a subcontractor agreement, Respondent became a compensated agent of Contract Construction. From that moment forward, Respondent was bound to recuse himself from any matter in which Contract Construction had an economic interest.

The Panel notes that Respondent, once he improperly inserted himself into this matter, appeared to be critical of Contract Construction. However, the Panel finds that where there is opportunity for harm, the opportunity for benefit also exists. To that end, "the prohibitions contained in Section 8-13-700(A) and (B) serve the public interest in objective, impartial, and effective government by preventing the creation of situations which would tend to impair the objectivity and impartiality, and therefore, the effectiveness of the public member." SEC AO2000-004. Finally, the Panel calls attention to the Preamble of the Ethics Act, which provides, in relevant part, as follows:

Whereas, one of the most important functions of any law aimed at

> making public servants more accountable is that of complete and effective disclosure. Since many public officials serve on a part-time basis, it is inevitable that conflicts of interest and appearances of impropriety will occur. Often these conflicts are unintentional and slight, but at every turn those who represent the people of this State must be certain that it is the interests of the people, and not their own, that are being served. Officials should be prepared to remove themselves immediately from a decision, vote, or process that even appears to be a conflict of interest.

THEREFORE, pursuant to Section 8-13-320(l)(i) of the Ethics Act, the Panel hereby issues a Public Reprimand and orders Respondent to pay a civil penalty of $5,250.00 ($1,750.00 for each count);

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

AND, pursuant to Section 8-13-320 of the Ethics Act, if the $6,150.00 is not paid within thirty (30) days from Respondent's receipt of this Order, a judgment in the amount of $6,150.00 shall be entered against Respondent. In the event of a failure to pay, upon the Commission's filing of said Judgment with the Clerk of Court in the County of Respondent's last known residence, the Clerk of Court shall enter this Order in the amount of $6,150.00 in its Judgment Rolls, without cost to the Commission.

FINALLY, Respondent Kenneth Loveless has ten (10) days from receipt of this Order to appeal to the full Commission.

AND IT IS SO ORDERED THIS 24th DAY OF March 2023.

STATE ETHICS COMMISSION

F. XAVIER STARKES, HEARING CHAIR
Columbia, South Carolina

ATTACHMENT B

Ballard & Watson
Attorneys at Law
PERSISTENT. UNWAVERING.

Desa Ballard
Harvey M Watson III
Haley Hubbard
226 State Street West Columbia, SC 29169
ph 803.796.9299 | fx 803.796.1066 | desaballard.com

January 23, 2024

Via Electronic Mail (mediaquestions@ethics.sc.gov)
South Carolina Ethics Commission
201 Executive Center Drive, Suite 150
Columbia, South Carolina 29210

Re: *Freedom of Information Request*

To Whom It May Concern:

You are required by the Public Records Act of South Carolina, S.C. Code Ann. §30-1-70 to protect public documents, including those requested herein, from deterioration, mutilation, theft, loss or destruction and keep them secure as required by the statute. To the extent any public documents referenced herein are not in your possession, you are reminded of your obligation to maintain these documents pursuant to S.C. Code § 30-1-20 and asked to take such steps as are necessary to gather these documents into your possession for safekeeping. No public records shall be deleted or destroyed after receipt of this request.

Pursuant to the South Carolina Freedom of Information Act, S.C. Code Ann. §30-4-30 (Supp. 2017) (hereafter "the Act"), please provide me with copies of the following documents. Copies produced in response to this request may be provided electronically to my email address provided below to avoid reproduction costs as permitted by S.C. Code Ann. Section 30-4-30(B).

I reserve the right to request that the search fees be waived upon a determination that the request herein is in the public interest as "primarily benefitting the general public." *Id.*

DOCUMENTS TO BE PRODUCED

1. Any and all documents sent to and received from the Office of Inspector General relating to Kenneth Loveless and/or his matter pending before the South Carolina Ethics Commission.

If any documents produced in response to this request contain redactions, please identify them and your basis for redacting.

With warm personal regards, I am,

Sincerely yours,

Haley A. Hubbard

Haley Hubbard
haley@desaballard.com

Walker, Meghan

From: Media Questions
Sent: Tuesday, February 21, 2023 12:23 PM
To: Watson, Bessie
Subject: RE: Office of the State Inspector General Request

Investigator Watson,

The audio files have been saved to the thumb drive that you provided to Commission staff. The thumb drive will be with our receptionist and can be picked up whenever convenient for you.

Meghan

From: Watson, Bessie <BessieWatson@oig.sc.gov>
Sent: Friday, February 17, 2023 10:59 AM
To: Media Questions <MediaQuestions@ethics.sc.gov>
Subject: Office of the State Inspector General Request

Dear Director Walker,

The Office of the State Inspector General requests the recording of the Kim Benson vs Kenneth Loveless Hearing held 2/16/23 and exhibits related to the case [C2021-016].

It was a pleasure to meet you.

Thank you for your assistance, and please let me know if you have any questions.

Bessie Watson, CIGI
State of South Carolina
Office of the Inspector General
111 Executive Center Drive
Synergy Business Park
Suite 204 Enoree Building
Columbia, SC 29210-8416
Office: 803-896-2319
Fax: 803-896-4309 1-855-SC-Fraud
website: https://www.oig.sc.gov/

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	BEFORE THE STATE ETHICS COMMISSION
IN THE MATTER OF: Complaint C-2021-016 Kenneth Loveless, Respondent. Kim Benson, Complainant.	)	**REPLY TO RESPONSE TO MOTION TO ADMIT ADDITIONAL EVIDENCE**

In reply to Commission staff's response to Respondent Kenneth Loveless' (hereafter "Respondent") Motion to Allow the Admission of Additional Evidence into the Record on Appeal, and further moves for a stay of the formal hearing set for March 21, 2024 to permit him to gather Respondent would show:

BACKGROUND

On or about February 17, 2021, Kim Benson ("Benson") filed a Complaint Form with the South Carolina State Ethics Commission ("Commission") against Respondent, who formerly served as a member of the Board of Trustee for School District Five on Lexington and Richland Counties ("District Five"). The complaint arose from Respondent's criticism of work performed in the construction of Piney Woods Elementary School. In her complaint, Benson alleged that Respondent improperly participated in Board discussions and/or attempted to use his position to gain an advantage for himself because the company of which Respondent is president had an ongoing subcontract with the same contractor on a totally unrelated project at the time Respondent began to question the quality of work being performed for District Five. By Notice dated July 11, 2022, Respondent was advised that the Commission had determined that probable cause existed

to support the allegations made in the above captioned complaint. The Notice of Hearing notified Respondent that a hearing would be held on four (4) counts of violation of the South Carolina Ethics Reform Act.

Respondent moved to dismiss the matter on September 11, 2022, and the motion was denied by order dated October 6, 2022. On or about February 16, 2023, a hearing was held before a three-member panel of the Commission. Following the hearing, the Commission panel issued its Decision and Order on March 24, 2023, finding Respondent in violation of the first three counts set forth in the Notice of Hearing and dismissing the fourth count. On April 3, 2023, Respondent subsequently submitted a request for review of the Commission panel's Order. A final hearing on the matter was scheduled for March 21, 2024.[1]

ARGUMENT

Respondent filed the instant motion seeking to admit into the record any relevant evidence produced in response to certain subpoenas requested on February 13, 2024, as additional evidence to be considered by the full Commission pursuant to SEC Regulation 52-807. SEC Regulation 52-807 provides that "[a] party seeking to admit additional evidence into the record shall file a motion and affidavit with the Commission." Respondent filed this Motion to Admit Additional Evidence on February 20, 2024, and further files and submits his affidavit in support of this motion along with this Reply.[2] **Exhibit 1**.

[1] Due to Respondent's filing of the instant Motion to Admit Additional Evidence, and pursuant to agreement with Commission counsel, the hearing on March 21, 2024, will solely address Respondent's motions, and the final hearing will be re-noticed for a later date.

[2] Respondent is not aware of any provision contained in Regulation 52-807 which requires him to file his affidavit contemporaneously with the motion or prohibits him from filing his affidavit after filing the motion.

The Commission asserts that Respondent has failed to demonstrate why the record before the panel is incomplete. S.C. Code Ann. §§ 1-23-320(G)(1) and (2) provide that "[t]he record in a contested case must include all pleadings, motions, intermediate rulings, and depositions; and evidence received or considered." (Emphasis added). By letter dated January 17, 2023, the Governor of South Carolina formally requested that the State Inspector General conduct a review or investigation into "certain procurement-related issues associated with the District's Piney Woods Elementary School project." A copy of this letter is attached and incorporated herein as **Exhibit 2**. The procurement-related issues listed in the letter included "relationship[s] between or among the procurement panelists and the general contractor or its subcontractors"; "potential conflicts of interest among procurement selection committee members or family members and the contractor, subcontractors, or both," and "any related-party transactions between the contractor and subcontractors without the knowledge of the District's Board of Trustees."

Pursuant to the Governor's formal request, The Office of Inspector General (OIG) conducted an investigation into the construction of Piney Woods Elementary School and issued a report of its findings in August 2023.[3] In this report, the OIG indicated that the State Investigator General "conducted interviews of current and former District leadership…as well as…the State Ethics Commission" in the course of its investigation. While it does not provide the dates of these interviews, based upon the date of the Governor's request to the State Inspector General, it is possible that these interviews took place between January 2023 and August 2023.

Respondent submitted a FOIA request to the Commission on or about January 23, 2024, seeking to obtain all documents sent to and received from the OIG concerning Respondent's matter

[3] A copy of this report was filed with the Commission on February 20, 2024, as Exhibit A to Respondent's Motion to Admit Additional Evidence.

before the Commission. In response, the Commission produced an email between an investigator from the OIG and the Commission in which the OIG requested a recording of the hearing before the Commission panel on February 16, 2023, and exhibits introduced during the hearing. This request was made, and a copy of the recording was provided to the OIG before the Commission issued a final order on March 24, 2023. The Commission has advised that the only item it provided to the OIG was the audio recording from the hearing. Respondent requested the issuance of certain subpoenas to the OIG, and other parties, to independently verify this claim and obtain any information that was exchanged between the Commission and the OIG based on the representation in the OIG's August 2023 report.

Respondent asserts that any information shared or exchanged between the Commission and the OIG is relevant to the proceedings in this matter because it constitutes evidence received or considered by the Commission and is therefore material to the decision reached by the Commission panel. This includes interviews with any agents and/or employees of the Commission concerning the investigation of the construction of Piney Woods Elementary and procurement-related issues as represented by the OIG's report. Respondent was a sitting member of the District Five School Board during the construction of Piney Woods Elementary School, and the allegations made against Respondent in this matter primarily concern his alleged participation in discussions and/or decisions about the construction of this specific facility and his company's relationship with a subcontractor who performed work on the PWES project.

Respondent has a right to be informed of all evidence received and considered by the Commission in reaching its decision. The fact that the OIG was provided with the audio recording from the February 16, 2024 hearing before the Commission issued its order over a month later, in

violation of S.C. Code Ann. § 8-13-320(g)(ii) and without notice to Respondent, further highlights the need to include any such communications or evidence into the record.

CONCLUSION

Wherefore, having fully set forth the grounds for the relief south herein, Respondent moves for an order admitting additional evidence into the Record on Appeal.

Respectfully submitted,

s/ Haley Hubbard____
Desa Ballard (S.C. Bar No. 498)
Harvey M. Watson III (S.C. Bar No. 74053)
Haley Hubbard (S.C. Bar No. 103195)
BALLARD & WATSON
226 State Street
West Columbia, South Carolina 29169
Telephone 803.796.9299
desab@desaballard.com
harvey@desaballard.com
haley@desaballard.com

ATTORNEYS FOR RESPONDENT

March 19, 2024

Exhibit 1

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	BEFORE THE STATE ETHICS COMMISSION
IN THE MATTER OF: Complaint C-2021-016 Kenneth Loveless, Respondent. Kim Benson, Complainant.	)	**AFFIDAVIT OF KENNETH LOVELESS IN SUPPORT OF MOTION TO ADMIT ADDITIONAL EVIDENCE**

Personally appeared before me, Kenneth B. Loveless, who being duly sworn, deposes and says that:

1. I am over the age of eighteen years and am competent to state the matters set forth herein. I have personal knowledge of the matters so stated, except as to those matters stated on information and belief, and as to those, I have a good faith basis for believing them to be true.
2. I am submitting this affidavit in support of the Motion to Admit Additional Evidence filed with the Commission on February 20, 2024.
3. I have obtained and reviewed a copy of the OIG's report issued in August 2023 regarding its investigation into the construction of Piney Woods Elementary School.
4. The OIG's report indicates and specifically states that the State Investigator General "conducted interviews of current and former District leadership...as well as...the State Ethics Commission" in furtherance of its investigation into the construction of Piney Woods Elementary School.

5. Despite this representation in the OIG's report, the Commission maintains that no agents or staff from the Commission were interviewed in connection with the OIG's investigation. However, I am informed and believe that the Commission and the OIG have exchanged communications and/or documents regarding my case pending before the Commission.

6. Clearly, there have been communications between the OIG and the Commission regarding my case as the OIG requested a copy of the audio from the hearing before the Commission panel on February 16, 2023, and the exhibits introduced during that hearing, all of which I discovered after submitting a FOIA request to the Commission.

7. The Commission provided the OIG with the requested audio before the Commission issued a final order on March 24, 2023, in direct violation of S.C. Code Ann. § 8-13-320(g)(ii). Further, the Commission provided the recording to the OIG without prior notice to myself or my counsel.

8. I am also aware of the fact that an employee and/or agent of the OIG signed the registry and attended the hearing on February 16, 2023. On information and belief, an OIG employee and /or agent working on behalf of the Inspector General attended the hearing of February 16, 2023 and revealed her identity to my wife, Jondy S. Loveless, and overheard by another. This occurrence is detailed in the attached affidavit. **Exhibit A**.

9. On information and belief, Inspector General Brian Lamkin appeared before an executive session of the school board of Lexington-Richland School District Five without my knowledge long before February 16, 2023, and long after I had not been re-elected to the board. I. G. Lamkin swore the now sitting board to secrecy under penalty of law to neither reveal the existence, the subject of, nor any information or actions

resulting from that and subsequent meetings before his report was published which was August 2023.

10. On information and belief after such extensive efforts to keep the OIG's investigation secret, I can think of no other explanation as to the motive of the OIG to have a staff member physically at the hearing and to have that staff member identify herself to my wife other than it was an effort to pressure me as a witness. I am also curious as to why we had to learn of the involvement of both state agencies through two separate Freedom of Information requests, one by a legislator and the other by my attorney. It was obvious that the SC Ethics Commission staff was scheduling a final hearing on this matter without informing me of this evidence which includes the notes the OIG has in its possession. I was forced to spend time and treasure through legal bills to find the truth. This scenario is not one that an American citizen should expect from its government.

11. I requested the issuance of certain subpoenas in this matter to obtain documents and/or testimony of which I was not aware, nor could I have been aware, prior to the hearing held before the panel on February 16, 2023.

12. It is my belief that any evidence produced in response to those subpoenas is relevant to the instant matter and is necessary to complete the record before the Commission.

FURTHER, deponent sayeth not.

Kenneth B. Loveless

Sworn to me this
18 day of March, 2024

Printed Name: Marshall Price Jr.
Notary Public for South Carolina
My commission expires: July 21, 2033

Exhibit A

STATE OF SOUTH CAROLINA	)	
COUNTY OF RICHLAND	)	BEFORE THE STATE ETHICS COMMISSION
	)	
	)	
	)	
IN THE MATTER OF:	)	
	)	AFFIDAVIT OF JONDY S LOVELESS
Complaint C-2021-016	)	IN SUPPORT OF MOTION TO ADMIT
	)	ADDITIONAL EVIDENCE
Kenneth Loveless,	)	
Respondent.	)	
	)	
Kim Benson,	)	
Complainant.	)	
_____	)	

Personally appeared before me, Jondy S. Loveless, who being duly sworn, deposes and says that:

1. I am over the age of eighteen years and am competent to state the matters set forth herein. I have personal knowledge of the matters so stated, except as to those matters stated on information and belief, and as to those, I have a good faith basis for believing them to be true.

2. I am submitting this affidavit in support of the Motion to Admit Additional Evidence filed with the Commission on February 20, 2024.

3. I attended the SC Ethics Commission hearing of Kenneth B. Loveless Respondent vs. Kim Benson Complainant February 16, 2023. My husband was the last person to testify. I noticed a lady all day throughout the hearing in the row right in front of me. The lady was taking plenty of handwritten notes.

Cathy Huddle and I went to the restroom which is located near the lobby of the building. Coming up to the area where there are handwash sinks, I saw a lady and told her that she had on a pretty scarf. She said" Thank You". I asked her if she was a newspaper reporter because she was taking all those notes. She said that she was not a reporter but rather that she was an employee of the state Office of the Inspector General. The OIG's office is located on a different floor of the same building.

FURTHER, deponent sayeth not.

Jondy S. Loveless

Sworn to me this
18th day of March, 2024

Printed Name: Stephanie Orander

Notary Public for South Carolina

My commission expires: 2/4/31

Exhibit 2

HENRY MCMASTER
GOVERNOR

January 17, 2023

The Honorable Brian D. Lamkin
State Inspector General
111 Executive Center Drive, Suite 204
Columbia, South Carolina 29210-8416

Dear Inspector General Lamkin:

Pursuant to section 1-6-35 of the South Carolina Code of Laws, please allow this letter to confirm my previous request that you and your staff in the Office of the State Inspector General ("SIG") conduct a review or investigation of School District Five of Lexington and Richland Counties ("District") and to further specify the proposed scope of the same.

As detailed in the letter dated December 1, 2022, the Office of the Governor ("Office") previously received certain correspondence and accompanying materials from Ms. Jan Hammond, who formerly served as chair of the District's Board of Trustees. Ms. Hammond, ostensibly on behalf of the District's Board of Trustees, requested that the Office submit the "Procurement Examination and Consulting Phase II Report [dated] September 19, 2022 . . . to the Office of Inspector General and request an investigation into the matters contained in the report." Based on the Office's preliminary review of the materials provided, it appears that the above-referenced Phase II Report identified or alleged certain procurement-related issues associated with the District's Piney Woods Elementary School project, to include the following:

- internal controls over the procurement selection committee;
- potential violations of the District's procurement code or procurement policy;
- any relationship between or among the procurement panelists and the general contractor or its subcontractors;
- potential conflicts of interests among procurement selection committee members or family members and the contractor, subcontractors, or both;
- perceived irregularities in billing, to include the reclassification of items to project labor;
- apparent unexplained discrepancies in allowances and contingencies that should have accrued to the benefit of the District in savings on the project; and
- any related-party transactions between the contractor and subcontractors without the knowledge of the District's Board of Trustees.

In light of the foregoing, I respectfully request that you and your staff initiate and conduct a review or investigation of the District regarding the aforementioned matters, as well as any different or additional allegations of fraud, waste, abuse, mismanagement, misconduct, violations of state or federal law, or wrongdoing, as you deem appropriate.* In the event there may be other pending investigations or proceedings, please endeavor to limit any potential interplay with the same so as to avoid interfering with any separate inquiries.

Should you or SIG staff have any questions or concerns regarding this matter, please do not hesitate to contact the Office. Thank you in advance for your assistance with this matter and for your continued service to the State of South Carolina.

Yours very truly,

Henry McMaster

* Please note that the cited matters are not intended to be exhaustive or exclusive in nature but rather to summarize matters cited or alleged in the Phase II Report, which I am providing for purposes of "articulat[ing] the basis of any alleged wrongdoing," S.C. Code Ann. § 1-6-35(B), in connection with this request. The topics identified herein should not be construed to narrow or confine the scope of any further SIG inquiry or investigation or limit your preexisting or independent authority to, *inter alia*, "receive complaints alleging a violation of a statute or rule relating to the purchase of goods or services by a current or former employee, state officer, special state appointee, or person who has a business relationship with an agency," S.C. Code Ann. § 1-6-30(3), "receive complaints from any individual, including those employed by any agency, alleging fraud, waste, abuse, mismanagement, misconduct, violations of state or federal law, and wrongdoing in an agency," S.C. Code Ann. § 1-6-30(4), or otherwise identify matters that warrant further investigation.

Ballard & Watson
Attorneys at Law
PERSISTENT. UNWAVERING.

Desa Ballard
Harvey M Watson III
Haley Hubbard

226 State Street West Columbia, SC 29169
ph 803.796.9299 | fx 803.796.1066 | desaballard.com

May 16, 2024

Via U.S. Mail and Email (mwalker@ethics.sc.gov)
Meghan L. Walker
State Ethics Commission
201 Executive Center Drive
Columbia, South Carolina 29210

Re: Kenneth Loveless, Respondent
Case No.: C2021-016

Dear Meghan:

Please find enclosed an additional exhibit for inclusion to the Motion to Admit Additional Evidence and Motion to Stay Proceedings for the above-referenced matter. By copy of this letter and as evidenced by the Proof of Service, these filings have been served upon counsel for the State Ethics Commission. Thank you for your time in this matter. If you have any questions, please do not hesitate to contact our office.

With warm regards, I am,

Sincerely yours,

Haley A. Hubbard

Haley Hubbard
haley@desaballard.com

cc: Courtney Laster, Esquire (via U.S. Mail and Email)
Ken Loveless (via email)

Exhibit B

From: Walker, Meghan
To: Haley Hubbard
Cc: Desa Ballard; Beth Cogan
Subject: RE: [External] FOIA Response
Date: Wednesday, February 7, 2024 1:15:58 PM

All documents in the Commission's possession that were responsive to your request have been provided to you. The only thing on the thumb drive was the audio recording of the hearing – the exhibits were not provided.

Meghan

From: Haley Hubbard <haley@desaballard.com>
Sent: Wednesday, February 7, 2024 11:35 AM
To: Walker, Meghan <mwalker@ethics.sc.gov>
Cc: Desa Ballard <desab@desaballard.com>; Beth Cogan <Beth@desaballard.com>
Subject: RE: [External] FOIA Response

Just making sure I understand, the only thing that was provided to the OIG during the pendency of Mr. Loveless's matter was the audio recording of the hearing. No other documents, correspondence or communications have been exchanged between the Commission and the OIG regarding Mr. Loveless?

Best,

Haley A. Hubbard
Associate
Ballard & Watson
226 State Street
West Columbia, SC 29169
Telephone 803-796-9299
Email: haley@desaballard.com

From: Walker, Meghan <mwalker@ethics.sc.gov>
Sent: Monday, February 5, 2024 9:37 AM
To: Haley Hubbard <haley@desaballard.com>
Cc: Desa Ballard <desab@desaballard.com>; Beth Cogan <Beth@desaballard.com>
Subject: RE: [External] FOIA Response

Haley – the thumb drive contained only an audio recording of the hearing. Due to this email, I now realize that we never actually sent the documents. That was an oversight on my part due to the statute that you outlined below.

Thanks,

Meghan

From: Haley Hubbard <haley@desaballard.com>
Sent: Friday, February 2, 2024 9:46 AM
To: Walker, Meghan <mwalker@ethics.sc.gov>
Cc: Desa Ballard <desab@desaballard.com>; Beth Cogan <Beth@desaballard.com>
Subject: [External] FOIA Response

Good Morning Meghan,

We received the attached email in response to our FOIA request, which is also attached for reference. I first want to confirm that this represents all communications or documents exchanged between the Office of Inspector General and the Commission regarding Mr. Loveless's matter, and request that we be provided with a list of the documents that were on the thumb drive given to the OIG.

It appears that the OIG was provided with a thumb drive containing the recording of the Loveless hearing and the exhibits related to the case, which I understand becomes public record after a final order is issued by the Commission, pursuant to Section 8-13-320(g)(ii). However, this was released to the OIG on February 21,2023 before the Commission issued an order on March 24, 2023. Is there a specific reason as to why those documents and the recording were released to the OIG before the Commission issued the order in Mr. Loveless's matter?

Best,

Haley A. Hubbard
Associate
Ballard & Watson
226 State Street
West Columbia, SC 29169
Telephone 803-796-9299
Email: haley@desaballard.com

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	BEFORE THE STATE ETHICS COMMISSION
IN THE MATTER OF:	)	
Complaint C2021-016	)	**SECOND AMENDED**
Kim Benson, APPELLATE.	)	**NOTICE OF APPELLATE HEARING**
Kenneth Loveless, APPELLANT.	)	

Desa Ballard, Attorney for Appellant Kenneth Loveless, served a Request for Review of Decision and Order on the State Ethics Commission on April 3, 2023. The State Ethics Commission will, therefore, convene a formal appellate hearing into the matter, in accordance with State Ethics Commission Regulations, 52 S.C. Code Ann. Regs. 802 (2013 Cum. Supp.) on January 16, 2025 at 9:30 a.m. at the State Ethics Commission Hearing Room located at: 201 Executive Center Drive Suite 150, Columbia, South Carolina 29210.

Pursuant to 52 S.C. Code Ann. Regs. 803, the Appellant shall file any additional briefs within ten (10) days of the date of service of this notice. In the event the Appellant fails to appear, he will have waived his hearing and judgment will stand.

Meghan Walker Dayson
Executive Director

Dated this 10th day,
of July 2024.

Certificate of Service by Certified Mail

I hereby certify that a copy of this **SECOND AMENDED NOTICE OF APPELLATE HEARING** was duly served on Respondent's Attorney Desa Ballard, Esquire, 226 State Street, West Columbia, SC 29169 by depositing said **SECOND AMENDED NOTICE OF APPELLATE HEARING** in the United States mail, Columbia, South Carolina on this 17th day of July 2024, by CERTIFIED MAIL, E-RETURN RECEIPT REQUESTED, appropriate postage affixed, and a return address clearly indicated on said envelope.

Rachael O'Bryan, Administrative Assistant
Columbia, South Carolina State Ethics Commission (803) 253-4192

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	BEFORE THE STATE ETHICS COMMISSION
IN THE MATTER OF: Complaint C2021-016	)	
Kim Benson, Complainant.	)	**RESPONDENT'S BRIEF**
Kenneth Loveless, Loveless.	)	

RECEIVED
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STATE ETHICS COMMISSION

Respondent Kenneth Loveless (hereafter "Loveless") submits this brief to the Full Commission pursuant to Reg. 52-803 in advance of the appellate hearing currently scheduled for January 16, 2025. The date for submission of this brief was agreed-upon by counsel for Loveless and Commission Counsel Courtney Laster. Loveless is a former member of the Lexington-Richland School District 5 Board of Trustees. He served one term on the Board, from 2018 -2022. Loveless was defeated for re-election in November 2022 during the pendency of these proceedings. Loveless is currently running for election to the Board for a second term, but at present is a private citizen.

This matter was initiated by filing of a complaint with the Commission on February 17, 2021 by Kim Benson, who identified herself on the complaint as a "parent and tax payer." (R. p.1). For reasons that are not known to Loveless, he was not asked to submit a response to the Commission for more than a year, and when asked, he submitted a written response on February 28, 2022[1]. (R. pp.62-66). In his response, Loveless waived the confidentiality of these proceedings

[1] In its 2023 Annual Accountability Report to the Governor, as required by S. C. Code § 1-1-810, the Commission advised that the "legal department is asked to resolve cases within 180 days of a finding of probable cause, this goal was achieved in 81.53% of cases. On average, cases were resolved within 142.78 days of a finding of probable cause." The Commission's record in this matter is conflicting as to when the Commission found probable cause. Email from Investigator Caldwell to Loveless' prior counsel indicated the probable cause determination would occur sometime

as he is permitted to do by S.C. Code § 8-13-320(10)(b). (R. p.62).

By Notice of Hearing dated July 11, 2022, Loveless was charged with four (4) counts of violating S. C. Code § 8-13-700(B). (R. pp.67-70). He was charged with violating the statute by writing a letter, participating in discussions (but not votes) at two school board meetings, and attending a site visit of a construction project being built by the District. *Id.* Loveless was a current Board member on the dates set forth in the Notice of Hearing.

Loveless moved to dismiss these proceedings on September 11, 2022, pointing out the Notice of Hearing did not allege any violation of the statute, which prohibits public officials from "tak[ing] action" or "mak[ing] a decision." (R. p.76). The Motion to Dismiss also alleged numerous irregularities in the proceedings, including a violation by the Commission of S. C. Code § 8-13-31(9)(a), which permits the Commission to commence an investigation only after "a majority vote of the total membership of the commission" which could not have occurred here because the complaint was received on February 17, 2021, and it was sent to Loveless on February 23, 2021, and there were no Board meetings in the interim. (R. pp.85-87). The cover letter was Exhibit A to the Motion to Dismiss. (R. p.90). Several other procedural irregularities were set forth in the Motion to Dismiss. The motion also pointed out that the proceedings were being politicized in advance of the November 2022 election in which Loveless was running for re-election, and that these proceedings were the basis of "a media circus." (R. p.88).

The Motion to Dismiss was heard by Commissioner Starkes on October 6, 2022. In his order dated the same day, October 6, 2022, Commissioner Starkes erroneously ruled that the Executive Director had made the determination that the complaint "alleged facts sufficient to

after March 1, 2022, which is more than a year after the complaint was filed. The Notice of Hearing, dated 18 months after the complaint was filed, does not state when the probable cause determination was made.

constitute a violation of the Act and ordered an investigation" when she sent out the letter to Loveless on February 23, 2021. (R. pp.176-184). Exhibit A to the Motion to Dismiss says exactly the opposite. (R. p.90).

More importantly, Commissioner Starkes disagreed that the Notice of Hearing failed to state facts that showed a violation of § 8-13-700(B), citing to ethics opinions that erroneously expanded on the statutory definition of what constituted a violation of the Act.[2] (R. p.178). One of the advisory opinions Commissioner Starkes cited to, SEC AO2000-011, he described as being "supported by decades of guidance and enforcement actions." (R. p.179).

Loveless filed a Request for Review by the Full Commission in accordance with Reg. 52-801 and 52-805 on October 17, 2022. (R. p.188). That Request for Review is ripe for decision. Loveless incorporates hereto his Petition for Original Jurisdiction and proposed complaint filed with the South Carolina Supreme Court on August 22, 2024 for further legal argument on Commissioner Starke's erroneous finding that the Notice of Hearing did, in fact, state a violation of the Act.

A panel hearing was held on February 16, 2023 before Commission Members Xavier Starkes (Panel Chairman), Scott E. Frick, and A.J. Hollway.[3] By order dated March 24, 2023, the panel found that Loveless had violated the State Ethics Act on three (3) of the four (4) counts set forth in the Notice of Hearing. (R. p.218).

With no analysis, the panel cited S. C. Code §8-13-700(B)(4) and erroneously concluded

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[2] Commissioner Starkes cited to § 8-13-700(b)(4), which he called a "clarification" of § 8-13-700(b). It is not a clarification. It is, in fact, a procedure that applies only when the public official is required to "take an action or make a decision. . ." The numbered paragraphs below § 8-13-700(B), all 4 of them, spell out the steps that must be followed <u>if</u> a public official has to "take an action or make a decision." Paragraphs 8-13-700(B)(1) through (4) are <u>not</u> comments, but a separate part of the statute entirely.

[3] Mr. Holloway participated in the hearing by virtual link.

that Loveless had violated the statute. *Id.* The panel made the same mistake Commissioner Starkes did when he mis-read the subparts of § 8-13-700(B), *i.e.,* thinking subpart (4) was a part of the prohibition set forth in § 8-13-700(B). It is not. It is clearly a separate part of the statute that sets forth what must occur when a public official is "required to take an action or make a decision. . ." which does not apply here. The hearing panel also cited to numerous advisory opinions which unlawfully expand on the words of the unambiguous statute. (R. p.223).

None of the charges against Loveless claimed that Loveless took "actions" or made "decisions" and, as set forth in his Motion to Dismiss, Loveless took no action nor did he make a decision. (R. pp.77-83). In fact, as one member of the School Board, Loveless was powerless to take any action or make any decision on his own. S. C. Code § 59-19-10.[4] He was found by the hearing panel to have violated the statute by writing a letter and participating in two (2) board meetings, at neither of which did he vote on anything related to Contract Construction.

The panel found that Loveless "improperly inserted himself into this matter," without defining what "this matter" was, erring as did Commissioner Starkes, likely due to the decades-long misinterpretation of §8-13-700(B) by the Commission. (R. p.223). Loveless testified that he sent a letter recusing himself on the advice of Courtney Laster, counsel for the Commission, who wrote him a letter dated September 25, 2020, in which she advised that, in her opinion, he should recuse himself from "that matter" (which was similarly not defined in her letter) but concluded

[4] This error by the Commission was pointed out by Loveless in his response filed February 28, 2022. As he stated in his response to the Commission "Loveless has no individual ability to make decisions for the Board." (R. p.63). Loveless cited to SEC AO-2003-002, which pointed out the statute is not violated when the public official only acts as a member of a decision-making body. *Id.* As to the counts here, however, no one made any decisions or took any vote on the topics that were addressed in the letter or the discussion. *See* Minutes of School Board meetings of June 15, 2020, September 14 and 28, 2020, and February 8, 2021, admitted as Commission Exhibits. As noted repeatedly, Loveless has been charged with writing a letter and participating in a discussion, neither of which are prohibited by the Act.

"you are correct that the ultimate decision to recuse belongs to the public official." (R. pp.360-361). Loveless testified he disagreed with the suggestion that he was required to recuse himself, but "out of respect for the Commission's position" he recused himself from any decision or vote related to the construction of the project being built for the District by Contract Construction going forward. (R. p.361). Loveless never admitted that he was required to recuse himself, and the hearing panel's finding that he was required to do so was clear error.

Loveless raised the issue of whether Contract Construction was a business with which he was associated in his written response, and again at the hearing, so the issue is therefore preserved for appellate review. (R. pp.63-65). Loveless argued that Contract Construction Inc. was not a business with which he was associated in that he had no economic interest in the District's contract with Contract Construction as prohibited by § 8-13-100(11)(a), and that the construction company of which he is president, Loveless Commercial Contracting Inc., was a member of "a profession, occupation or large class. . ." whose interest in the District's contract with Contract Construction Inc. was "no greater . . . than the economic interest or potential benefit [that] could reasonably be foreseen to accrue to all other members of the profession, occupation or class" to which his company belonged, *i.e.,* the field of commercial contracting. (R. pp.63-64).

At the panel hearing, Loveless continued to contest the conclusion that Contract Construction was "a business with which he was associated," and the evidence establishes, without doubt, that Loveless did <u>not</u> vote on or take any action with respect to Contract Construction after his company became a subcontractor of Contract Construction on an unrelated job for SLED in 2020, two years into the construction of Piney Woods Elementary School.[5] (R. pp.292-295).

[5] Loveless and one of his employees testified that Contract Construction attempted to award the SLED contract to Loveless' company in 2019, but there was a procurement dispute and Contract Construction did not officially award the contract to Loveless's company until early March 2020. (R. pp.351-353). Loveless voted on nothing related to

While Loveless raised questions about issues with construction at Piney Woods Elementary School before his company became a subcontractor with Contract Construction on an unrelated project, Loveless participated in no votes nor did he take any action that was intended to or did influence any actions taken by the Board as to the project. (Tr. p. 78, line 7 – p. 83, line 7) (R. pp.275-278).

The Commission need not reach that issue on review because of the unlawful interpretation of the statute which, in Commissioner Starkes' words, "is supported by decades of guidance and enforcement actions," all of which violate the plain, unambiguous language of the statute. (R. p.179). Despite his thorough self-education on the rules which applied to his conduct as a School Board member, Loveless had no idea that his company's unrelated subcontract with Contract Construction created an issue relative to his service on the Board, since the district's selection of Contract Construction Inc. for Piney Woods Elementary School was the result of a competitive bid process. (R. pp.351-353).

Moreover, it is clear that Loveless took no action that influenced any action or vote regarding Contract Construction. Loveless was "literally shocked" during the September 14, 2020 school board meeting, to be accused of having violated a conflict-of-interest rule by virtue of his unrelated subcontract with Contract Construction. (Tr. p. 83, line 7 -8) (R. p.278, line 28). Loveless specifically cited to S.C. Code § 8-13-775 and stated that since Loveless Commercial Contracting's contract with Contract Construction for the SLED project was the result of a competitive bid, he believed the contract could not possibly pose a conflict for Loveless Commercial Contracting.

Additionally Loveless had not participated in any official function in the award of the

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Contract Construction after that date, period. It was after that date, in fact, when Loveless wrote the March 24, 2020 letter to Superintendent Melton, but as stated in testimony by both Loveless and Melton, Loveless was required by Melton to write the letter. (R. p.265). Writing a letter does not violate § 8-13-700(B).

contract to Contract Construction by way of vote or decision, nor would he in the future. There was no prohibition on his company having an unrelated subcontract with the same company with which the District did as long as he did not participate in any "take any action" or "make a decision" as it related to the district's contract with Contract Construction.

Commission Investigator Ryanne Caldwell testified that, in her opinion, Loveless's participation in discussions regarding work being performed for the district by Contract Construction, even though the discussions did not lead to actions or votes taken by the district, violated the "Commission's historic interpretation of § 8-13-700(B)." (R. pp.295-296). Ms. Caldwell acknowledged she was aware of no evidence Loveless had participated in any vote or decision regarding Contract Construction while serving as a Board member. (R. p.295). Ms. Caldwell was careful to point out that the Commission's historic interpretation" of the statute was the issue in these proceedings, and she did not testify that Loveless had violated the language of the statute.

Based in part on the letter he received from Ms. Laster (which, as noted, is not in the record), Loveless submitted a letter to the Chairman of the School Board at a Board meeting held on February 8, 2021 recusing himself from "any and all votes, deliberations, and other actions on any matter that comes before the Board of Trustees relating to Contract Construction Inc." (R. p.544). The Panel's review of all Board meetings[6] held between after September 2020 (when Loveless was accused of having a conflict of interest) and February 8, 2021, when Loveless

[6] Minutes of Board meetings appear at http://www.lexrich5.org/Page/13591. The School Board's voting tabulation for meetings which occurred on October 12, 2020, November 16, 2020, November 30, 2020 (special called meeting), December 2, 2020 (special called meeting), December 14, 2020, and January 25, 2021. According to the minutes of the January 25, 2021 meeting, Board Member White made a motion to amend the agenda to discuss "Financial Relationship of Ken Loveless with a Vendor and Recusal Requirement." That motion did not pass. No votes or actions were taken regarding Contract Construction at the January 25, 2021 meeting.

recused himself, reflect there were no votes or actions or decisions regarding Contract Construction on any topic taken by the Board during that time.[7]

Loveless receives a salary from Loveless Commercial Contracting Inc. (R. p.372, lines 10-12). However, as a member of the School Board for District Five, he unilaterally declined to accept compensation of any kind from District Five during his service on the Board, and he paid his own expenses for training and conferences he attended as a Board member, choosing instead to leave funds that would have been paid to him for use by the district for other needs. (R. p.350, lines 21-44). Loveless considered his service as a Board member to be a volunteer position and he elected not to be compensated for his volunteer work. (R. p.350, lines 21-44).

The SLED subcontract was a very small project for Loveless Commercial Contracting Inc. and made up approximately 3% of the bonding capacity which Loveless Commercial Contracting had available to it at the time the project was bid. (R. pp.365-366). Loveless neither sought or obtained any economic benefit of any kind for himself, his family, or his company from his service of the District Five Board of Trustees.

POINTS OF LAW

1. Once elected to serve as a member of the Lexington-Richland District Five Board of Trustees, Loveless became a "public official" as defined by S.C. Code § 8-13-100(27) and § 8-13-775. Because he is no longer on the Board, he is no longer a public official.

[7] In reviewing the Board minutes from February 8, 2021 (R. p.530), there was an active attempt during this time by at least one Board member to force Loveless to recuse himself from "discussions" (not actions or votes) regarding Contract Construction. An attachment by Board Member White to the minutes (Attachment 5, pp. 1-2) is an email to Board Chair Jan Hammond dated January 25, 2021 which states "I have also shared [the Laster letter] with my law partner, James Burns, who is an expert in the South Carolina Ethics laws and is a former past Chairman of the State Ethics Commission. After reviewing [the Laster letter] Mr. Burns' opinion is that Mr. Loveless is required to recuse himself from any discussions with the Board or District about the Piney Woods construction project and you, as Board Chair, have an affirmative obligation to make sure he recuses himself." (R. pp.548-549). Interestingly, the email refers to "discussions," which are not prohibited by S.C. Code § 8-13-700(B), but it is the same allegation made in each of the Four Counts pending against Loveless. This issue is further discussed in Points of Law, below.

2. A public-school Board of Trustees is an entity which is responsible for the "management and control" of the District which it serves. S.C. Code § 59-19-10. The Board acts only as an entity; no individual Board member has any power to take any action on behalf of the Board. (R. p.611, Board Policy BB) ("All powers of the board lie in its action as a body. Board members acting as individuals have no authority over personnel or school affairs."). *Id. See also* District Five Board Policy BCA (R. p.63) (". . .recognizing that authority rests only with the board in official meetings and that the individual member has no legal status to bind the board outside of such meetings.")[8]

3. Pursuant to the authority vested in it by S.C. Code § 59-19-90(3), District Five has adopted policies which guide the operation of the District Policy BD-R (R. p.607) governs the duties of the Chairman of the Board of Trustees. Policy BA (R. p.608) requires, *inter alia*, that Board members "provide leadership in order that the goals and objectives of the school system can be effectively carried out." Policy BBA (R. p.609) requires Board members to visit schools as "expressions of interest in school affairs. . .". The mandate for individual Board members to visit schools is also contained in S.C. Code § 59-19-90(6).

4. District Policy BCA, cited in Loveless's written response to the Commission, obligates the individual Board members to "accept the responsibility along with . . . fellow board members of ensuring that optimal facilities and resources are provided for the proper functioning of schools. . ."

[8] S.C. Code § 59-19-90 spells out the statutory duties vested in school board trustees, which includes the duty to "provide schoolhouses" and "[t]ake care of, manage and control the school property of the district." AS it relates to architectural and construction services for Piney Woods Elementary School, the Board of District Five delegated the final responsibility for contracting to the Superintendent.

5. It is fully within the authority of the members of the Board to ask questions of the Superintendent regarding ongoing affairs within the district, and Board members are not required to set aside their vocational experience at the door. Loveless's vocational experience as a commercial contractor gave him unique knowledge and experience to contribute to discussions regarding ongoing construction within the District.

6. All four counts leveled against Loveless by the Commission relate to events that did not include a vote or Board action. There is no allegation that Loveless participated in any vote regarding Contract Construction Inc. either before or after Loveless's company became a subcontractor of Contract Construction Inc. for the SLED project in 2020.

7. Because the District's selection of Contract Construction Inc. as Construction Manager at Risk through a competitive bidding process, S.C. Code § 8-13-775 expressly permits Board members to participate in discussion of vendors with which they have unrelated contracts, as long as the Board member does not "perform[] an official function" regarding the contract. SEC AO93-054.[9]

8. Early in its existence, the Commission[10] issued an advisory opinion that recognized its duties are prescribed by the legislature. In SEC AO-72, the Commission stated "[a] statutory provision should be given reasonable and practical construction consistent with the purpose and policy expressed in the statute." SEA AO 92-072[11] (pp.2-3). "The real purpose and intent of

[9] In Advisory Opinion SEC AO93-054, the Commission discussed the exceptions that apply to public contracts that are awarded in accordance with the state procurement code. The Commission cited to § 8-13-775 which then, and now, provides that "[o]fficial function means writing or preparing the contract specifications, acceptance of bids, award of the contract, or other action on the preparation or award of the contract.

[10] The Commission was created by the General Assembly in 1991. 1991 Act No. 248. That act transferred responsibility for work that was previously being done by the office of the Secretary of State to the Commission. *See* Preamble to 1991 Act No. 248.

[11] This EAO was overturned in part by amendments to § 8-13-740(4) and (5) in 2007, not applicable here.

the law makers will prevail over the literal import of the words." *Id., citing Hay v. South Carolina Tax Commission*, 273 S.C. 269, 255 S.E.2d 837 (1979) and *Greenville Baseball Inc. v. Bearden, Sheriff et al.*, 200 S.C. 363, 20 S.E.2d 813, 815 (1942).

9. Subsequently, however, the Commission found that "S.C. Code § 8-13-700(B) is unambiguous in its requirements." *State Ethics Commission v. OHP and JDG,* Complaint No. 97-035 & 036 (order dated February 13, 1998).[12] That being the case, Loveless is correct that the Commission need not construe the statutes which prescribe its authority and what constitutes a violation of the Ethics Act if the statute is unambiguous.

10. "When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning. *Miller v. Aiken*, 364 S.C. 303, 613 S.E.2d 364, 366 (2005); *Carolina Power & Light Co. v. City of Bennettsville*, 314 S.C. 137, 442 S.E.2d 177, 179 (1994). If a statute's language is unambiguous and clear, there is no need to employ the rules of statutory construction and a court has no right to look for or impose another meaning. *Tillev v. Pacesetter Corp.*, 355 S.C. 361, 585 S.E.2d 292, 298 (2003); *Paschal v. State Election Comm'n*, 317 S.C. 434, 454 S.E.2d 890, 892 (1995); see also *Timmons v. Tricentennial Comm'n*, 254 S.C. 378, 175 S.E.2d 805, 817 (1970) ["Where the language of the statute is clear and explicit, the court cannot rewrite the statute and inject matters into it which are not in the legislature's language"]

[12] In accepting a consent order for discipline where unpaid members of a hospital board had participated in votes and discussions which generated real estate commissions for their wives, and requiring disgorgement, the Commission did not recognize a distinction between "votes" and "discussions." It does not appear the issue raised by Loveless as to the substantive difference between "votes" and "discussions" were considered as a part of that consent order. Indeed, the consent order of discipline found that the public members of the board were "prohibited from discussing or otherwise affecting a matter in which disqualification is required" and ordered disgorgement of fees their wives had earned as a result of the real estate project in which the hospital had purchased property. *Id.*

11. Despite having held that the provisions of S.C. Code § 8-13-700(B) were unambiguous and needed no statutory construction, in 2000, the Commission issued an advisory opinion which construed and expanded on the language of that unambiguous statute, when construction was not necessary (and expansion not permitted). SEC AO2000-011, which was issued *sua sponte* by the Commission "in response to the ongoing concern the State Ethics Commission has regarding violations of . . . § 8-13-700(B) of the Ethics Reform Act of 1991" the Commission expanded what it considered to be violation of § 8-13-700(B). In that advisory opinion, the Commission opined that the language of § 8-13-700(B) prohibits a public official who is governed by the statute from participating in any deliberations and further is required to "absent. . . oneself from the meeting location" at which the matter is being discussed. . . [and] recuse himself from all matters in which a business with which he is associated has an economic interest." *Id.* This was an error.

12. The "historical application" of S.C. Code § 8-13-700(B) as referenced by Ms. Caldwell is based upon an advisory opinion which the Commission had no authority to issue, was not requested by anyone, and which contradicted earlier specific case decisions of the Commission.

13. Since the language of § 8-13-700(B) is unambiguous, the Commission erroneously construed the statute by adding to it language that does not appear in the statute. *Hodges v. Rainey*, 341 S.C. 79, 533 S.E.2d 578 (2000). "Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute. . . Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory construction are not needed and the court has no right to impose another meaning." *Id.* 341 S.C. 87.

14. The statute prohibits a public official from "mak[ing], participat[ing] in making, or in any way attempt[ing] to use his office. . . to influence a governmental **decision**. . . or **action**. . ." S. C.

Code Ann. § 8-13-700(B) (emphasis added). By erroneously reading the statute to expand on the acts prohibited by §8-13-700(B), the Commission has asserted counts against Loveless based on conduct that is not prohibited by the statute. Since those acts are not prohibited by the applicable statute, they are not actionable under § 8-13-700(B).

15. As an agency of the State and a creature of statute, the Commission's authority is dependent upon statute. The Commission is possessed only with those powers specifically delineated or necessarily implied in their enabling legislation. *City of Columbia v. Board of Health and Environmental Control*, 292 S.C. 199, 355 S.E.2d 536 (1987), cited with approval in *Charlotte-Mecklenburg Hospital Authority et al. v. South Carolina Department of Health and Environmental Control et al.*, Civil Action No. 06-ALJ-07-0713CC (Order dated December 9, 2009).

> [Administrative] bodies, being unknown to the common law, and deriving their authority wholly from constitutional and statutory provisions, will be held to possess only such powers as are conferred, expressly or by reasonably necessary implication, or such as are merely incidental to the powers expressly granted . . . 'Any reasonable doubt of the existence in the commission of any particular power should ordinarily be resolved against its exercise of the power.'

Mungo v. Smith, 289 S.C. 560,564, 347 S.E.2dd 514, 517 (1986). *See also Stoneledge at Lake Keowee Owners Association Inc. v. IMK Dev. Co.*, 435 S.C. 109, 866 S.E.2d 542 (2021) (Statutes in derogation of the common law are to be strictly construed, and a statute restricting the common law will not be extended beyond the clear intent of the legislature), quoting *Eades v. Palmetto Cardiovascular & Thoracic P.A.*, 422 S.C. 196, 201, 810 S.E.2d 848, 850 (2018).

16. It is true that Courts generally defer to the opinion of a state agency as to the interpretation of a statute it is charged with the duty of enforcing. *S.C. Coastal Conservation League v. South*

Carolina Department of Health and Environmental Control, 380 S.C. 349, 669 S.E.2d 899 (Ct. App. 2008). "It is well established that construction of a statute by the agency charged with its administration will be accorded the most respectful consideration and will not be overruled absent compelling reasons." *Lloyd v. South Carolina Department of Health and Environmental Control*, 328 S.C. 419, 428-29, 491 S.E.2d 582, 595 (Ct. Ap. 1999), cited with approval *Safety Disposal Systems Inc. v. South Carolina Department of Health and Environmental Control*, No. 01-ALJ-07-012CC, 2002 WL 1354623 at *26.

17. However, an agency's interpretation of a statute cannot be sustained when it is in violation of the clear language of the statute or constitutes a clear abuse of discretion. *Brown v. Bi-Lo Inc.*, 354 S.C. 436, 440, 581 S.E.2d 836, 838 (2003). "South Carolina Courts have long held that however clear the language is in a statute, the courts will not apply a construction that reaches an absurd result the Legislature clearly did not intend." *Charlotte Mecklenburg Hospital Authority v. South Carolina Department of Health and Environmental Control, supra.*, citing *Kiriakides v. United Artists Communication Inc.,* 312 S.C. 271, 2275, 440 S.E.2d 364, 366 (1994) ("If possible, the court will construe the statute so as to escape the absurdity and carry the [legislative] intention into effect." *Catawba Indian Tribe of South Carolina v. State of South Carolina*, 372 S.C. 519, 527, 642 S.E.2d 751, 755 (2007).

18. While the four counts alleged against Loveless allege he violated the statute by participating in a "decision" for each count, the factual basis for each count makes clear that the Commission is seeking to find a violation of S.C. Code § 8-13-700(B) based on allegations that he "wr[o]te a letter" (Count One), "participate[d] in discussions" at two (2) Board meeting (Counts Two and Three), and "participate[d] in a site visit" of a District facility.

19. The Notice of Hearing, and the evidence presented at the panel hearing, clearly establishes that Loveless did not engage in any activity that is prohibited by S.C. Code § 8-13-700(B), in that he did not "make, participate in making, or in any way attempt to use his office. . . to influence a governmental decision. . ." of any kind.

20. The Commission has, on at least one other occasion, issued a *sua sponte* Advisory Opinion that was not requested by anyone other than its own staff. In 2022 AO 2022-001, the Commission offered "clarity in the application of S.C. Code § 8-13-320(10)(g) of the Ethics Act." The Panel does not mean to suggest that 2022 AO 2022-001 is invalid or void. The Panel simply notes that the Commission is restricted to issuing formal advisory opinions unless requested in accordance with S.C. Code § 8-13-320(11)(a).

CONCLUSION

The Commission has failed to establish that Loveless violated any provision of the State Ethics Act, and there is simply no evidence in the record that can support a finding of violation. The recommendation of the hearing panel cannot be sustained and must be reversed. Loveless prays for an order dismissing the charges against him.

Respectfully submitted,

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August 30, 2024

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	BEFORE THE STATE ETHICS COMMISSION
IN THE MATTER OF: Complaint C2021-016	)	
Kim Benson, Complainant.	)	**RESPONSE TO RESPONDENT'S APPELLATE BRIEF**
Kenneth Loveless, Respondent.	)	

This brief is submitted in response to Kenneth Loveless' (Respondent) Appeal from the Hearing Panel's (Panel) Decision and Order (Decision), which found Respondent, a former member of the Board of Trustees (Board) for School District Five of Lexington and Richland Counties (District), in violation of three (3) counts of Section 8-13-700(B) of the South Carolina Ethics, Government Accountability, and Campaign Reform Act (Ethics Act or Act). For the reasons discussed herein, the Panel's Decision should be affirmed.

RELEVANT PROCEDURAL HISTORY

The above-referenced Complaint was filed on February 17, 2021 alleging, *inter alia*, that Respondent improperly participated in Board discussions and/or other activities related to a District contract with Contract Construction, Inc. (Contract Construction) a business with which Respondent was associated, for the construction of Piney Woods Elementary School (PWES). (R.pp.1-61). The Commission subsequently found probable cause to believe Respondent violated the Ethics Act as follows:

> **COUNT ONE FAILURE TO RECUSE FROM A GOVERNMENTAL DECISION IN WHICH A BUSINESS WITH WHICH ASSOCIATED HAD AN ECONOMIC INTEREST SECTION 8-13-700(B), S.C. CODE ANN., 1976, AS AMENDED.** That Kenneth Loveless, Lexington-Richland School District Five Board Member, did in Richland County, write a letter dated March 24, 2020 inquiring about construction work of a district facility by Contract Construction, Inc., a business with which he was associated, in violation of Section

8-13-700(B).

COUNT TWO FAILURE TO RECUSE FROM A GOVERNMENTAL DECISION IN WHICH A BUSINESS WITH WHICH ASSOCIATED HAD AN ECONOMIC INTEREST SECTION 8-13-700(B), S.C. CODE ANN., 1976, AS AMENDED. That Kenneth Loveless, Lexington-Richland School District Five Board Member, did in Richland County, on June 15, 2020, participate in discussion about construction of a district facility by Contract Construction, Inc., a business with which he was associated, in violation of Section 8-13-700(B).

COUNT THREE FAILURE TO RECUSE FROM A GOVERNMENTAL DECISION IN WHICH A BUSINESS WITH WHICH ASSOCIATED HAD AN ECONOMIC INTEREST SECTION 8-13-700(B), S.C. CODE ANN., 1976, AS AMENDED. That Kenneth Loveless, Lexington-Richland School District Five Board Member, did in Richland County, on September 14, 2020, participate in discussion about construction of a district facility by Contract Construction, Inc., a business with which he was associated, in violation of Section 8-13-700(B). (R.pp.67-70).

On February 16, 2023, a hearing was held before the Panel. (R.pp.225-374). On March 24, 2023, the Panel found Respondent violated Section 8-13-700(B) of the Ethics Act as outlined in Counts One (1) through Three (3) in the Notice of Hearing.[1] (R.pp.218-24). Respondent timely filed a Notice of Appeal on April 3, 2023. (R.pp.188-91).

FACTS

1. Respondent served on the District Board from 2018-2022. (R.p.273, lines 23-39; p.342, lines 43-45).
2. Respondent has owned and operated Loveless Commercial Contracting, Inc. (LCC) for over thirty-five (35) years. (R.p.275, lines 8-16; p.300, line 2-p.301, line 4; p.317, lines 16-19; p.341, lines 11-16). Respondent serves as President and personally carries the line of credit for LCC. (R.p.370, line 24-p.372, line 4).
3. At all times relevant, Contract Construction was a general contractor located in South Carolina.

[1] The Commission also found probable cause to believe Respondent violated Section 8-13-700(B) for making a visit to the PWES construction site. However, this charge was dismissed by the Panel and is therefor not at issue in this appeal.

(R.p.274, lines 13-20). At all times relevant, Greg Hughes (Hughes) was the President of Contract Construction. (R.p.276, lines 40-42; p.288, lines 20-22).

4. On December 19, 2018, the District retained Contract Construction as its Construction Manager for the building of PWES. (R.pp.513-29; p.613).

5. Contract Construction subsequently hired LCC to perform work on an unrelated State Law Enforcement Division (SLED) Forensic Services Laboratory in Columbia, SC (SLED Lab). (R.p.323, lines 1-5; pp.471-72). The agreement between LCC and Contract Construction was personally signed by Respondent no later than March 12, 2020. (R.p.284, line 11-p.285, line 40; p.320, lines 27-30; p.352, line 37-p.353, line 7).

6. On March 24, 2020, Respondent submitted a letter to the District Superintendent raising perceived problems with the construction of PWES and criticizing terms of the District's contract with Contract Construction. (R.p.253, line 42-p.256, line 7; p.262, line 28-p.266, line 38). Respondent requested "action and a reply on these matters within the next two weeks." (R.pp.379-86).

7. During a June 15, 2020, District Board meeting, Contract Construction provided a progress report on the PWES construction. (R.pp.375-96). Following the report, Respondent questioned Hughes and District consultant Dan Neal (Neal) about contract change orders and owner/contractor contingencies. Another Board member, Ed White (White), questioned Hughes and Neal about the issues raised in Respondent's March 24, 2020 letter. Respondent engaged in additional discussion with White and the Board, noting he had received unsatisfactory answers to his March 24, 2020 letter and stating, "I'm a contractor, I know things like this." (R.p.276, line 8-p.279, line 24; Exhibit C2 Timestamps: 13:03-14:41; 22:50-23:11; 28:15-29:45).

8. During a September 14, 2020 District Board meeting, Contract Construction provided a progress report on the PWES construction. (R.p.280, lines 4-27; pp.397-456). Board member White again questioned Hughes about the issues raised in Respondent's March 24, 2020 letter. White also addressed LCC's subcontract with Contract Construction and questioned whether Respondent's participation in matters related to Contract Construction was proper. Respondent questioned Hughes and other PWES subcontractors about the cost of specific soil and concrete work at PWES. Hughes replied, in relevant part, as follows:

> . . . I don't have any problem with the questions. And we're going to give you the best facility you've had, and it will be under budget. And I do want to speak to Mr. Loveless' abilities as a contractor. He is doing a fantastic job on the project we're working together on. He was selected for his qualifications and doing a fantastic job. And there's similar type issues out there, but they're minor in the scheme of things. And we're pleased with what he's doing for us.

(R.p.280, lines 33-46; p.284, line 7; Exhibit C4 Timestamps: 0:00-2:00; 7:45-8:50; 15:01-27:06; 53:00-1:01:39; 1:09:00-1:16:31).

9. During the February 8, 2021 District Board meeting, Respondent submitted a letter to the Board Chair acknowledging his affiliation with Contract Construction on the unrelated SLED Lab and stating that he would recuse himself from all matters related to Contract Construction. (R.p.286, line 11-p.287, line 28; pp.545-47).

10. As outlined in its Decision, the Panel found that Respondent violated Section 8-13-700(B) of the Ethics Act by (1) writing the March 24, 2020 letter to the District Superintendent in which he demanded action be taken with regard to the Contract Construction/District contract; (2) participating in the June 15, 2020 Board discussion with Contract Construction regarding its progress and performance under the contract; and (3) participating in the September 14, 2020 Board discussion with Contract Construction regarding its progress and performance under the

contract. The Panel assessed a $1,750.00 civil penalty for each violation of the Ethics Act, plus an administrative fee of $900.00, for a total of $6,150.00.

ARGUMENT

I. The Hearing Panel properly applied Section 8-13-700(B) to the facts.

Respondent argues that Section 8-13-700(B)[2] applies only to "actions" and "decisions," such as a vote. Respondent argues that he has not violated Section 8-13-700(B) because he only wrote a letter and participated in Board discussions regarding Contract Construction's progress and performance during the PWES construction. (App.Br.pp.3-8; 12-15). As discussed herein, this argument lacks merit.

Section 8-13-700(B) of the Ethics Act provides, in relevant part:

> No [public official] may make, participate in making, or in any way attempt to use his [office] to influence a governmental decision in which he, a family member, an individual with whom he is associated, or a business with which he is associated has an economic interest. A [public official] who, in the discharge of his official responsibilities, is required to take an action or make a decision which affects an economic interest of himself, a family member, an individual with whom he is associated, or a business with which he is associated shall:
>
> (1) prepare a written statement describing the matter requiring action or decisions and the nature of his potential conflict of interest with respect to the action or decision;
>
> . . .
>
> (4) if he is a public official, other than a member of the General Assembly, he shall furnish a copy of the statement to the presiding officer of the governing body of an agency, commission, board, or of a county, municipality, or a political subdivision thereof, on which he serves, who shall cause the statement to be printed in the minutes and require that the member be excused from any votes, deliberations, and other actions on the matter on which the potential

[2] Respondent raises Section 8-13-775 multiple times throughout his brief. However, these arguments are not addressed herein because Section 8-13-775 applies to when a public servant has a contract with his own governmental entity, which is not the case here.

> conflict of interest exists and shall cause the disqualification and the reasons for it to be noted in the minutes.

Section 8-13-100(4) of the Ethics Act defines "business with which he is associated" as:

> A business of which the person or a member of his immediate family is a director, an officer, owner, employee, a compensated agent, or holder of stock worth one hundred thousand dollars or more at fair market value and which constitutes five percent or more of the total outstanding stock of any class.

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

> . . . an interest distinct from that of the general public in a purchase, sale, lease, contract, option, or other transaction or arrangement involving property or services in which a public official, public member, or public employee may gain an economic benefit of fifty dollars or more.

Pursuant to Section 8-13-320(11)-(12), the Commission is bestowed with the power and authority to issue advisory opinions and to promulgate and publish rules and regulations to carry out the provisions of the Ethics Act. See also Op. S.C. Atty. Gen., 2006 WL 2593082 (August 24, 2006) ("[p]rimary jurisdiction for interpretation of the Act is bestowed upon the State Ethics Commission . . ."). In matters of interpretation, the cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. See Hodges v. Rainey, 341 S.C. 79, 533 S.E.2d 578 (2000). "All rules of statutory construction are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in the light of the intended purpose of the statute." Jones v. State Farm Mut. Auto Ins. Co., 364 S.C. 222, 230, 612 S.E.2d 719, 723 (Ct. App. 2005). "Courts will reject a statutory interpretation which would lead to a result so plainly absurd that it could not have been intended by the legislature or would defeat the plain legislative intention." Id. at 232; 612 S.E.2d at 724.

Here, even assuming that Respondent's argument is correct (which it is not) and Section 8-13-700(B) applied only when there were official "actions" or "decisions" being made,

Respondent has still violated Section 8-13-700(B) by his own admission. Respondent has stated in at least two written submissions to the Commission that he wrote the March 24, 2020 letter and participated in the aforementioned Board discussions because he was obligated by District policy to "ensur[e] that optimal facilities and resources [were] provided for the proper functioning of schools." (App.Br.p.9; R.pp.62-66). He has also asserted that he was required by S.C. Code Ann. § 59-19-90 to "[p]rovide schoolhouses" and to "take care of, manage and control the school property of the district." Id. In addition, during the Panel hearing, Respondent testified he was carrying out his duties as a Board member in questioning the quality of Contract Construction's work. (R.pp.327-28). It is difficult to imagine how Respondent can argue that he was engaged in these legal and policy mandated *actions* (ensuring, caring for, managing, and controlling) while also somehow arguing that he was not engaged in any "action" under Section 8-13-700(B).

Moreover, regarding conflicts of interest, the Commission has long held that recusal is required in *any matter* that implicates the economic interest of a business with which a public official is associated. See SEC AO92-072 (advising public servant to disqualify from all matters affecting the economic interests of a business with which he is associated); SEC AO2000-004 (same); SEC AO2000-011 (same). This interpretation is supported by the text of the Ethics Act, which uses the phrase "governmental decision" just once in the main text of Section 8-13-700(B), then explains in the following subsections that public officials are required to recuse "from any votes, deliberations, and other actions on the matter" and on all "matters pertaining to that economic interest." This interpretation is also supported by decades of guidance and enforcement actions, not only from this Commission, but from prior Commissions and other entities responsible for interpreting and enforcing the Ethics Act.[3]

[3] See SEC AO77-020("[i]f, in the discharge of your duties as President, a matter comes before you which would substantially affect directly the Bank, you would be required by the Act to prepare a written

Here, it is undisputed that Contract Construction had a contract with the District for the construction of PWES at all times relevant. It is also undisputed that Respondent, who personally carries the line of credit for LCC and personally signs all its contracts, became a subcontractor for Contract Construction on February 11, 2020 on an unrelated SLED Lab, thereby making Contract Construction a business with which Respondent was associated. See Section 8-13-100(4) (defining "business with which he is associated" as " a business of which the person . . . is a . . . compensated agent"); SEC AO2000-004 (defining "compensated agent" as "any *ongoing* client relationship in which the [public official] receives compensation for services rendered") (emphasis added).

The governmental decision at the heart of this matter is the District's decision to contract with Contract Construction for the construction of PWES. Section 8-13-700(B) therefore prohibited Respondent from participating in any matter related to that contract, including discussions about Contract Construction's progress or performance under that contract. See SEC AO2002-003 (finding the economic interest of a business with which the public official is associated is imputed to the public official for purposes of Section 8-13-700). Any other interpretation of Section 8-13-700(B) would lead to an absurd result that would allow a public

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

official to be involved in literally every aspect of a matter that implicated their own economic interests as long as they recused themselves when it came to a formal vote. This would defeat the entire purpose of the Ethics Act, which is outlined in the Preamble:

> Whereas, one of the most important functions of any law aimed at making public servants more accountable is that of complete and effective disclosure. Since many public officials serve on a part-time basis, it is inevitable that conflicts of interest and appearances of impropriety will occur. Often these conflicts are unintentional and slight, but at every turn those who represent the people of this State must be certain that it is the interests of the people, and not their own, that are being served. Officials should be prepared to remove themselves immediately from a decision, vote, or process that even appears to be a conflict of interest.

II. The Commission properly opened and investigated the complaint filed against Respondent.

Respondent argues that these proceedings have contained "numerous irregularities." (App.Br.p.2). More specifically, Respondent argues that the Complaint was not properly opened because (1) the full Commission did not vote to open an investigation; and (2) the Notice of Hearing was not provided within ten (10) days of the probable cause finding.[4] (App.Br.pp.2-3). As discussed below, Respondent is wrong and these arguments lack merit.

Pursuant to Section 8-13-320(9) of the Ethics Act, the Commission has the duty and power "to initiate *and* receive complaints and make investigations, as provided in item (10) . . . of statements filed or allegedly failed to be filed . . . and, upon complaint by an individual, of an alleged violation of this chapter." (emphasis added). Section 8-13-320(9)(a) of the Ethics Act allows the Commission to "commence an investigation on the filing of a complaint by an individual *or* by the commission, as provided in item (10)(d), upon a majority vote of the total membership of the commission." (emphasis added).

[4] Although the argument regarding the ten (10) day notice requirement is not contained in Respondent's brief, it is addressed herein because it was raised in Respondent's Request for Review of the Order denying his Motion to Dismiss. (R.pp.176-84).

Section 8-13-320(10) of the Ethics Act provides for the various ways the Commission may accept a complaint and provides the process for each of these filings, the relevant portions of which are provided below:

> (a) The commission shall accept from an individual, whether personally or on behalf of an organization or governmental body, a verified complaint, in writing, that states the name of a person alleged to have committed a violation of this chapter and the particulars of the violation. The Commission shall forward a copy of the complaint, a general statement of the applicable law with respect to the complaint, and a statement explaining the due process rights of the respondent including, but not limited to, the right to counsel to the respondent within ten days of the filing of the complaint.
>
> . . .
>
> (c) If the commission, its executive director, or staff designated by the commission determines that the complaint alleges facts sufficient to constitute a violation, an investigation may be conducted of the alleged violation.
>
> (d) If the commission, upon receipt of any information, finds probable cause to believe that a violation of the chapter has occurred, it may, upon its own motion and an affirmative vote of six or more members of the commission, file a verified complaint, in writing, that states the name of the person alleged to have committed a violation of this chapter and the particulars of the violation. The commission shall forward a copy of the complaint, a general statement of the applicable law with respect to the complaint, and a statement explaining the due process rights of the respondent including, but not limited to, the right to counsel to the respondent within ten days of the filing of the complaint.

The statutory language is clear that the Commission may accept complaints in several ways. Much of Respondent's argument on this issue seems rooted in the wording of the Commission's February 23, 2021 cover letter wherein it provided Respondent with a copy of the Complaint and stated that "the State Ethics Commission" had reviewed the complaint and opened an investigation. Respondent argues that because the letter states "*the State Ethics Commission* reviewed the complaint" and because the Commission did not meet during any time frame that would have made this possible, the letter is in error and the Complaint was opened in violation of

the law. However, this argument clearly overlooks Section 8-13-320(10)(c), which explicitly permits the Executive Director to assess whether a Complaint contains sufficient facts and order an investigation. The investigation into this matter was clearly opened under the lawful authority given to the Executive Director by Section 8-13-320(10)(c) of the Ethics Act.

As to the ten (10) day notice requirement, Section 8-13-320(10)(a) and (d) require only that the Commission forward a copy of the complaint to the Respondent within ten (10) days, which was done in the present case – the Complaint was filed on February 17, 2021, the Executive Director determined the Complaint contained sufficient facts, an investigation was ordered, and Respondent was notified by way of a certified letter dated February 23, 2021. There is no timeline set forth in the Ethics Act or the corresponding regulations regarding the issuance of the Notice of Hearing, aside from Regulation 52-707, which requires the Notice of Hearing to be issued "at least thirty days before the scheduled hearing."

CONCLUSION

For the reasons stated herein, the Panel decision should be affirmed.

Respectfully submitted,

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September 30, 2024
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STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	BEFORE THE STATE ETHICS COMMISSION
IN THE MATTER OF: Complaint C2021-016	)	
Kim Benson, Complainant.	)	**RESPONDENT'S REPLY BRIEF**
Kenneth Loveless, Loveless.	)	

Respondent Kenneth Loveless (hereafter "Loveless") submits this reply brief to the Full Commission pursuant to Reg. 52-803 in advance of the appellate hearing currently scheduled for January 16, 2025. For the reasons set forth herein and in Loveless's Initial Brief, the Panel's decision should be reversed.

As previously discussed, the Panel erroneously found that Loveless violated Section 8-13-700(B) of the Ethics Act. He was found by the hearing panel to have violated the statute by writing a letter and participating in discussions at two (2) board meetings, at neither of which did he vote on anything related to Contract Construction. In finding that Loveless violated the Act, the Panel made the same mistake Commissioner Starkes did when he mis-read the subparts of § 8-13-700(B), *i.e.,* thinking subpart (4) was a part of the prohibition set forth in § 8-13-700(B). It is not.

Section 8-13-700(B) states:

> No public official, public member, or public employee may make, participate in making, or in any way attempt to use his office, membership, or employment to influence a governmental decision in which he, a family member, an individual with whom he is associated, or a business with which he is associated has an economic interest. A public official, public member, or public employee who, in the discharge of his official responsibilities, **is required to take an action or make a decision** which affects an economic interest of himself, a family member, an individual with whom he is associated, or a business with which he is associated

> **shall**:
>
> (1) prepare a written statement describing the matter requiring action or decisions and the nature of his potential conflict of interest with respect to the action or decision;
>
> ...
>
> (4) if he is a public official, other than a member of the General Assembly, he shall furnish a copy of the statement to the presiding officer of the governing body of an agency, commission, board, or of a county, municipality, or a political subdivision thereof, on which he serves, who shall cause the statement to be printed in the minutes and require that the member be excused from any votes, deliberations, and other actions on the matter on which the potential conflict of interest exists and shall cause the disqualification and the reasons for it to be noted in the minutes;

(Emphasis added).

The Commission misinterprets § 8-13-700(B) and fails to understand that there is a condition precedent to the application of subsections (B)(1) and (B)(4). Only under the circumstance in which a public official is "required to take an action or make a decision which affects an economic interest of himself…or a business with which he is associated" is it mandatory for that public official to complete the requirements of subsections (B)(1) and (B)(4) and recuse himself. S.C. Code § 8-13-700(B).

As an initial matter, Contract Construction cannot properly be considered a business with which Loveless was associated as he had no economic interest in District 5's contract with Contract Construction, which is prohibited by S.C. Code § 8-13-100(11)(a). The record supports that Contract Construction was awarded the contract for Piney Woods Elementary School *before* Loveless was elected to the school board. Loveless was elected to the school board on November 15, 2018. The Board, through its selection committee, selected Contract Construction to build Piney Woods Elementary School in October 2018. (R. pp.343). Most importantly, Loveless's company became a subcontractor of Contract Construction on a wholly unrelated job for SLED in

2020, two years *after* the construction of Piney Woods Elementary School began. (R. pp.292-295). Simply put, Loveless nor his business stood to benefit economically from the District's contract with Contract Construction, and Loveless's company becoming a subcontractor of Contract Construction on totally separate and unrelated project does not implicate an economic interest prohibited by the Act. There was no prohibition on his company having an unrelated subcontract with the same company with which the District did as long as he did not participate in any "take any action" or "make a decision" as it related to the district's contract with Contract Construction.

Furthermore, even if Contract Construction was a business with which Loveless was associated, none of the charges against Loveless claimed that Loveless took "actions" or made "decisions" that would affect an economic interest implicating S.C. Code § 8-13-700(B). Loveless was charged with violating the Act for writing a letter to the District Superintendent on March 24, 2020 in which he raised issues of concern about the quality of the work performed by Contract Construction, and participating in two Board discussions which did not lead to any official action or vote taken by the Board. As previously noted, Commission Investigator Ryanne Caldwell acknowledged she was aware of no evidence Loveless had participated in any vote or decision regarding Contract Construction while serving as a Board member. (R. p.295). As clearly set forth in S.C. Code § 8-13-700(B), only in the event of an official action, decision, or vote would Loveless have been required to recuse himself. There simply cannot be a valid basis for a finding of violation when the record supports that Loveless did not take an action or make a decision that would affect a business with which he was associated.

CONCLUSION

For the reasons set forth above and in Loveless's Initial Brief, the Panel's decision must be reversed as there is no evidence in the record that can support a finding of violation. The

recommendation of the Panel cannot be sustained and must be reversed.

Respectfully submitted,

s/ Haley Hubbard
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ATTORNEY FOR RESPONDENT

October 10, 2024

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Apr 30 2025
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM STATE ETHICS COMMISSION
Case No. C2021-016

State Ethics Commission, ... Respondents,

v.

Kenneth Loveless ..... Appellant.

NOTICE OF APPEAL

Pursuant to S.C. Code Ann. § 1-23-380, Appellant Kenneth Loveless (hereafter "Appellant") appeals from the State Ethics Commission (1) Order Denying Respondent's Motion to Dismiss dated October 6, 2022 that was received by Appellant on October 6, 2022; (2) Decision and Order dated March 24, 2023 that was received by Appellant on March 24, 2023; (3) Order Denying Respondent's Motion to Admit Additional Evidence dated June 3, 2024 that was received by Appellant on June 3, 2024; and (4) Appeal Order dated March 31, 2025 that was received by Appellant on April 1, 2025.

[signature block next page]

Respectfully submitted,

s/ Desa Ballard

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Harvey M. Watson III (S.C. Bar No. 74053)
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April 30, 2025

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ATTORNEY FOR RESPONDENT

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	BEFORE THE STATE ETHICS COMMISSION
IN THE MATTER OF: COMPLAINT C2021-016	)	
Kim Benson, Complainant.	)	**ORDER DENYING RESPONDENT'S MOTION TO DISMISS**
Kenneth Loveless, Respondent.	)	

RECEIVED
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This matter comes before the South Carolina State Ethics Commission (Commission) on Respondent Ken Loveless's (Respondent) Motion to Dismiss (Motion), filed on September 12, 2022. The Motion was originally noticed for a hearing before the Commission on September 15, 2022. The Commission's counsel was unavailable due to a family emergency and Respondent's counsel agreed to continue the Motion until the Commission's counsel returned to work. The Commission's Counsel filed a Response to Respondent's Motion on September 26, 2022 and the Panel Chair heard oral arguments on Respondent's Motion on October 6, 2022.

PROCEDURAL HISTORY

The above-referenced Complaint was filed against Respondent, a member of the Board of Trustees (Board) for School District Five of Lexington and Richland Counties (District), on February 17, 2021. The Complaint alleged, among other things, that Respondent improperly participated in Board discussions and/or other activities that involved a District contract with Contract Construction, a business with which Respondent was associated.

Pursuant to Section 8-13-320(10)(c) of the Ethics, Government Accountability, and Campaign Reform Act (Ethics Act or Act), the Commission's Executive Director determined that the Complaint alleged facts sufficient to constitute a violation of the Act and ordered an investigation. In a certified letter dated February 23, 2021, Respondent was provided with a copy

of the Complaint. Respondent provided a written response on February 28, 2022. On May 19, 2022, following the investigation, the Commission found probable cause to believe Respondent violated the Ethics Act as follows:

> **COUNT ONE FAILURE TO RECUSE FROM A GOVERNMENTAL DECISION IN WHICH A BUSINESS WITH WHICH ASSOCIATED HAD AN ECONOMIC INTEREST SECTION 8-13-700(B), S.C. CODE ANN., 1976, AS AMENDED.** That Kenneth Loveless, Lexington-Richland School District Five Board Member, did in Richland County, write a letter dated March 24, 2020 inquiring about construction work of a district facility by Contract Construction, Inc., a business with which he was associated, in violation of Section 8-13-700(B).
>
> **COUNT TWO FAILURE TO RECUSE FROM A GOVERNMENTAL DECISION IN WHICH A BUSINESS WITH WHICH ASSOCIATED HAD AN ECONOMIC INTEREST SECTION 8-13-700(B), S.C. CODE ANN., 1976, AS AMENDED.** That Kenneth Loveless, Lexington-Richland School District Five Board Member, did in Richland County, on June 15, 2020, participate in discussion about construction of a district facility by Contract Construction, Inc., a business with which he was associated, in violation of Section 8-13-700(B).
>
> **COUNT THREE FAILURE TO RECUSE FROM A GOVERNMENTAL DECISION IN WHICH A BUSINESS WITH WHICH ASSOCIATED HAD AN ECONOMIC INTEREST SECTION 8-13-700(B), S.C. CODE ANN., 1976, AS AMENDED.** That Kenneth Loveless, Lexington-Richland School District Five Board Member, did in Richland County, on September 14, 2020, participate in discussion about construction of a district facility by Contract Construction, Inc., a business with which he was associated, in violation of Section 8-13-700(B).
>
> **COUNT FOUR FAILURE TO RECUSE FROM A GOVERNMENTAL DECISION IN WHICH A BUSINESS WITH WHICH ASSOCIATED HAD AN ECONOMIC INTEREST SECTION 8-13-700(B), S.C. CODE ANN., 1976, AS AMENDED.** That Kenneth Loveless, Lexington-Richland School District Five Board Member, did in Richland County, in June of 2020, participate in a site visit of a district facility being constructed by Contract Construction, Inc., a business with which he was associated, in violation of Section 8-13-700(B).

On July 11, 2022, a Notice of Hearing was issued setting forth the aforementioned violations. This Motion followed.

DISCUSSION

As discussed herein, Respondent's Motion to Dismiss is denied and this matter shall proceed to a hearing on the merits.

I. The Notice of Hearing Properly Alleges Conduct That Violates the Ethics Act

Respondent argues the Complaint should be dismissed because the Notice of Hearing fails to allege conduct that violates the Ethics Act. Specifically, Respondent contends he did not participate in any "governmental decision" that implicates Section 8-13-700 and, therefore, the allegations contained in the Notice of Hearing are faulty.[1] I disagree and find that the Notice of Hearing properly alleges conduct that violates the Ethics Act.

Section 8-13-700(B) of the Ethics Act provides, in relevant part:

> No [public official] may make, participate in making, or in any way attempt to use his [office] to influence a governmental decision in which he, a family member, an individual with whom he is associated, or a business with which he is associated has an economic interest. A [public official] who, in the discharge of his official responsibilities, is required to take an action or make a decision which affects an economic interest of himself, a family member, an individual with whom he is associated, or a business with which he is associated shall:
>
> . . .
>
> (4) if he is a public official, other than a member of the General Assembly, he shall furnish a copy of the statement to the presiding officer of the governing body of an agency, commission, board, or

[1] Respondent briefly argues that Respondent is being deprived of his First Amendment rights by these proceedings and/or the Commission's interpretation of Section 8-13-700. However, the U.S. Supreme Court has "rejected the notion that the First Amendment confers a right to use governmental mechanics to convey a message." See Nevada Ethics Comm'n v. Carrigan, 564 U.S. 117, 131 S.Ct. 2343 (2011) (finding lower court's "belief that recusal rules violate legislators' First Amendments rights is also inconsistent with long-standing traditions in the State. A number of States, by common-law rule, have long required recusal of public officials with a conflict.").

> of a county, municipality, or a political subdivision thereof, on which he serves, who shall cause the statement to be printed in the minutes and *require that the member be excused from any votes, deliberations, and other actions on the matter* on which the potential conflict of interest exists and shall cause the disqualification and the reasons for it to be noted in the minutes.
>
> (emphasis added).

Section 8-13-100(4) of the Ethics Act defines "business with which he is associated" as:

> A business of which the person or a member of his immediate family is a director, an officer, owner, employee, a compensated agent, or holder of stock worth one hundred thousand dollars or more at fair market value and which constitutes five percent or more of the total outstanding stock of any class.

"Primary jurisdiction for interpretation of the Act is bestowed upon the State Ethics Commission, pursuant to § 8-13-320(11) . . ." Op. S.C. Atty. Gen., 2006 WL 2593082 (August 24, 2006). Regarding conflicts of interest, the Commission has long held that recusal is required in any matter that implicates the economic interest of a business with which a public official is associated. See SEC AO92-072 (advising public servant to disqualify from all matters affecting the economic interests of a business with which he is associated); SEC AO2000-004 (same); SEC AO2000-011 (same). This interpretation is supported by the text of the Ethics Act, which uses the phrase "governmental decision" just once in the main text of Section 8-13-700(B), then clarifies in the following subsections that public officials are required to recuse "from any votes, deliberations, and other actions on the matter" and on all "matters pertaining to that economic interest." This interpretation is also supported by decades of guidance and enforcement actions. Id.; see also Complaint Nos. 97-035 and 97-036 (holding discussion by a public servant about a matter in which his wife had an economic interest violated Section 8-13-700(B)).

Here, it is undisputed that Contract Construction entered into a contract with the District in 2018 for the construction of Piney Woods Elementary School (PWES). It is also undisputed that

Respondent became a subcontractor for Contract Construction on February 11, 2020 on an unrelated South Carolina Law Enforcement Division (SLED) construction project, thereby making Contract Construction a business with which Respondent was associated. See Section 8-13-1300(4) (defining "business with which he is associated" as " a business of which the person . . . is a . . . compensated agent"); SEC AO2000-004 (defining "compensated agent" as "any ongoing client relationship in which the [public official] receives compensation for services rendered").

Section 8-13-700 therefore prohibited Respondent from participating in any matter in which Contract Construction had an economic interest, to include the PWES contract. See SEC AO2002-003 (finding the economic interest of a business with which the public official is associated is imputed to the public official for purposes of Section 8-13-700). Any other interpretation of Section 8-13-700 would lead to an absurd result and would defeat the entire purpose of the Ethics Act, which is outlined in the Preamble:

> Whereas, one of the most important functions of any law aimed at making public servants more accountable is that of complete and effective disclosure. Since many public officials serve on a part-time basis, it is inevitable that conflicts of interest and appearances of impropriety will occur. Often these conflicts are unintentional and slight, but at every turn those who represent the people of this State must be certain that it is the interests of the people, and not their own, that are being served. Officials should be prepared to remove themselves immediately from a decision, vote, or process that even appears to be a conflict of interest.

I therefore find that the Notice of Hearing properly alleges violations of the Ethics Act.

II. The Commission's Complaint Process Complies with the Ethics Act

Respondent argues the Complaint must be dismissed because (1) the full Commission did not vote to open an investigation; (2) the Complaint was not notarized by the Commission; and (3) the Notice of Hearing was not provided to Respondent within ten (10) days of the finding of probable cause. I disagree and find that the Commission's complaint process complied with the

Ethics Act.

Pursuant to Section 8-13-320(9) of the Ethics Act, the Commission has the duty and power "to initiate and receive complaints and make investigations, as provided in item (10) . . . of statements filed or allegedly failed to be filed . . . and, upon complaint by an individual, of an alleged violation of this chapter." Section 8-13-320(9)(a) of the Ethics Act allows the Commission to "commence an investigation on the filing of a complaint by an individual or by the commission, as provided in item (10)(d), upon a majority vote of the total membership of the commission." (emphasis added).

Section 8-13-320(10) of the Ethics Act provides for the various ways the Commission may accept a complaint and provides the process for each of these filings, the relevant portions of which are provided below:

> (a) The commission shall accept from an individual, whether personally or on behalf of an organization or governmental body, a verified complaint, in writing, that states the name of a person alleged to have committed a violation of this chapter and the particulars of the violation. The Commission shall forward a copy of the complaint, a general statement of the applicable law with respect to the complaint, and a statement explaining the due process rights of the respondent including, but not limited to, the right to counsel to the respondent within ten days of the filing of the complaint.
>
> . . .
>
> (c) If the commission, its executive director, or staff designated by the commission determines that the complaint alleges facts sufficient[2] to constitute a violation, an investigation may be conducted of the alleged violation.

[2] "Facts sufficient" means a preliminary determination based on the face of the complaint of jurisdiction over the Respondent and whether the facts plead, if true, would constitute a violation of the Act. S.C. Code Ann. Reg. 52-203(B)(6).

(d) If the commission, upon receipt of any information, finds probable cause to believe that a violation of the chapter has occurred, it may, upon its own motion and an affirmative vote of six or more members of the commission, *file a verified complaint*, in writing, that states the name of the person alleged to have committed a violation of this chapter and the particulars of the violation. The commission shall forward a copy of the complaint, a general statement of the applicable law with respect to the complaint, and a statement explaining the due process rights of the respondent including, but not limited to, the right to counsel to the respondent within ten days of the filing of the complaint. (emphasis added).

. . .

(e) At the conclusion of its investigation, the commission staff, in a preliminary written decision with findings of fact and conclusions of law, must make a recommendation whether probable cause exists to believe that a violation of this chapter has occurred. If the commission determines that probable cause does not exist, it shall send a written decision with findings of fact and conclusions of law to the respondent and the complainant. If the commission determines, by an affirmative vote of six or more commission members, that there is probable cause to believe that a violation has been committed, its preliminary decision may contain an order setting forth a date for a hearing before a panel of three commissioners, selected at random, to determine whether a violation of the chapter has occurred. If the commission finds probable cause, by an affirmative vote of six or more commission members, to believe that violation of this chapter has occurred, the commission may waive further proceedings if the respondent takes action to remedy or correct the alleged violation. Probable cause is a finding that the allegations contained in the complaint are more likely than not to have occurred and constitute a violation of this chapter or Chapter 17, Title 2.

The statutory language is clear that the Commission may accept complaints in a number of different ways. The language is equally clear that the Commission is only required to notarize complaints that it generates itself pursuant to Section 8-13-320(10)(d). Complaints filed by individuals are notarized prior to filing. There is no requirement that the Commission notarize every Complaint filed by a member of the public. In fact, to the contrary, Section 8-13-320(10)(a)

allows the Commission to "accept from an individual, whether personally or on behalf of an organization or governmental body, a verified complaint . . ." This interpretation is further supported by the Ethics Act's accompanying regulations, which outline the Complaint process in a similar manner. See S.C. Code Ann. Regs. 52-701, et seq.

As to the ten (10) day notice requirement, this applies to the Respondent's receipt of the Complaint, not of the Notice of Hearing. See Section 8-13-320(10)(a) (requiring the Commission to forward a copy of a complaint filed by an individual within ten (10) days); Section 8-13-320(10)(d) (requiring the Commission to forward a copy of a Commission-generated complaint within ten (10) days). There is no timeline set forth in the Ethics Act or the corresponding regulations regarding the Notice of Hearing, aside from Regulation 52-707, which requires the Notice of Hearing to be issued "at least thirty days before the scheduled hearing."

In this matter, Respondent conflates the process for opening a Commission-generated Complaint (outlined in Section 8-13-320(10)(d)) with a Complaint filed by a member of the public or on behalf of an organization (outlined in Section 8-13-320(10)(c)). Pursuant to Section 8-13-320(10)(c) of the Ethics Act, "if the Commission, its executive director, or staff designated by the commission determines that the complaint alleges facts sufficient to constitute a violation, an investigation may be conducted of the alleged violation." This is exactly what occurred - the Complaint was filed on February 17, 2021, the Executive Director determined the Complaint contained sufficient facts, an investigation was ordered, and Respondent was notified by way of a certified letter dated February 23, 2021.

I therefore find that the Complaint process in this matter complied with the relevant provisions of the Ethics Act.

CONCLUSION

Based on the reasoning set forth above, Respondent's Motion to Dismiss is hereby DENIED and this matter shall proceed to a hearing on February 16, 2023.

AND it is **SO ORDERED.**

F. Xavier Starkes
Chairman, Hearing Panel

October 6, 2022
Columbia, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND IN THE MATTER OF: COMPLAINT 2021-016 Kim Benson Complainant. Kenneth Loveless Respondent.	BEFORE THE STATE ETHICS COMMISSION **DECISION AND ORDER**

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Apr 30 2025
SC Court of Appeals

Pursuant to Section 8-13-320(10) of the South Carolina Ethics, Government Accountability, and Campaign Reform Act of 1991 (Ethics Act), the State Ethics Commission (Commission) reviewed the above-captioned complaint and found probable cause to charge Kenneth Loveless (Respondent) with four (4) counts of violating Section 8-13-700(B). Present at the hearing held on February 16, 2023, were Commissioners AJ Holloway, Scott E. Frick, and F. Xavier Starkes, Hearing Panel Chair. Respondent was represented by Desa Ballard and the Commission was represented by Courtney M. Laster. The following charges were considered:

COUNT ONE
FAILURE TO RECUSE FROM A GOVERNMENTAL DECISION IN WHICH A BUSINESS WITH WHICH ASSOCIATED HAD AN ECONOMIC INTEREST SECTION 8-13-700(B), S.C. CODE ANN., 1976, AS AMENDED

That Kenneth Loveless, Lexington-Richland School District Five Board Member, did in Richland County, write a letter dated March 24, 2020 inquiring about construction work of a district facility by Contract Construction, Inc., a business with which he was associated, in violation of Section 8-13-700(B).

COUNT TWO
FAILURE TO RECUSE FROM A GOVERNMENTAL DECISION IN WHICH A BUSINESS WITH WHICH ASSOCIATED HAD AN ECONOMIC INTEREST SECTION 8-13-700(B), S.C. CODE ANN., 1976, AS AMENDED

That Kenneth Loveless, Lexington-Richland School District Five Board Member, did in Richland County, on June 15, 2020, participate in discussion about construction of a district facility by

Contract Construction, Inc., a business with which he was associated, in violation of Section 8-13-700(B).

COUNT THREE
FAILURE TO RECUSE FROM A GOVERNMENTAL DECISION IN WHICH A BUSINESS WITH WHICH ASSOCIATED HAD AN ECONOMIC INTEREST SECTION 8-13-700(B), S.C. CODE ANN., 1976, AS AMENDED

That Kenneth Loveless, Lexington-Richland School District Five Board Member, did in Richland County, on September 14, 2020, participate in discussion about construction of a district facility by Contract Construction, Inc., a business with which he was associated, in violation of Section 8-13-700(B).

COUNT FOUR
FAILURE TO RECUSE FROM A GOVERNMENTAL DECISION IN WHICH A BUSINESS WITH WHICH ASSOCIATED HAD AN ECONOMIC INTEREST SECTION 8-13-700(B), S.C. CODE ANN., 1976, AS AMENDED

That Kenneth Loveless, Lexington-Richland School District Five Board Member, did in Richland County, in June of 2020, participate in a site visit of a district facility being constructed by Contract Construction, Inc., a business with which he was associated, in violation of Section 8-13-700(B).

FINDINGS OF FACT

Having carefully reviewed the evidence presented, the Panel finds as fact:

1. Respondent served on the Lexington Richland School District Five (District) Board of Trustees (Board) from 2018-2022.
2. Respondent has owned and operated Loveless Commercial Contracting, Inc. (Loveless) for approximately thirty-six (36) years. He serves as President and personally carries the line of credit for Loveless.
3. Contract Construction, Inc. (Contract Construction) is a general contractor located in South Carolina. Greg Hughes (Hughes) is the President of Contract Construction.

4. On December 19, 2018, the District retained Contract Construction as its Construction Manager for the building of Piney Woods Elementary School (PWES).

5. Contract Construction subsequently hired Loveless to perform work as a subcontractor on a State Law Enforcement Division (SLED) Forensic Services Laboratory in Columbia, SC. The agreement was signed by Respondent and was fully executed no later than March 12, 2020.

6. On March 24, 2020, Respondent submitted a letter to District Superintendent Christina Melton (Melton) raising perceived problems with the construction of PWES and criticizing terms of the District's contract with Contract Construction. Respondent requested "action and a reply on these matters within the next two weeks."

7. During a June 15, 2020, District Board meeting, Hughes provided an update on PWES to the Board. Following the update, Respondent questioned Hughes and District representative Dan Neal (Neal) about contract change orders and owner/contractor contingencies. Board member Ed White (White) then questioned Hughes and Neal about the issues raised in Respondent's March 24, 2020 letter to Melton. Respondent engaged in discussions with White and made additional comments to the Board, noting he had received unsatisfactory answers to his letter and stating, "I'm a contractor, I know things like this."

8. During a September 14, 2020 District Board meeting, Hughes provided an additional update on PWES to the Board. Board member White questioned Hughes about the issues raised in Respondent's March 24, 2020 letter. White also addressed Loveless's subcontract with Contract Construction and questioned whether it was proper. Respondent engaged in discussion with Hughes and other PWES subcontractors about the cost of specific soil and concrete work at PWES. Hughes replied, in relevant part, as follows:

> . . . I don't have any problem with the questions. And we're going to give you the best facility you've had, and it will be under budget. And I do want to speak to Mr. Loveless's abilities as a contractor. He is

> doing a fantastic job on the project we're working together on. He was selected for his qualifications and doing a fantastic job. And there's similar type issues out there, but they're minor in the scheme of things. And we're pleased with what he's doing for us.

9. During the February 8, 2021 District Board meeting, Respondent submitted a letter to the Board Chair acknowledging his affiliation with Contract Construction and vowing to "recuse [him]self from any and all votes, deliberations, and other actions on any matter that comes before the Board of Trustees relating to Contract Construction, Inc." The aforementioned letter was submitted by Respondent after he requested and received an informal opinion from the State Ethics Commission (SEC). The Informal Opinion from the SEC opined, in pertinent part, as follows: "Based on the facts presented, the general contractor for which Loveless Construction subcontracts is a "business with which (you are) associated" for the purposes of the Ethics Act. This means that whenever you are faced with a scenario in which the general contractor has an economic interest, you must recuse yourself from that matter following the instructions in Section 8-13-700(B)."

CONCLUSIONS OF LAW

Based upon the Findings of Fact, the Panel concludes, as a matter of law:

1. At all times relevant, Respondent was a public official as defined by Section 8-13-100(27). Accordingly, the Commission has personal and subject matter jurisdiction.
2. Section 8-13-100(4) defines "business with which he is associated" as:

> a business of which the person or a member of his immediate family is a director, an officer, owner, employee, a compensated agent, or holder of stock worth one hundred thousand dollars or more at fair market value and which constitutes five percent or more of the total outstanding stock of any class.

3. Upon execution of the agreement between Contract Construction and Loveless, Respondent became a compensated agent of Contract Construction. See SEC AO2000-004 (defining "compensated agent" as "any ongoing client relationship in which the [public official] receives

compensation for services rendered."). Accordingly, Contract Construction was a "business with which [Respondent was] associated" pursuant to Section 8-13-100(4).

4. Section 8-13-700 provides, in relevant part:

> (B) No [public official] may make, participate in making, or in any way attempt to use his [public office] to influence a governmental decision in which he, a family member, an individual with whom he is associated, or a business with which he is associated has an economic interest. A [public official] who, in the discharge of his official responsibilities, is required to take an action or make a decision which affects an economic interest of himself, a family member, an individual with whom he is associated, or a business with which he is associated shall:
>
> (1) prepare a written statement describing the matter requiring action or decisions and the nature of his potential conflict of interest with respect to the action or decision;
> . . .
>
> (4) if he is a public official, other than a member of the General Assembly, he shall furnish a copy of the statement to the presiding officer of the governing body of an agency, commission, board, or of a county, municipality, or a political subdivision thereof, on which he serves, who shall cause the statement to be printed in the minutes and require that the member be excused from any votes, deliberations, and other actions on the matter on which the potential conflict of interest exists and shall cause the disqualification and the reasons for it to be noted in the minutes.

5. Sections 8-13-130 and 8-13-320(10) allow the Panel to levy an administrative fee and to require payment of a civil penalty of up to $2,000 for each violation of the Ethics Act.

DECISION

NOW, THEREFORE, based on the foregoing Findings of Fact and Conclusions of Law, the Panel has determined, based on a preponderance of the evidence, that Respondent Kenneth Loveless is in violation of three (3) counts of Section 8-13-700(B) as outlined in Count One (1), Count Two

(2), and Count Three (3) of the Notice of Hearing. Specifically, the Panel finds that Respondent's (1) March 24, 2020 letter to Melton; (2) participation in the June 15, 2020 District Board meeting discussion regarding PWES; and (3) participation in the September 14, 2020 District Board meeting discussion regarding PWES were matters that required recusal pursuant to Section 8-13-700(B). The Panel finds that the Commission failed to establish by a preponderance of the evidence that Respondent participated in a PWES site visit in June of 2020 and therefore dismisses Count Four (4).

Regarding conflicts of interest, the Commission has long held that recusal is required in any matter that implicates the economic interest of a business with which a public official is associated. See SEC AO92-072 (advising public servants to disqualify from all matters affecting the economic interest of a business with which he is associated); SEC AO2000-004 (same); SEC AO2000-011 (same); see also SEC AO96-003 ("it is clear that the restrictions on the activities of a public official are broader than merely prohibiting a vote on a matter which affects the official's economic interest"). Here, Respondent owns, operates, and personally carries the line of credit for Loveless. Accordingly, when Loveless and Contract Construction entered into a subcontractor agreement, Respondent became a compensated agent of Contract Construction. From that moment forward, Respondent was bound to recuse himself from any matter in which Contract Construction had an economic interest.

The Panel notes that Respondent, once he improperly inserted himself into this matter, appeared to be critical of Contract Construction. However, the Panel finds that where there is opportunity for harm, the opportunity for benefit also exists. To that end, "the prohibitions contained in Section 8-13-700(A) and (B) serve the public interest in objective, impartial, and effective government by preventing the creation of situations which would tend to impair the objectivity and impartiality, and therefore, the effectiveness of the public member." SEC AO2000-004. Finally, the Panel calls attention to the Preamble of the Ethics Act, which provides, in relevant part, as follows:

Whereas, one of the most important functions of any law aimed at

> making public servants more accountable is that of complete and effective disclosure. Since many public officials serve on a part-time basis, it is inevitable that conflicts of interest and appearances of impropriety will occur. Often these conflicts are unintentional and slight, but at every turn those who represent the people of this State must be certain that it is the interests of the people, and not their own, that are being served. Officials should be prepared to remove themselves immediately from a decision, vote, or process that even appears to be a conflict of interest.

THEREFORE, pursuant to Section 8-13-320(l)(i) of the Ethics Act, the Panel hereby issues a Public Reprimand and orders Respondent to pay a civil penalty of $5,250.00 ($1,750.00 for each count);

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

AND, pursuant to Section 8-13-320 of the Ethics Act, if the $6,150.00 is not paid within thirty (30) days from Respondent's receipt of this Order, a judgment in the amount of $6,150.00 shall be entered against Respondent. In the event of a failure to pay, upon the Commission's filing of said Judgment with the Clerk of Court in the County of Respondent's last known residence, the Clerk of Court shall enter this Order in the amount of $6,150.00 in its Judgment Rolls, without cost to the Commission.

FINALLY, Respondent Kenneth Loveless has ten (10) days from receipt of this Order to appeal to the full Commission.

AND IT IS SO ORDERED THIS 24th DAY OF March 2023.

STATE ETHICS COMMISSION

F. XAVIER STARKES, HEARING CHAIR
Columbia, South Carolina

RECEIVED
Apr 30 2025
SC Court of Appeals

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	BEFORE THE STATE ETHICS COMMISSION
IN THE MATTER OF: COMPLAINT C2021-016	
Kim Benson, Complainant.	**ORDER DENYING RESPONDENT'S MOTION TO ADMIT ADDITIONAL EVIDENCE**
Kenneth Loveless, Respondent.	

This matter comes before the South Carolina State Ethics Commission (Commission) on Respondent's Motion to Admit Additional Evidence[1] (Motion) filed on February 20, 2024. The Commission's Counsel filed a Response on March 14, 2024, and Respondent filed a Reply on March 19, 2024. The Appellate Panel heard oral arguments on March 21, 2024.

FACTS/PROCEDURAL HISTORY

On February 17, 2021, the above-referenced Complaint was filed against Respondent, a member of the Board of Trustees (Board) for School District Five of Lexington and Richland Counties (District) from 2018-2022. The Complaint alleged, among other things, that Respondent improperly participated in matters involving Contract Construction, a business with which Respondent was associated, regarding the construction of Piney Woods Elementary School (PWES). A public hearing was held on February 16, 2023. Numerous individuals attended Respondent's public hearing, including an employee from the State Inspector General's Office (SIG).[2] Following the hearing, the SIG employee requested and received an audio recording of Respondent's public hearing.

On March 24, 2023, a Decision and Order was issued finding Respondent violated the Ethics

[1] Included in the Motion was a request to stay the March 21, 2024 appellate hearing pending the outcome of this Motion. Based on the timing of this Motion's oral argument, this issue is moot.

[2] The SIG was established by the South Carolina General Assembly in 2012 and, in relevant part, exists to investigate and address allegations of fraud, waste, abuse, mismanagement and misconduct in public schools.

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Act as follows:

> **COUNT ONE FAILURE TO RECUSE FROM A GOVERNMENTAL DECISION IN WHICH A BUSINESS WITH WHICH ASSOCIATED HAD AN ECONOMIC INTEREST SECTION 8-13-700(B), S.C. CODE ANN., 1976, AS AMENDED.** That Kenneth Loveless, Lexington-Richland School District Five Board Member, did in Richland County, write a letter dated March 24, 2020 inquiring about construction work of a district facility by Contract Construction, Inc., a business with which he was associated, in violation of Section 8-13-700(B).
>
> **COUNT TWO FAILURE TO RECUSE FROM A GOVERNMENTAL DECISION IN WHICH A BUSINESS WITH WHICH ASSOCIATED HAD AN ECONOMIC INTEREST SECTION 8-13-700(B), S.C. CODE ANN., 1976, AS AMENDED.** That Kenneth Loveless, Lexington-Richland School District Five Board Member, did in Richland County, on June 15, 2020, participate in discussion about construction of a district facility by Contract Construction, Inc., a business with which he was associated, in violation of Section 8-13-700(B).
>
> **COUNT THREE FAILURE TO RECUSE FROM A GOVERNMENTAL DECISION IN WHICH A BUSINESS WITH WHICH ASSOCIATED HAD AN ECONOMIC INTEREST SECTION 8-13-700(B), S.C. CODE ANN., 1976, AS AMENDED.** That Kenneth Loveless, Lexington-Richland School District Five Board Member, did in Richland County, on September 14, 2020, participate in discussion about construction of a district facility by Contract Construction, Inc., a business with which he was associated, in violation of Section 8-13-700(B).

On April 3, 2023, Respondent filed a Respondent's Request for Review of the Hearing Panel's Decision and Order. An appellate hearing was scheduled for March 21, 2024.

In August of 2023, prior to the appellate hearing, the SIG issued a report entitled "Review of Project Management and Internal Controls" related to the District's construction of PWES. According to the report, the SIG's investigation covered activities occurring from November 2016 through November 2022. (SIG, p.2). The scope and objective of the SIG's "limited review examined contractor billing, actions of the procurement selection committee, the District's compliance with its procurement code, and contractor-related transactions," to include "potential conflicts of interest between or among the procurement selection committee members, the general

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contractor or subcontractors." (SIG, p.1). Under a portion entitled "Methodology," the report provided:

> The SIG reviewed relevant documentation, including emails, provided by the District, and applicable state and federal laws, regulations, and policies. The SIG conducted interviews of current and former District leadership, trustees, employees, representatives, project managers, and contractors for the PWES project, as well as the state's Division of Procurement Services, the Office of State Engineer officials, the South Carolina Department of Education (SCDE) officials, the Office of the State Auditor, the State Ethics Commission, external auditors that provided services to the District, and other persons associated with the PWES project.
>
> (SIG, p.1).

Following its investigation, the SIG made the following findings, in relevant part:

> (1) The SIG determined the District's accounts payable officials and project managers did not ensure sufficient documentation was provided by Contract Construction to support the amount requested for payment in the pay apps and that the District failed to provide proper contract management and oversight of the payment process.
>
> (2) The SIG determined that a selection committee member prepared written statements as required by the South Carolina Code of Laws §8-13-700(B)(3) that provided notice to the selection committee of his/her potential conflict of interest, and the agency head was apprised of the member's potential conflict and deemed him/her qualified. The SIG determined District officials and selection committee members were unable to provide the identity of the appointing official, documentation regarding the appointments, the timing of the appointments, or the criteria used for determining qualified committee members.
>
> (3) The SIG determined that the Board's disregard of at least three legal reviews, including two investigations, in order to pursue ethics actions against a selection committee member constituted a waste of District resources, amounting to at least $12,605 and Board interference in violation of Board policy BBA.
>
> (4) The SIG determined that the District's execution of a Buyer Agency Agreement with The Education Group, Inc. without Board approval was a violation of the District's procurement code. The SIG determined that the District issued an RFP seeking a certified public accounting firm to provide procurement audit

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> services for FYs 2019-2021, with the option to also audit FYs 2017 and 2018. As specified in the Scope of Work of the RFP, the procurement audit was required to be performed in accordance with the agreed upon audit procedures issued by the DPS. However, the audit agreement was changed by the Board and District representatives from a procurement audit to a procurement consulting services contract, which was a substantial departure from the RFP requirements that resulted in the waste of $105,650 in District resources.
>
> (SIG, pp.18-19).

At its conclusion, the SIG report provided, in relevant part:

> The SIG extends its appreciation to the District's current and former leadership, Board members, employees, representatives, project managers, and contractors for the PWES project. In addition, the SIG is appreciative of the collaboration with the state's Division of Procurement Services, the Office of the State Engineer, the South Carolina Department of Education, the Office of the State Auditor, the State Ethics Commission, the District's external auditors, and other persons associated with the PWES project for their assistance and cooperation provided during this review.

On January 23, 2024, Respondent submitted a Freedom of Information Act (FOIA) request to the Commission seeking all documents exchanged between the Commission and the SIG concerning Respondent's complaint matter. Commission staff provided Respondent with emails dated February 17, 2023 and February 21, 2023 between a SIG employee and the Commission's Executive Director. Within this exchange, the SIG employee sought an audio recording of the public hearing, as well as any exhibits from the public hearing. The Executive Director responded by advising the SIG employee how to obtain the audio recording.[3]

On February 13, 2024, Respondent submitted a "Request for Subpoenas" asking the Commission to issue subpoenas, in relevant part, as follows:

> 1. To the custodian of the records of the Office of Inspector General for any and all documents, correspondence, communications contained

[3] Although the SIG employee requested the public exhibits from Respondent's public hearing, the Executive Director did not provide these to the SIG employee due to an oversight. No additional communications between the SIG employee and the Executive Director occurred.

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on a compact disc sent by Brian D. Lamkin to Representative Jay Kilmartin on October 19, 2023 in OIG File No. A-4-0139 . . .

2. To the Office of the Inspector General commanding the deposition of State Inspector General Brian D. Lamkin.

3. To the State Ethics Commission and its Executive Director, Meghan Walker, for any and all documents, correspondence, and communications sent to or received from any employee, agent, investigator, or staff of the Office of Inspector General as set forth in page 1 of the August 18, 2023 report of the Office of the State Inspector General regarding [PWES] Construction; and a list setting forth all individuals from the State Ethics Commission who were interviewed in connection with OIG's report described above.

4. To Thomas William McGee III, Nelson Mullins, 1320 Main Street, Columbia, SC 29201 for all documents provided by Gregory Hughes of Contract Construction Inc. . . .

Following additional contact with Commission staff, Respondent filed this Motion.

DISCUSSION

Respondent asks the Appellate Panel to (1) supplement the record with the August 2023 SIG report and (2) permit Respondent to engage in additional discovery, admitting "into the record any relevant evidence produced in response to [the aforementioned] subpoenas . . ." [4] (Motion, p.2). Respondent claims "the information and communications exchanged between the [SIG] and the Commission are relevant and should be admitted into the record because Respondent was a sitting member of [the District Board] during the construction of [PWES] and the allegations made against Respondent in this matter stem primarily from the construction of [PWES]." (Reply, p.4) In support of this argument, Respondent relies on S.C. Code Ann. §§ 1-23-320(G)(1)-(2), which provides that the "record in a contested case must include all pleadings, motions, intermediate rulings, and

[4] Respondent's Motion briefly raises the issue of information being "inappropriately placed" in Motions to Quash filed by individuals who were served with Commission subpoenas at Respondent's request during the discovery phase of this Complaint matter. To the extent Respondent is requesting that portions of these documents should be stricken from the record, this request is denied because (1) pleadings are not evidence; and (2) if these pleadings were objectionable, Respondent should have filed a Motion to Strike the offending portions at the time of submission.

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depositions; and evidence received or considered." Respondent argues the information he seeks is relevant because it constitutes "evidence received or considered by the Commission and is therefore material to the decision reached by the [Hearing P]anel." (Reply, pp.2-3). As discussed herein, the Commission disagrees and Respondent's Motion is denied.

S.C. Code Ann. Regs. 52-807 allows additional evidence to be added to the record when "necessary for completion of the record in a case on review." In ruling on an application to submit additional evidence, the Commission must consider two (2) factors: (1) the materiality of the proposed additional evidence; and (2) the existence of a good reason for the failure to introduce such evidence at the original hearing. See Brown v. Peoplease Corp., 402 S.C. 476, 741 S.E.2d 761 (Ct. App. 2013). Material evidence is that which would present a reasonable possibility of a different outcome. See DeHart v. SCDHHS, No. 98-ALJ-08-0096-AP, 1998 WL 682496 (S.C. Admin. L. Ct. Sept. 14, 1998); see also Wright v. Strickland, 306 S.C. 187, 410 S.E.2d 596 (Ct. App. 1991) (finding the moving party did not proffer any testimony or show that the evidence could make any difference to the outcome of the case).

The Commission finds Respondent has failed to point to a single fact that would create a reasonable possibility of a different outcome in Respondent's complaint matter. There are no facts in the SIG report that relate to Respondent's relationship with Contract Construction, nor is there any indication in the SIG report that Respondent did not engage in the conduct found to be violative of the Ethics Act as determined by the Panel's Order.

The Commission further finds that Respondent cannot establish a good reason for failing to introduce any fact set forth in the SIG report because, according to the report, the SIG's period of review was from 2016-2022. Respondent's hearing did not occur until February 16, 2023, meaning any fact uncovered by the SIG could have also been discovered by Respondent prior to the hearing. Indeed, Respondent had the ability to engage in discovery prior to the Panel hearing, and he exercised that right by issuing numerous subpoenas and conducting several depositions. In fact, one

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of the subpoenas currently sought by Respondent relates to Greg Hughes, an individual he has already deposed.

Finally, the Commission finds Respondent's reliance on §§ 1-23-320(G)(1)-(2) is misplaced. These statutory provisions are a clear reference to the fact-finder, which is the Hearing Panel in this instance. The only information received or considered by the Hearing Panel was the information presented during Respondent's public hearing. Respondent is undoubtedly aware of this information given he was present and represented by counsel for the duration of the hearing.

CONCLUSION

Based on the reasoning set forth above, Respondent's Motion to Admit Additional Evidence is hereby DENIED and this matter shall proceed to an appellate hearing.

AND it is **SO ORDERED.**

Neal D. Truslow
Chairman, Appellate Panel

June 3, 2024
Columbia, South Carolina

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STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	BEFORE THE STATE ETHICS COMMISSION
IN THE MATTER OF: COMPLAINT C2021-016	)	
Kim Benson, Complainant.	)	**APPEAL ORDER**
Kenneth Loveless, Respondent.	)	

RECEIVED
Apr 30 2025
SC Court of Appeals

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

RELEVANT PROCEDURAL HISTORY

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

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

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

> **COUNT ONE FAILURE TO RECUSE FROM A GOVERNMENTAL DECISION IN WHICH A BUSINESS WITH WHICH ASSOCIATED HAD AN ECONOMIC INTEREST SECTION 8-13-700(B), S.C. CODE ANN., 1976, AS AMENDED.** That Kenneth Loveless, Lexington-Richland School District Five Board Member, did in Richland County, write a letter dated March 24, 2020 inquiring about construction work of a district facility by Contract Construction, Inc., a business with which he was associated, in violation of Section 8-13-700(B).
>
> **COUNT TWO FAILURE TO RECUSE FROM A GOVERNMENTAL DECISION IN WHICH A BUSINESS WITH WHICH ASSOCIATED HAD AN ECONOMIC INTEREST SECTION 8-13-700(B), S.C. CODE ANN., 1976, AS AMENDED.** That Kenneth Loveless, Lexington-Richland School District Five Board Member, did in Richland County, on June 15, 2020, participate in discussion about construction of a district facility by Contract Construction, Inc., a business with which he was associated, in violation of Section 8-13-700(B).
>
> **COUNT THREE FAILURE TO RECUSE FROM A GOVERNMENTAL DECISION IN WHICH A BUSINESS WITH WHICH ASSOCIATED HAD AN ECONOMIC INTEREST SECTION 8-13-700(B), S.C. CODE ANN., 1976, AS AMENDED.** That Kenneth Loveless, Lexington-Richland School District Five Board Member, did in Richland County, on September 14, 2020, participate in discussion about construction of a district facility by Contract Construction, Inc., a business with which he was associated, in violation of Section 8-13-700(B).

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

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

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

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

FACTS

1. Respondent served on the District Board from 2018-2022.
2. Respondent has owned and operated Loveless Commercial Contracting, Inc. (LCC) for over thirty-five (35) years. Respondent serves as President, signs all contracts on LCC's behalf, and personally carries the line of credit for LCC.
3. At all times relevant, Contract Construction was a general contractor located in South Carolina and Greg Hughes (Hughes) was its President.
4. On December 19, 2018, the District entered into a contract with Contract Construction for the building of PWES.
5. Thereafter, Contract Construction hired LCC to perform work on an unrelated State Law Enforcement Division (SLED) Laboratory (SLED Lab). The agreement between LCC and Contract Construction was signed by Respondent no later than March 12, 2020.
6. On March 24, 2020, Respondent submitted a letter to the District Superintendent raising perceived problems with the construction of PWES and criticizing certain terms of the District's contract with Contract Construction. Respondent requested "action and a reply on these matters within the next two weeks."

7. During a June 15, 2020 District Board meeting, Contract Construction provided a progress report on the PWES construction. Following the report, Respondent questioned Hughes and District consultant Dan Neal (Neal) regarding, in relevant part, contract change orders and owner/contractor contingencies. Another Board member, Ed White (White), questioned Hughes and Neal about the issues raised in Respondent's March 24, 2020 letter. Respondent engaged in additional discussion with White and the Board, noting he had received unsatisfactory answers to his March 24, 2020 letter.

8. During a September 14, 2020 District Board meeting, Contract Construction provided another progress report on the PWES construction. White again questioned Hughes about the issues raised in Respondent's March 24, 2020 letter. White also raised the issue of LCC's contract with Contract Construction with regard to the SLED Lab and questioned whether Respondent's participation in matters related to Contract Construction was proper. Respondent continued to question Hughes and others about the cost of materials and the work being performed at PWES. Hughes replied, in relevant part, as follows:

> . . . I don't have any problem with the questions. And we're going to give you the best facility you've had, and it will be under budget. And I do want to speak to Mr. Loveless' abilities as a contractor. He is doing a fantastic job on the project we're working together on. He was selected for his qualifications and doing a fantastic job. And there's similar type issues out there, but they're minor in the scheme of things. And we're pleased with what he's doing for us.

9. During the February 8, 2021 District Board meeting, Respondent submitted a letter to the Board acknowledging his affiliation with Contract Construction on the SLED Lab and stating that he would thereafter recuse himself from all matters related to Contract Construction.

10. As outlined in its Decision, the Hearing Panel found that Respondent violated Section 8-13-700(B) of the Ethics Act by (1) writing the March 24, 2020 letter to the District Superintendent

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

LAW/ANALYSIS

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

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

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

Section 8-13-700(B) of the Ethics Act provides, in relevant part:

> No [public official] may make, participate in making, or in any way attempt to use his [office] to influence a governmental decision in which he, a family member, an individual with whom he is associated, or a business with which he is associated has an

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

> economic interest. A [public official] who, in the discharge of his official responsibilities, is required to take an action or make a decision which affects an economic interest of himself, a family member, an individual with whom he is associated, or a business with which he is associated shall:
>
> (1) prepare a written statement describing the matter requiring action or decisions and the nature of his potential conflict of interest with respect to the action or decision;
>
> . . .
>
> (4) if he is a public official, other than a member of the General Assembly, he shall furnish a copy of the statement to the presiding officer of the governing body of an agency, commission, board, or of a county, municipality, or a political subdivision thereof, on which he serves, who shall cause the statement to be printed in the minutes and require that the member be excused from any votes, deliberations, and other actions on the matter on which the potential conflict of interest exists and shall cause the disqualification and the reasons for it to be noted in the minutes.

Section 8-13-100(4) of the Ethics Act defines "business with which he is associated" as:

> A business of which the person or a member of his immediate family is a director, an officer, owner, employee, a compensated agent, or holder of stock worth one hundred thousand dollars or more at fair market value and which constitutes five percent or more of the total outstanding stock of any class.

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

> (a) . . . an interest distinct from that of the general public in a purchase, sale, lease, contract, option, or other transaction or arrangement involving property or services in which a public official, public member, or public employee may gain an economic benefit of fifty dollars or more.
>
> (b) This definition does not prohibit a public official, public member, or public employee from participating in, voting on, or influencing or attempting to influence an official decision if the only economic interest or reasonably foreseeable benefit that may accrue to the public official, public member, or public employee is incidental to the public official's, public member's,

> or public employee's position or which accrues to the public official, public member, or public employee as a member of a profession, occupation, or large class to no greater extent than the economic interest or potential benefit could reasonably be foreseen to accrue to all other members of the profession, occupation, or large class.

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

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

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

"decisions" and "actions," but also provides that public officials are required to recuse "from any votes, deliberations, and other actions on the matter" and on all "matters pertaining to that economic interest." See Section 8-13-700(B)-(C). This interpretation is also supported by decades of guidance and enforcement actions, not only from the Commission, but from other entities responsible for interpreting and enforcing the Ethics Act.[5]

The governmental decision at the heart of this matter is the District's 2018 contract with Contract Construction for the construction of PWES. It is undisputed that Respondent, who personally carries the line of credit for LCC and personally signs all its contracts, became a subcontractor for Contract Construction on March 12, 2020, on an unrelated SLED Lab, thereby making Contract Construction a business with which Respondent was associated. See Section 8-13-100(4) (defining "business with which he is associated" as " a business of which the person . . . is a . . . compensated agent"); SEC AO2000-004 (defining "compensated agent" as "any *ongoing* client relationship in which the [public official] receives compensation for services rendered") (emphasis added).[6] Accordingly, after March 12, 2020, Respondent was required to recuse himself

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

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

from any matter in which Contract Construction had an economic interest, to include the inner workings of its contract with the District. See SEC AO2002-003 (finding the economic interest of a business with which the public official is associated is imputed to the public official for purposes of Section 8-13-700). It was therefore in violation of Section 8-13-700 for Respondent to insert himself into the inner workings of the contract between the District and Contract Construction by (1) writing the March 24, 2020 letter to the Superintendent demanding action with regard to Contract Construction's performance under the PWES contract; (2) participating in the June 15, 2020 Board discussion regarding Contract Construction's performance under the PWES contract; and (3) participating in the September 14, 2020 Board discussion regarding Contract Construction's performance under the PWES contract.

Any other interpretation of Section 8-13-700(B) would lead to an absurd result that would allow a public official to be involved in literally every aspect of a matter that implicated their own economic interests as long as they recused themselves when it came to a formal vote. This would defeat the entire purpose of the Ethics Act, which is outlined in the Preamble:

> Whereas, one of the most important functions of any law aimed at making public servants more accountable is that of complete and effective disclosure. Since many public officials serve on a part-time basis, it is inevitable that conflicts of interest and appearances of impropriety will occur. Often these conflicts are unintentional and slight, but at every turn those who represent the people of this State must be certain that it is the interests of the people, and not their own, that are being served. Officials should be prepared to remove themselves immediately from a decision, vote, or process that even appears to be a conflict of interest.

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

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

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

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

Pursuant to Section 8-13-320(9) of the Ethics Act, the Commission has the duty and power "to initiate *and* receive complaints and make investigations, as provided in item (10) . . . of statements filed or allegedly failed to be filed . . . and, upon complaint by an individual, of an alleged violation of this chapter." (emphasis added). In that regard, Section 8-13-320(9)(a) of the Ethics Act allows the Commission to "commence an investigation on the filing of a complaint by an individual *or* by the commission, as provided in item (10)(d), upon a majority vote of the total membership of the commission." (emphasis added).

Section 8-13-320(10) of the Ethics Act provides for the various ways the Commission may accept a complaint and provides the process for each, the relevant portions of which are provided below:

> (a) The commission shall accept from an individual, whether personally or on behalf of an organization or governmental body, a verified complaint, in writing, that states the name of a person alleged to have committed a violation of this chapter and the particulars of the violation. The Commission shall forward a copy of the complaint, a general statement of the applicable law with respect to the complaint, and a statement explaining the due process rights of the respondent including, but not limited to, the right to counsel to the respondent within ten days of the filing of the complaint.
>
> . . .
>
> (c) If the commission, its executive director, or staff designated by the commission determines that the complaint alleges facts sufficient to constitute a violation, an investigation may be conducted of the alleged violation.
>
> (d) If the commission, upon receipt of any information, finds probable cause to believe that a violation of the chapter has occurred, it may, upon its own motion and an affirmative vote of six or more members of the commission, file a verified complaint, in writing, that states the name of the person alleged to have committed a violation of this chapter and the particulars of the violation. The commission shall forward a copy of the complaint, a general statement of the applicable law with respect to the complaint, and a statement explaining the due process rights of the respondent including, but not limited to, the right to counsel to the respondent within ten days of the filing of the complaint.

As an initial matter, Respondent appears to conflate the process for opening a Commission-generated complaint (outlined in Section 8-13-320(10)(d)) with a complaint filed by a member of the public (outlined in Section 8-13-320(10)(c)). Pursuant to Section 8-13-320(10)(c) of the Ethics Act, "if the Commission, its executive director, or staff designated by the commission determines that the complaint alleges facts sufficient to constitute a violation, an investigation may be conducted of the alleged violation." This is exactly what occurred - the complaint was filed on February 17, 2021 by a member of the public, the Executive Director determined the complaint contained sufficient facts, an investigation was ordered, and Respondent was notified by way of a certified letter dated February 23, 2021. Accordingly, the investigation into this matter was opened under the lawful authority given to the Executive Director by Section 8-13-320(10)(c) of the Ethics Act.

As to the ten (10) day notice requirement, Section 8-13-320(10)(a) and (d) require only that the Commission forward a copy of the complaint to the Respondent within ten (10) days, which was done in the present case – the complaint was filed on February 17, 2021, the Executive Director determined the complaint contained sufficient facts, an investigation was ordered, and Respondent was notified by way of a certified letter dated February 23, 2021. There is no timeline set forth in the Ethics Act or the corresponding regulations regarding the issuance of the Notice of Hearing, aside from Regulation 52-707, which requires the Notice of Hearing to be issued "at least thirty days before the scheduled hearing."

DECISION

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

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

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

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

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

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

STATE ETHICS COMMISSION

NEAL D. TRUSLOW,
APPELLATE PANEL CHAIR

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HEARING PROCEEDINGS

October 06, 2022

Kim Benson

VS

Kenneth Loveless

C-2021-016

REPORTER: Kathryn Bostrom

STATE OF SOUTH CAROLINA

STATE ETHICS COMMISSION

Case: C-2021-16

Kim Benson, Petitioner,	HEARING
vs.	October 6, 2022
Kenneth Loveless, Respondent,	

The within hearing reported by Kathryn B Bostrom, Court Reporter and Notary Public in and for the State of South Carolina; said hearing was taken before the Honorable Commissioner Xavier Starkes, at the South Carolina State Ethics Commission, 201 Executive Center Drive, Columbia, South Carolina, on Thursday, the 6th day of October, 2022, commencing at the hour of 3:00 pm.

APPEARANCES:

Representing the Petitioner:

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Representing the Respondent:

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Court Reporter's Legend:

dashes [--]	Intentional or purposeful interruption
[ph]	Denotes phonetically written
[sic]	Written as said

(EXHIBIT NO. A MARKED FOR IDENTIFICATION PURPOSES (13 pages) Opinion)
(EXHIBIT NO. B MARKED FOR IDENTIFICATION PURPOSES (11 pages) consent order)
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P-R-O-C-E-E-D-I-N-G-S

COMMISSIONER: I am Commissioner Xavier Starkes. It's 3:00 on October the 6th, 2022. This matter is scheduled to be heard on February the 16th of

2023 in accordance with Regulation 52-713 of the South Carolina Code of Regulations. I will be hearing today's motion. Before we proceed, Director Walker, has the media been notified of today's hearing?

MS. WALKER: Non verbal response.

COMMISSIONER: You're on mute. I think you said yes. Okay. There is a positive head nod, yes, the media has been notified. Thank you. Before me I have Respondent's Motion to Dismiss, the Commission's Response and Respondent's Reply Response to the Motion to Dismiss. For today's hearing, Ms. Ballard will have ten minutes to argue. Ms. Laster will have ten minutes to reply and Ms. Ballard will then have the final five minutes to respond. Before we get started, I need to disclose this to all parties. Ms. Ballard, your co-counsel Karl Bowers, of course, is a buddy of mine. We all know each other in the Bar, but he also wrote a recommendation letter for me to be a member of this Commission. And I need to disclose that to Ms. Laster, Ms. Ballard. I will tell you that will not affect my decision one way or another. I can certainly be fair and impartial. I want to disclose that to

you. If you desire that I recuse myself, I will, but I want to disclose that to you. Ms. Laster, you also. Ms. Ballard.

MS. BALLARD: I was aware of that, and I appreciate you making that disclosure. We have no objection to you presiding in this matter or in the hearing proceeding that's scheduled for February.

COMMISSIONER: Thank you. Ms. Laster.

MS. LASTER: No objection from me, Commissioner Starkes.

COMMISSIONER: Thank you very much. Ms. Ballard, please proceed.

MS. BALLARD: Thank you very much. Your Honor, Desa Ballard and Haley Hubbard representing the Respondent, Ken Loveless. This is a Motion to Dismiss on two general bases. One, under the theory that the Notice of Hearing in this matter does not allege a violation of 8-13-700(b) of the State Ethics Act, which is the rules of conduct. The other basis for our Motion to Dismiss is numerous procedure irregularities that are discussed in our brief, which given the limited time, I won't focus on those if it's all right with you.

COMMISSIONER: Yes, ma'am.

MS. BALLARD: We handed up some authorities. It mistakenly says exhibits, but we've handed up some authorities. The first three of them are from Ms. Laster's Memorandum. They were attachments to her Memorandum. So I think you've seen them all before, but I wanted to make reference to them if you didn't mind. What she attached for our edification, all of us, are some advisory opinions from the State Ethics Commission that have been issued through the years. And I discovered when I was reviewing these in detail -- I discovered, for lack of a better word, where the train got off the rails. I discovered when the -- when and how the Commission expanded its interpretation of what was prohibited under Rule 700 or Section 700(b) of 8-13. What I found is -- of course the Commission was established in 1991. One of its first advisory opinions was issued and is marked as Exhibit A in our authorities, page -- I Bates stamped them as well, which is the other reason they're attached separately, so you have reference to them. On page 3, there is a highlight of this Commission's statement about how it construes the statutes, which is included

in my proposed Order. And this particular one has to do with the Planning Commission, and other than the recognition of what the statutory requirements are, I didn't want to refer to this for any particular reason. There are, however, two advisory opinions that start on page 5. One starts on page 5, and one starts on page 9. Those are advisory opinion 004 and 011, both from the year 2000. And both are issued, not at the request of any inquirer, but if you'll notice, they are issued as a result of -- and I'm quoting now, "ongoing concern the State Ethics Commission has regarding violations of 8-13-700(a) and (b) by public members who participate in and vote on matters," et cetera, et cetera. Both of these ethics advisory opinions -- of these advisory opinions, not ethics advisory opinions -- have the same reference. They were issued sua sponte by this Commission not far apart. Obviously there was some question about the language of the statute. So I looked into the authority of Commission to issue advisory opinions, and interestingly, they don't have authority to issue advisory opinions unless someone asks. That would be Section 8-13-300 -- I'm sorry, 320. I'm

lost there. 320 -- oh, which is on page 59 of Exhibit F. Exhibit F is selected sections of the Ethics Act, Mr. Chairman.

COMMISSIONER: Yeah, got it.

MS. BALLARD: I excerpted the hundreds and hundreds of pages that had to do with regulation making and things like that and just included the ones that I thought were relevant for purposes of this hearing. Section 11(a) of that statute provides that the Commission may issue formal advisory opinions based on real or hypothetical circumstances, but if you read on, it says that the only people who are bound by that are the people who requested the formal opinion and any other person who acted in reliance on it in good faith.

COMMISSIONER: Where are you reading, Ms. Ballard?

MS. BALLARD: 11(a) at the bottom of page 10, which is also Bates as page 59.

COMMISSIONER: I got it.

MS. BALLARD: You got it?

COMMISSIONER: Yes, ma'am.

MS. BALLARD: Based on a real or hypothetical set of circumstances, and the next to the last line refers to who's bound by a formal advisory

opinion. And it's limited to whoever asked the question. And in both of these 2000 opinions, nobody asked the question, and otherwise, it's advisory only. I included as Exhibit E certain provisions of the Administrative Procedures Act, and that's at Tab E, and I wanted to point out in 1-23-10, subsection 4, that the definition of regulation specifically excludes the authority to make descriptions regarding agency procedures. And so these advisory opinions are -- I don't want to say for what they're worth, but they are advisory opinions only. Just based on my experience, there have been ethics advisory opinions issued in the context of lawyers many times. And then we argued a case at the Supreme Court, and the Supreme Court sometimes agrees with the ethics advisory opinion and sometimes doesn't. But what we determined is that these 2000 opinions, particular 2000-11 is where the Commission expanded its definition of a vote or action that is prohibited under 8-13-700(b). And if you look on page 12 of that, which is behind Tab A, page 12 says, the Commission has issued many advisory opinions on this, and at the very end of the first full paragraph they say, this is

what somebody must do if they have a potential conflict of interest. They in sub 2 of the to dos -- they said that they must abstain from any action, vote or deliberations, and it says that should absent oneself from the meeting location when the topic comes up. None of that is in the statute. The action or vote is prohibited by the statute. Being present during deliberations is not prohibited by the statute. There is certainly nothing in the statute that requires one to absent oneself from the meeting location. And since that requirement was set forth in a non binding advisory opinion that was not based on a request and therefore is not binding on my client, we think it's inappropriate for the Commission to proceed to charge him with violations of the Ethics Act based on an expansive reading of 8-13-700(b). These words are not in the statute.

COMMISSIONER: Is the word action in the statute?

MS. BALLARD: Yes, the word action is in the statute.

COMMISSIONER: What would you consider an action, Ms. Ballard?

MS. BALLARD: Well, the legislature helpfully helped us out a little bit with some definitions.

Action's not one of them. Neither is deliberation. And I did some research to see what I could find for us, and the only place I can find reference to deliberation is in 8-17, which is the regulations governing the State Employee Grievance Act. And it doesn't define deliberations. It just makes reference to the word. There is a 2015 case from the South Carolina Supreme Court in which a dissenting opinion authored by Judge Pleicones, uses the word deliberations, but not in a context that's helpful to us at all. So I looked for that. I wanted to see if we had any legal guidance on that whatsoever, but what's important about the case that is attached as -- let me see -- I apologize. I'm not usually this disorganized.

COMMISSION: That's absolutely okay. We're coming up on time, but I'm not going to call just yet.

MS. BALLARD: Okay. Well, let me shorten it to this. The Commission has determined that 700 -- 8-13-700(b) is unambiguous on its face, and it does not require construction. I've cited to that, which was an attachment to Ms. Laster's Memorandum. It was a case involving some doctors at Lexington County Hospital who were ordered to

disgorge fees earned by their wives who participated in a real estate transaction for property that was purchased by the hospital. In that decision, which ordered disgorgement of those fees, this Commission said that 700(b) is unambiguous on its face. As a result, the existing law says we can't apply rules of statutory construction because it's unambiguous on its face. We can't add to it. We can't rewrite the statute. We can't interpret the statute to include anything that's not already contained in the statute. And as we know, for the past 20 years or so this Commission has, in fact, interpreted 700(b) in a broader application than what the statute permits. That's a very, very short explanation for why we believe the Notice of Hearing does not allege any violations of the Act, because if you look at the Notice of Hearing, it charges Mr. Loveless in four matters. Number one, writing a letter. Number two, participating in a discussion. Number three, participating in discussion and number 4, attending a site viewing of a property that was under construction for the school district.

COMMISSIONER: So in your opinion, Ms. Ballard, do you

think any of those four would qualify as an action?

MS. BALLARD: No, no. And the reason I say that is because -- let me point to the language of the statute actually. Ms. Laster's memo argues that we have to go further in 700(b) to determine exactly what is prohibited by it, but that's not true. He's charged with a violation of 8-13-700(b) and the sections thereunder, but there's also a subparagraph 4 that includes the word deliberations, but this paragraph tells us what has to happen if he has a conflict of interest. So we don't get there. We first have to determine whether a conflict of interest has been alleged, and that's defined in the 700(b), which is required to take an action -- required to take an action. That's the important part. 700(b), a public official --

COMMISSIONER: Let me ask you this, Ms. Ballard.

MS. BALLARD: Yes.

COMMISSIONER: That's the second sentence, the word required appears. How about that first sentence where it just says has an economic interest in the business?

MS. BALLARD: Well, first of all, that's not what he

is charged with. He's charged under 700(b), and perhaps the Commission intended to charge him under 700(a), but they didn't. So the Notice of Hearing is defective insofar as that was what they were intending to charge him with. The facts as set forth, as I said, of writing a letter, participating in discussions and attending a site visit -- the important language of sub (b), 700 sub (b) is action he is required to take or make a decision.

COMMISSIONER: Okay. How about that first sentence in 700(b)? Does it not apply in this situation?

MS. BALLARD: May make, participate in making or any way attempt to use his office to influence a government decision. Well, the only way to influence a government decision is by an official action or a decision. Deliberations are not defined, as I said, in the State Ethics Act, so we don't know what deliberations are. And the requirement for not participating in deliberations doesn't come in until it's been determined that there is a conflict of interest. So what we've pointed out in our Motion to Dismiss is the statutory obligations and the regulatory obligations that Mr. Loveless is

subject to as a result of being a public member of the school board. He has certain acts that he's required to perform. There are certain acts that he's required to vote on. There are certain actions he's required to participate in. He has not been charged with any of those. He has not been charged with any action that he was required to take or decisions or votes. He's been charged with writing a letter, participating in a discussion, which led to no vote, participating in another discussion, which led to no vote and attending a site visit, which did not result in a vote. I attached to our Motion to Dismiss, or it might have been to our Reply, the minutes of the school board meetings for the dates that are set forth in the Notice of Hearing. I set forth the voting tabulation that was occurring -- that occurred during those board meetings showing how Mr. Loveless voted and what questions he voted on, and none of them have anything to do with Contract Construction.

COMMISSIONER: Let me ask you this question.

MS. BALLARD: Yes.

COMMISSIONER: On the letter that Mr. Loveless wrote --

MS. BALLARD: Yes.
COMMISSIONER: At the very end he says, I request action and reply on these matters within the next two weeks. Those are his words --
MS. BALLARD: Uh-huh.
COMMISSIONER: Doesn't that require an action?
MS. BALLARD: He didn't get any. It was not responded to until many, many months later. He requested information, which he's allowed to do under the regulations of School District 5. The way School District 5 operates is that it's governed by the school board as an entity, and the board can request -- individual members of the board can request information from the superintendent. And that's the content of the letter that is referred to in the Notice of Hearing. He wrote a letter to the superintendent asking that action be taken, but none was. So my point is, and I'm sorry to have to say this, but we've been misconstruing 700(b) for a long time.
COMMISSIONER: When you say we, who are you talking about?
MS. BALLARD: We're talking about the Commission, the Commission and the people who have come before the Commission. This Commission has said this

statute is unambiguous, and therefore it has to be applied in accordance with its exact terms. And the Notice of Hearing sets forth what the charge is, and it sets forth what the factual basis is. None of them allege any required action or any decisions or any governmental decisions. Nothing in the words of the statute is set forth in the Notice of the Hearing. So if this were a civil case, I would be making a motion for 12(b)(6), because it's not properly pled. Now it's not to say that it couldn't be, but at this point in time Mr. Loveless had been served with a Notice of Hearing that does not allege any misconduct on his part as set forth in the Notice of Hearing. And we -- as a result, we filed our Motion to Dismiss under the regulation that permits us to file motions, pre hearing to be determined pre hearing. This Commission and all of us have already invested a tremendous amount of time and energy in this, and it only makes sense to me that this Commission determine whether we go any further when we have a defective Notice of Hearing on our hands. I'm not suggesting that this matter has to be dismissed in its entirety. What I am saying is

this Notice of Hearing has to be withdrawn or dismissed, and if they want to start over again, they can, but they have to work within the language of the statute. If they're going to charge Mr. Loveless with any misconduct in the State Ethics Act, they have to use the language of the statute, not the way they've interpreted it in the past. As I said, we figured out in 2000 how they got off the rails, and they expand their definition to include deliberations, walking out of the room, doing all these other things that the State Ethics Commission just came up with on its own, which is not allowed.

COMMISSIONER: Let me stop you there. I know we're --

MS. BALLARD: I apologize.

COMMISSIONER: -- out of time, and I've got to ask you about your interpretation of 813-3298, which is, I believe the second argument that you have relating to your Motion to Dismiss.

MS. BALLARD: All right. 320 what?

COMMISSIONER: In your brief you actually have it as 813-3198. I think you meant --

MS. BALLARD: That's a typographical error. I apologize for that.

COMMISSIONER: That's okay.

MS. BALLARD: One of the regulations -- and I can't call the number off the top of my head, but it's in my Motion. One of the regulations that's been adopted by this Commission and has gone through the regulation procedure and is therefore enforceable pursuant to the APA, is the ability of this Commission to take such action as it deems appropriate at any stage of the proceedings, which would include dismissing a defective Notice of Hearing. Now whether I'm correct about the defects that I've argued in the second part of our Motion, we rest on our brief on those issues, but I think the primary issue and the issue that really requires this Commission's immediate attention, is that the Commission has been applying an inaccurate application of this statute for many years.

COMMISSIONER: Okay.

MS. BALLARD: And it's time for it to stop.

COMMISSIONER: All right. Let me stop you right here.

MS. BALLARD: Thank you very much.

COMMISSIONER: You're quite welcome. Thank you. Ms. Laster.

MS. LASTER: Yes, sir. Okay. So because Ms. Ballard did not address the second part of her argument,

I too will rest on my briefing unless you, Mr. Starkes, have any specific questions for me on that. I think the facts of this case are few and largely undisputed. At all times relevant, Respondent was a compensated agent of Contract Construction. That makes Contract Construction a business with which he was associated pursuant to the definition in the 1300 subsection 4. So Respondent was therefore required to recuse himself from any matter in which Contract Construction had an economic interest, which would include Contract Construction's contract with the district for the construction of Piney Woods Elementary School. On the four occasions set forth in the Notice of Hearing, Respondent interfered with or attempted to meddle in the contract between Contract Construction and the district. The government --

COMMISSIONER: Ms. Laster.

MS. LASTER: I'm sorry. Go ahead.

COMMISSIONER: I hate to interrupt you. I know we've got a little delay here. Explain to me how writing a letter, site visits -- how those are actions as it applies to the statute.

MS. LASTER: Could you repeat that, Commissioner

Starkes?
COMMISSIONER: Yeah, I'm sorry. In your four allegations of the violations against Mr. Loveless, there are the letter and the issues with the site visits and the other two. My question is how are those actions as defined in the statute. How are those violations of the statute?
MS. LASTER: I think it's participation in the governmental decision. The decision being the contract between the district and Contract Construction. And so he is attempting to participate in that contract matter by doing the letters, by writing the letters, by discussing the matters during the board meetings and by doing the site visit.
COMMISSIONER: Even though the contract had already been awarded, it is my understanding he did not vote on the contract; is that correct?
MS. LASTER: That's correct. It was a -- but it's an ongoing government decision to be into the contract. Obviously there are ways to get out of it. There are ways to modify it, et cetera.
COMMISSIONER: Okay, I'm sorry. Please proceed.
MS. LASTER: Sure. I think that to construe 813-700

in the way that Respondent is suggesting would allow interference and meddling by someone who has imputed economic interest, which is what that is supposed to prohibit. I think it would lead to a result of prohibiting public officials from directly voting in matters, but allowing them to run around behind the scenes, interfering with matters that they or a family member or business or individual with whom they're associated has an economic interest. And as I understand, Respondent's argument, as long as he wasn't "required to take an action, he could do whatever he likes and insert himself into any matter that he or any of those groups of people, the family member, business or individual with whom he's associated has an economic interest. I would submit that that is incorrect, but moreover, Respondent's written response indicates that he is in fact required to do all of this as part of his duties on the school board. The letter says that he's obligated to the citizenry to bring these matters to their attention and to carry out those duties throughout his tenure on the board. So in my opinion, the Respondent's interpretation kind of flies in the face of the spirit and the

letter of the Act. The preamble states that the public official should remove themselves through any process in which they have a conflict. The language of 700(b)(4) requires excusing from votes, deliberations or any other actions on the matter. And then further down in subsection (c) -- it's not applicable here, but it does state that "if you have a blind trust, you do not have a conflict with regard to matters pertaining to that economic interest." And so they're using it in more of a broad sense than what Respondent is setting forth now. So, you know, that's basically the staff's argument as far as 813-700 goes. I'm happy to answer any questions that you might have.

COMMISSIONER: Yeah. Let me ask you this question. In the letter, Mr. Loveless appears to be pointing out a number of safety issues with regard to the property. Let's say for the sake of argument that he happens to drive by the site, and he sees a large hole there, okay. There's no fence around it. There are no warning signs. There's a large hole there. He pulls over to the side, and he whips out his phone, and he sends an email to the superintendent. Mr. Superintendent,

there's a hole here. Something needs to be done about it. In that hypothetical, would that be a violation, an ethics violation, if all the other facts were the same in this particular case?

MS. LASTER: Possibly. And, yeah, in fact, probably. I don't think he should be inserting himself into anything that has to do with Contract Construction. You know, I understand that he believes that he has construction knowledge and background, and that is why his opinion is important, but the guidance from the Commission as well as the statutory language requires that he not participate in any of that at all, that he just doesn't have a hand in any of it, is what I'm saying.

COMMISSIONER: All right. Those are all the questions I have for you. Any other --

MS. LASTER: Thank you, Commissioner Starkes. That's it from me.

COMMISSIONER: You're welcome. Ms. Ballard, you have five minutes.

MS. BALLARD: By way of -- I'll do my best.

COMMISSIONER: Yes, ma'am.

MS. BALLARD: Behind Tab D in the authorities I handed up, I provided the preamble to the 1991 Act,

which created the State Ethics Commission and set forth what was and wasn't prohibited. And the reason I did that is because you go through the legislative intent if we get to statutory construction. If you go through the legislative intent, it is set forth here. And it says on page 29 of Exhibit D, officials should be prepared to remove themselves immediately from a decision, vote or process that even appears to be a conflict of interest, but they didn't put that in the statute. That's what they put in the preface and where we looked to determine statutory intent. And if that's what they intended to do, that's what they should have said. Since this Commission has said that it's -- the regulation is unambiguous on its face, then we're stuck with construing it based on the language of the statute itself, which does not include process and is only limited to required actions, not voluntarily stopping on the side of the road and taking a picture and sending it to the superintendent or any other act that he does in carrying out his duties as a school board member.

COMMISSIONER: Ms. Ballard, let me ask you this

question.
MS. BALLARD: Yes.
COMMISSIONER: Now didn't Mr. Loveless at one point a thought it wise to recuse himself. He actually recused himself?
MS. BALLARD: When the issue was raised, he sought an advisory opinion from staff at the Commission. Staff's opinion suggested that he should recuse himself, and he thereafter recused himself. I've looked at it since then and told him I don't think he should have done that, but -- because I don't think he was prohibited by virtue of a contract that was entered into in 2018, voted on before he was even a member of the school board and was already being carried out in 2020 when he became related in some way to Contract Construction, but for the first two years of his service on the board, he had no contract with Contract Construction, and the one he did have was for a totally unrelated project in which I think it's undisputed that he was not involved in at all. And I know we're going beyond the facts set forth in the pleadings, and I don't intend to do that. The one point I did want to make about the procedural issues that I meant to mention

before, Ms. Laster in her proposed Order to the Chairman says that the Committee's Executive Director determined that the complaint alleged sufficient facts to constitute a violation of the Act and ordered an investigation. I added an Exhibit. It's Exhibit G. It's at the very back of your packet of materials. Ms. Walker's letter to Mr. Loveless, dated February 23rd, 2021 says that the Ethics Commission reviewed the Complaint and determined that there are sufficient facts to warrant an investigation. So Ms. Laster's statement that the Executive Director made that determination is incorrect.

COMMISSIONER: Well, let me ask you this. On that same letter if you look at the code section that's referenced, 8-13-320, subsection 10 --

MS. BALLARD: Yes.

COMMISSIONER: -- have you read that subsection?

MS. BALLARD: In detail, in staggering detail, yes.

COMMISSIONER: Okay. So 8-13-320-10, subsection (c) -- it says, if the Commission, it's Executive Director or staff designated by the Commission determines that the Complaint alleges facts sufficient to constitute a violation, an investigation may be conducted.

MS. BALLARD: I absolutely agree that's what it says.
COMMISSIONER: Okay.
MS. BALLARD: I just wanted to point out the different between what happened and what Ms. Laster says happened, because they're different. And I would not know that but for the cover letter, Exhibit G, the cover letter that was sent to Mr. Loveless by the Executive Director, which says that the full Commission -- board full is not there -- the State Ethics Commission reviewed the Complaint provided and determined there are sufficient facts to warrant an investigation. So there's one other thing in her proposed Order that we were unaware of. She has confirmed for us that probably cause was determined at the board's meeting in May of 2022. That's part of the grounds in our procedural stuff, because we think as spelled out in our Memorandum, that he was required to get notice of that within ten days after that determination of probable cause was made. And as I think you're aware, it was a year and a half after this investigation was opened before the Notice of Hearing was sent to him. So there are several procedural problems. If this letter had said by delegation Executive Director

has determined, then that's fine, but that's not what Ms. Laster says in her proposed Order. So I don't know what record she's referring to, but all I have is the letter that was sent to Mr. Loveless telling him that the State Ethics Commission had determined that the investigation should proceed. And I know that I'm past my five minutes. Mr. Chairman, I've done a proposed Order for you, which focuses on the process of construing the statute if it has to be construed and points out and cites from cases decided by this Commission or a case decided by this Commission which says 700(b) is unambiguous and therefore must be construed on its face. That's the ruling -- that's the only ruling that was provided in support of -- by the Respondent -- I'm sorry, I'm the Respondent -- by the Commission in responding to my Motion to Dismiss. And as I said, we can see now in 2000 how the Commission's interpretation of the statute got broadened and has been broadened. And that's probably why they found it necessary two times in 2000 to say, this is what we really meant, because their ethics opinions made it clear as mud. The last portion of my proposed Order says

what I said to you earlier, which is I'm not asking you to dismiss this matter. I'm not asking you to dismiss this Complaint. I'm asking you to dismiss this proceeding that was initiated by the Notice of Hearing issued in -- I don't even remember the date now -- the Notice of Hearing July 11th, 2022, the Notice of Hearing, which should have been served on him within ten days after the March meeting finding probable cause. I'm simply asking that this Notice of Hearing be dismissed, and as the appellate court would say, remanded with instructions to proceed in accordance with the terms of his opinion. In other words, they can try again if they think he's done something wrong. They can't do it now, because we're in that magic 50 day time period, and I'm afraid this Commission's been unwittingly involved in this matter by outside sources, and I won't comment further on that, but I think a dismissal of this Notice of Hearing based on the fact that it fails to state a cause of action under the statute is appropriate, does not act as res judicata in any way. It allows the Commission to continue its investigation and try to get it right if it wants to or determine that

there's been no wrongdoing, depending on how they decide to construe 700(b). Thank you, Mr. Chairman.

COMMISSIONER: Thank you very much. Thank you both for your arguments. If you would, can I take a few minutes to review --

MS. BALLARD: Absolutely.

COMMISSIONER: -- keep working through my notes. My goal is to rule on it today --

MS. BALLARD: Okay.

COMMISSIONER: -- so let me --

MS. BALLARD: Okay.

COMMISSIONER: -- give me a few minutes to --

MS. BALLARD: Would you like us to step out?

COMMISSIONER: That would be great if you could. Thank you.

MS. BALLARD: Okay, sure. Thank you.

COMMISSIONER: Well, you know what? I have Ms. Master on the screen. I could actually step out for a minute. Let me do that. Since it's just me, I'll just step out for a few minutes. How about that.

MS. BALLARD: Okay, thank you.

(Off the record)

COMMISSIONER: Okay, we're back on the record. Ms.

Ballard.
MS. BALLARD: Yes. I just wanted to make sure that the record is clear that what I referred to that I handed up to you as exhibits, which are really authorities -- they're advisory opinions and statutes and cases. I've also given a copy to the court reporter so that she will have it for the record. And so your copy is yours.
COMMISSIONER: Yes, ma'am.
MS. BALLARD: So you don't need to provide those to her.
COMMISSIONER: So noted. It will become part of the record.
MS. BALLARD: Thank you so much.
COMMISSIONER: Thank you both for your arguments today. You did a super job, and I appreciate it very much, very informative, very prepared, and thank you so much for that. Ms. Ballard, at this time I'm going to deny your Motion to Dismiss and an Order will be forthcoming either later today or certainly by first thing in the morning.
MS. BALLARD: Do you have the benefit of the versions that Courtney and I sent?
COMMISSIONER: I do.
MS. BALLARD: Okay.

COMMISSIONER: Thank you very much.
MS. BALLARD: Mr. Chairman, thank you for your time and attention. I apologize for calling you Your Honor.
COMMISSIONER: Thank you for the promotion.
MS. BALLARD: And it was a pleasure to see you again.
COMMISSIONER: Thank you very much. Ms. Laster, thank you also.
MS. LASTER: Thank you, Commissioner.
COMMISSIONER: Have a good day.
(WHEREUPON, THE ABOVE HEARING WAS CONCLUDED AT 3:57 PM)

CERTIFICATE OF REPORTER

I, KATHRYN BOSTROM, COURT REPORTER AND NOTARY PUBLIC IN AND FOR THE STATE OF SOUTH CAROLINA AT LARGE, HEREBY CERTIFY THAT I REPORTED THIS HEARING ON THURSDAY THE 6TH DAY OF OCTOBER, 2022, AND THAT THE FOREGOING 35 PAGES CONSTITUTE A TRUE AND CORRECT TRANSCRIPTION OF MY STENOMASK REPORT OF SAID DEPOSITION.

I FURTHER CERTIFY THAT I AM NEITHER ATTORNEY NOR COUNSEL FOR, NOR RELATED TO OR EMPLOYED BY ANY OF THE PARTIES CONNECTED WITH THIS ACTION, NOR AM I FINANCIALLY INTERESTED IN SAID CAUSE.

I FURTHER CERTIFY THAT THE ORIGINAL OF SAID TRANSCRIPT WAS THEREAFTER SEALED BY ME AND DELIVERED TO DESA BALLARD, 226 STATE STREET, WEST COLUMBIA, SOUTH CAROLINA, WHO WILL RETAIN THIS SEALED ORIGINAL TRANSCRIPT AND SHALL BE RESPONSIBLE FOR FILING SAME WITH THE COURT PRIOR TO TRIAL OR ANY HEARING WHICH MIGHT RESULT IN A FINAL ORDER ON ANY ISSUE.

IN WITNESS WHEREOF, I HAVE SET MY HAND AND SEAL THIS 4th DAY OF JANUARY 2023.

Kathryn B Bostrom

KATHRYN B. BOSTROM, COURT REPORTER

MY COMMISSION EXPIRES AUGUST 23, 2032

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AUDIO TRANSCRIPTION

February 16, 2023

Kenneth Loveless

VS

Kim Benson

Ethics Hearing

REPORTER: Laura Kelly

STATE OF SOUTH CAROLINA)
) BEFORE THE STATE ETHICS COMMISSION
COUNTY OF RICHLAND)

IN THE MATTER OF:)
)
Complaint C2021-016)
)
Kenneth Loveless,)
)
Respondent,)
)
Kim Benson,)
)
Complainant.)
_____)

Ethics Hearing
Thursday, February 16, 2023

Commissioners in Attendance:

F. Xavier Starkes, Chairman

A.J. Holloway, Vice Chairman

(Appearing via Zoom)

Scott E. Frick

Representing the Respondent:
Desa Ballard, Esquire

Representing the Commission:
Courtney M. Laster, Esquire

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PROCEEDINGS

MR. CHAIRMAN: -- the Chair presiding over the panel today. Hearing the matter along with me are Commissioners Scott A. Frick and A.J. Holloway, and Commissioner Holloway is joining us virtually. The purpose of the hearing today is to hear the allegations of the Commission and to allow the Respondent to present any evidence they have in response to the allegations. This panel, this hearing panel is a neutral body. Our job is to hear both sides of the matter and make a determination of whether there has been a violation of the Ethics laws and, if so, to make a determination of what penalties should be imposed.

Here's the process today. Each side will have an opportunity to make an opening statement. Opening statements are not evidence, but to 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. She will present the Commission's case first. And, you, the Respondent and/or Respondent's counsel, will be allowed to ask questions of her witnesses. Each witness will get their sworn testimony into the record. You are limited to asking questions only of the witnesses. You 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 Ms. Laster has concluded, you will have an opportunity to present your side of the matter and can testify yourself or call any witnesses that you may wish to call. Ms. Laster will then be given the opportunity to ask questions of you or any witnesses she chooses. After testimony of any witness, members of this panel may ask questions they may have as well. Each side will then have the opportunity to make a closing statement and the hearing will be concluded. Please be aware that --

COMMISSIONER HOLLOWAY: Have you started in there? Because it's muted and so I can't hear anything if y'all have started.

MR. CHAIRMAN: We actually have started, Commissioner Holloway.

MS. WALKER: Can you un-mute the thing? Down at the bottom.

MR. CHAIRMAN: Can you hear me?

COMMISSIONER HOLLOWAY: Yes, sir.

MR. CHAIRMAN: Okay. Good deal. Please be aware that the proceedings are being recorded, so it's important to keep your voices up and give verbal answers to the questions rather than head nods or saying uh-huh or uh-uh as we do in general conversations so we can assure

that we have an accurate record of today's proceedings.

MS. WALKER: Commissioner Starkes, the media has been notified we are in compliance with South Carolina FOIA laws. If you'll just give me one second I'll go to my office and make sure that everyone who is asked to attend via Zoom has been admitted, begin recording the hearing via Zoom and then we can get started.

MR. CHAIRMAN: Thank you.

MS. BALLARD: Mr. Starkes, Desa -- I know we're not recording yet -- Desa Ballard for the Respondent. I just wanted to clarify your opening statement. Did I hear you to say that I am not allowed to cross-examine their witnesses?

MR. CHAIRMAN: You did not hear me say that.

MS. BALLARD: Okay. Good. It was a little confusing. I wanted to make sure.

MR. CHAIRMAN: All right. If I said that, I was wrong.

MS. BALLARD: I think it just was the way I heard it.

MR. CHAIRMAN: Okay. No problem.

MS. WALKER: Commissioner Starkes, everyone who have requested the ability to attend has been granted access and I'll begin recording now.

MR. CHAIRMAN: Thank you.

(Recording in Progress)

MR. CHAIRMAN: Ms. Laster, please proceed.

MS. LASTER: Thank you.

MS. BALLARD: Could we put an introduction on the record? I'm sorry, Mr. Starkes.

MR. CHAIRMAN: Sure.

MS. BALLARD: Okay. Thank you very much. Desa Ballard representing the Respondent, Ken Loveless. My co-counsel is Butch Bowers. He is unfortunately on military leave and rather than delay these proceedings we've decided to go forward. And as you and I discussed prior to the hearing, you have a hard stop at four so we may not complete testimony today. I just want to make sure we had that on the record.

MR. CHAIRMAN: Yes, ma'am.

MS. BALLARD: Can I also tell you that, for the record, I've provided each of you -- and I did not realize that Mr. Holloway does not have a thumb drive so we will arrange to get it to him. And what the thumb drive contains -- and you don't need to look at it during these proceedings, it's for your use after the hearing -- it contains a copy of our exhibits, it contains a copy of the pleadings in this proceeding, it contains a file containing law that we believe is relevant and it also contains a sub-file including SEC opinions issued through the years on

various topics, all of which I think you'll find helpful when you're deliberating.

At the conclusion of the hearing it would be my intent, as I do with other regulatory bodies, to ask permission to submit proposed findings of fact and conclusions of law. And I think you'll find the thumb drives useful at that point, but I don't mean to suggest that you need to access them during the hearing. I just provided those for you to avoid giving you six stacks of notebooks for you to carry around yourself.

MR. CHAIRMAN: And we appreciate that. Thank you.

MS. BALLARD: Thank you very much.

MR. CHAIRMAN: Okay. Ms. Laster, please identify yourself for the record.

MS. LASTER: Thank you, Commissioner Starkes. I'm Courtney Laster. I'm the general counsel of the State Ethics Commission. Commissioners, today you will hear one matter. It is C2021-016, Kim Benson versus Kenneth B. Loveless. This is a four-count notice of hearing with all the counts alleging violations of 8-13-700 for participation in matters related to a business with which Respondent was associated.

I believe the evidence today will show that the Respondent served on the Lexington-Richland School District

Five School Board of Trustees from 2018 to 2020 and that he is the owner and operator of Loveless Commercial Contracting. I believe the evidence will further show that while Respondent was serving on the Board, the District was in the process of building Piney Woods Elementary School which is in Chapin. In that regard, the District hired a company called Contract Construction as its general contractor, construction manager at risk.

Respondent subsequently became a subcontractor with Contract Construction on a separate project that involved the building of a SLED lab. After Respondent became a subcontractor for Contract Construction, he participated in matters related to Contract Construction on four occasions. The first was via a March 24th, 2020 letter that he wrote to the then superintendent, Dr. Christina Melton, about Contract's performance and about Piney Woods Elementary School.

The second was a discussion about Contract Construction's performance that he engaged in during a June 15th, 2020 Board meeting. The third was a site visit to review the progress of the project on June 18th of 2020, and the fourth was an additional discussion about Contract Construction's performance and the construction of the elementary school on September 14th, 2020.

So at the conclusion of the evidence, staff will

be asking that you find Respondent violated the Ethics Act in those four respects. That's all I have by way of opening.

MR. CHAIRMAN: Thank you. Ms. Ballard?

MS. BALLARD: Yes. Thank you. Ms. Walker told me to move the microphone so that it would pick me up a little bit better.

We filed an answer on behalf of Mr. Loveless on February 28th, 2022. That's included in the pleadings section of the hard drive that I've given you and it sets forth in detail the substance of our arguments, which I will summarize for you at this point to say, A, Mr. Loveless did not violate any provision of the Ethics Act.

The construction of the Ethics Act that is being advanced by the State, I guess the prosecution, is beyond the language of the statute and, as Mr. Starkes will remember from our Motion to Dismiss, we take the position that the advisory opinions issued by the SEC expand on the interpretation of the language of the statute and permissibly in violation of the limited authority given to State agencies. They must apply the statutes as written and not expand upon their meaning when they're clear on their face.

And, secondly, other than not having violated any of the Acts in the four counts that have been alleged

against Mr. Loveless, it's also our position that your authority over him is limited at this point. You could, should the evidence show you by the preponderance of the evidence that he has violated the Act.

At this point, because he's no longer in public office you do not have any statutory authority to fine him. The only thing you could do would be to find that he violated the Act, but there's no sanction available to you under the statute cite. The only sanctions that are available against public officials, and I can cite you to the subsection when we get to the appropriate part of that. But we've got several steps to go before we get to any determination regarding whether sanctions are appropriate.

For the record, we had a Motion to Dismiss these entire proceedings that was heard by the Chairman and he issued an order denying our Motion to Dismiss and we appealed that finding to the full Commission. We filed our appeal to that on October 17th, 2022. So I'm not asking, nor can I ask this panel to revisit that issue. We have preserved for review by the full Commission the merits of our Motion to Dismiss which talks about the authority of the Commission and the over-broad reading of the statute that the Commission is applying to prosecute this case, so we are preserving that for review by the full Commission.

It's included in your pleadings if you are

interested in it. I've provided both that and the request for review to the full Commission that is currently pending. I just wanted to ensure that our rights are reserved under that Motion to Dismiss.

Mr. Bowers' response, which I've made reference to that, was filed in February 2022 and goes into great detail about the many legal reasons why the statutes do not apply and cannot be held to find Mr. Loveless violated any of them. I don't think it's necessary to rehash those in detail. As I said, I'll be requesting the opportunity to propose findings of fact and conclusions of law which will address those in more detail after the close of the evidence.

MR. CHAIRMAN: Thank you, Ms. Ballard.

MS. BALLARD: Thank you.

MR. CHAIRMAN: Ms. Laster, call your first witness.

MS. LASTER: Thank you, Commissioner Starkes. At this time with the panel's permission, I would like to call Michael Cates.

MS. BALLARD: One other thing for the record. Ms. Laster and I had discussed the exhibits. I have no objection to hers, she has no objection to mine.

MS. LASTER: I might have some to yours.

MS. BALLARD: Okay.

MS. LASTER: I think it depends on -- I haven't had a chance to fully look at everything.

MS. BALLARD: We have no objection to hers.

MS. LASTER: Okay.

MS. BALLARD: Originally, she had -- I don't mean to interrupt you. Please be seated. I have included in your -- on your thumb drive the videos that she intends to play for you which are from several of the Board meetings she's included the minutes for. We believe the minutes are not inclusive of all the requirements under Title 30, but once we included the video as well I think you'll understand why the minutes are not complete and you'll have all of that available to you.

MR. CHAIRMAN: Thank you. Okay. Sir, please raise your right hand.

Whereupon,

Michael Cates, having been duly sworn and cautioned to speak the truth, the whole truth and nothing but the truth, testified as follows:

MR. CHAIRMAN: Please be seated and state your full name for the record.

MR. CATES: Michael Cates, C-a-t-e-s.

MR. CHAIRMAN: Please proceed.

MS. LASTER: Thank you.

DIRECT EXAMINATION

BY MS. LASTER:

Q. Good morning, Mr. Cates.

A. Good morning.

Q. Mr. Cates, where are you from?

A. I live in Lexington County near Irmo, Irmo cluster. It would be the way to describe that.

Q. Okay. How long have you lived there?

A. I've been in the Columbia area for over 30 years.

Q. Okay. What is it that you do for work?

A. I currently work for the South Carolina Department of Health, the disease and epidemiology section.

Q. Have you been busy lately?

A. Yeah.

Q. Okay.

A. With COVID, yes.

Q. Okay. Have you always done that?

A. No. I've also -- I'm ordained in -- as a minister, so I've served several local churches, have a Master's degree in Divinity Theology.

Q. Okay. Mr. Cates, have you ever served on the Lexington-Richland Five School Board of Trustees?

A. Yes.

Q. What years did you serve on the Board?

A. I believe it was 2016 to 2020.

Q. Did you ever serve any other terms?
A. No.
Q. That was the only term you ever had?
A. That was the only term.
Q. Okay. And were you ever a Board officer during your public service?
A. Yes.
Q. Can you describe how you were a Board officer?
A. I was originally, probably in 2018, elected as the Secretary for the Board and then after that Board Chair.
Q. Okay. Mr. Cates, do you know the respondent?
A. Yes.
Q. And how do you know the respondent?
A. By serving together on the School Board.
Q. Okay. Are you familiar with Piney Woods Elementary School?
A. Yes.
Q. Where is Piney Woods Elementary School?
A. On Amicks Ferry Road in Chapin.
Q. Chapin? And that's in District Five?
A. That's in Richland Five, yes.
Q. I see. Was that school previously known as Elementary School 13?
A. It was.
Q. When you came onto the Board, was the District

already in the process of building Piney Woods Elementary School?

A. No. We -- they were in the process of securing the property --

Q. For --

A. -- but had not started the building process.

Q. Okay. Can you explain when they started to build? Do you know?

A. I don't remember the exact date. It was -- I would have to look at --

Q. Okay.

A. -- the timeline.

Q. Were you the Chair at that time?

A. It started to be built prior to my being Chair.

Q. Okay. Mr. Cates, do you know what a construction manager at risk does?

A. Yes, broadly. The CM at risk is a method of procuring -- having a project built used by a lot of public bodies, universities, public schools. It brings a architect, construction manager, the owner, in this case the District, together fairly early. Another method would be a designed build, so it's a method, not a person.

Q. Okay. So there's several processes by which --

A. Right.

Q. -- a construction can be done is what I'm

hearing; is that --

A. Right. That's correct.

Q. Okay. And which one of those processes did the District utilize for Piney Woods Elementary School?

A. The construction management at risk.

Q. Okay. And under the construction manager at risk, is there a general contractor hired?

A. The contractor, yes. Contract Construction.

Q. That was the contractor for Piney Woods Elementary School?

A. For Piney Woods, for Elementary 13 at the time.

Q. Okay. And who were the principals of Contract Construction at that time?

A. Primarily, Mr. Greg Hughes.

Q. Okay. Do you recall a contract being executed between the District and Contract Construction?

A. Yes.

Q. Were you serving on the Board on June 15th, 2020?

A. I was.

Q. And did you attend the June 15th, 2020 Board meeting?

A. Yes.

Q. Were you the Chair at that time?

A. Yes.

Q. Okay.

MS. LASTER: With the panel's permission, I'd like to show Mr. Cates what has been pre-marked as Commission Exhibit 1, which are the Board meeting minutes.

MS. BALLARD: Which one?

MS. LASTER: June 15th. It's C-1 --

MS. BALLARD: Oh, okay.

MS. LASTER: -- from the stack that I handed you.

MS. BALLARD: Okay. Thank you.

BY MS. LASTER:

Q. Mr. Cates, have you had a chance to review what has been pre-marked as Commission Exhibit 1?

A. I have.

Q. And does it accurately depict what occurred at the June 15th, 2020 Board meeting?

A. Yes, it does.

Q. Okay.

MS. LASTER: With the panel's permission, I'd like to introduce C-1 into evidence. It is -- for the record, it's 22 pages long and it's the June 15, 2020 Board meeting minutes.

MR. CHAIRMAN: Is that without objection?

MS. BALLARD: As stated, without objection. Included on your thumb drive is a video, the actual video of

the Board meeting.

MR. CHAIRMAN: C-1 is admitted.

MS. LASTER: Thank you.

(Exhibit C-1, 6/15/20 Board Meeting Minutes, was admitted into evidence.)

MS. LASTER: With the panel's permission, I would like to pull up on the Smart Board what has been pre-marked as Commission Exhibit 2, which is the video. You don't have that because it's a flash drive.

MS. BALLARD: And which date?

MS. LASTER: June 15th.

MS. BALLARD: Okay.

MR. CHAIRMAN: Please proceed without objection.

MS. LASTER: Thank you.

BY MS. LASTER:

Q. Mr. Cates, have you had a chance to review what has been pre-marked as Commission Exhibit 2?

A. The video?

Q. Yes, sir.

A. Yes, I have.

COMMISSIONER HOLLOWAY: Is this going be screen shared?

MS. LASTER: You know, I can see if I can figure out how to do that.

COMMISSIONER HOLLOWAY: And, sorry, I thought --

I would have gone there in person. It's just after being off yesterday going to Charleston for a doctor's appointment, it was just a lot trying to get up there so I was hoping I would be able to get share screen.

MS. LASTER: Sure.

MS. BALLARD: Mr. Holloway, your hard drive has a complete copy of the video on it. When you receive it you'll have access to it that way.

MS. LASTER: Can we take a brief break and see if we can get the Director to be able to let me share this?

MR. CHAIRMAN: Sure. We'll stand in recess.

MS. LASTER: Okay.

(Recess)

MR. CHAIRMAN: Can you see the share screen now?

COMMISSIONER HOLLOWAY: Yes. It's showing the June 15th, 2020 highlighted video clip, like --

MR. CHAIRMAN: Yes, sir.

COMMISSIONER HOLLOWAY: Okay. Yeah, I can see that. Thank you.

MR. CHAIRMAN: We're back on the record?

MS. LASTER: I believe so. If Commissioner Starkes can confirm that he sees this video?

MR. CHAIRMAN: Commissioner Holloway, can you now see the video?

COMMISSIONER HOLLOWAY: It's showing a Zoom --

Zoom called meeting dialogue boxes, I guess you would call them.

MR. CHAIRMAN: How about now, Commissioner Holloway?

COMMISSIONER HOLLOWAY: Yeah. I can see the video. Thank you.

MR. CHAIRMAN: Perfect. We're back on the record.

MS. LASTER: Okay. Thank you. Sorry about that.

BY MS. LASTER:

Q. So, Mr. Cates, I'm sorry, have you had a chance to review Commission's Exhibit 2?

A. I have.

Q. Okay. And does the video footage therein accurately depict what occurred on June 15th, 2020 at the Board meeting?

A. Yes.

Q. Okay.

MS. LASTER: With the panel's permission, I'd like to introduce C-2 into evidence. It is all of the -- it's the whole entire Board meeting. I just have a section of it pulled up here.

MS. BALLARD: Can you designate which section applies?

MS. LASTER: Yes. This -- I'm going to -- I have pulled up here the Superintendent's report portion.
MS. BALLARD: Thank you.
MR. CHAIRMAN: Did you say without objection?
MS. BALLARD: Without objection.
MR. CHAIRMAN: Please proceed.
(Commission Exh. #2, Superintendent's Report Portion of Board Meeting, was admitted into evidence.)
BY MS. LASTER:
Q. Mr. Cates, just can you -- are you able to identify the people in this video?
A. Yes.
Q. Just start -- let's, you know, start around here towards the bottom --
A. From my right to left --
Q. Sure.
A. -- it's Mr. Loveless, Ms. Hammond, Ms. Hutcheson, myself, Dr. Melton and Ed White.
Q. And what -- do you know all of their first names, just for the record?
A. Yes.
Q. Okay. Can you tell us --
A. Ken, Jan, Beth, myself, Christina Melton and Ed.
Q. And is everyone up there a Board member?
A. Dr. Melton is. There's the Superintendent.

Q. And she's seated to your right?
A. That's correct.
Q. Okay. Thank you. Mr. Cates, did you attend the September 14th, 2020 Board meeting?
A. I did.
Q. Were you the Chair at that meeting?
A. I was.
MS. LASTER: With the panel's permission, I'd like to show the witness what has been pre-marked as Commission Exhibit 3. This is the Board meeting minutes from September twenty --
MS. BALLARD: Twenty, what?
MS. LASTER: September 14, 2020.
MS. BALLARD: Okay. Thanks. And that's C-3?
MS. LASTER: Yes, ma'am.
MS. BALLARD: No objection.
MR. CHAIRMAN: Thank you.
MS. LASTER: All right. So with the panel's permission I'd like to introduce that. So introduced, I assume?
MR. CHAIRMAN: So introduced.
MS. LASTER: Thank you.
(Commission Exh. #3, 9/14/20 Board Meeting Minutes, was entered into evidence.)
MS. LASTER: At this time I'd like to pull up on

the Smart Board Commission Exhibit 4, which is the video recording from the September 14, 2020 Board meeting, with the panel's --

MS. BALLARD: No objection.

MS. LASTER: With the panel's permission.

MR. CHAIRMAN: Please proceed.

MS. LASTER: Thank you.

MS. BALLARD: With no objection, I'd like her to designate which section she's playing.

MS. LASTER: I will. I am going to the discussion agenda and adjournment portion.

MS. BALLARD: This is C-4?

MS. LASTER: Yes, ma'am. And Commissioner Holloway can say, I guess, whether or not he's able to see this.

MR. CHAIRMAN: Commissioner Holloway, can you see the screen?

COMMISSIONER HOLLOWAY: I can see it, yeah.

MS. LASTER: Okay. Perfect.

COMMISSIONER HOLLOWAY: Thank you.

BY MS. LASTER:

Q. Mr. Cates, you've reviewed this video footage --

A. Yes.

Q. -- is that accurate? Can you identify everyone in this video?

A. Yes. It appears the full Board is there, Mr. Loveless, Ms. Hammond, Ms. Hutcheson, myself, Dr. Melton, Ed White and Nikki Gardner. Mr. Gantt appears to be participating virtually because I can see him on the screen.

Q. Up there on the big jumbo tron --

A. Up at the top left.

Q. Okay. Thank you.

MS. LASTER: I would like at this time to introduce C-4 into the record. This is the Board's September 14, 2020 Board meeting and the portion I have pulled up is the discussion agenda and adjournment.

MR. CHAIRMAN: Without objection, admitted.

MS. BALLARD: Correct. Discussion agenda and what?

MS. LASTER: Adjournment.

(C-4, 9/14/20 Board Meeting Discussion Agenda and Adjournment, was admitted into evidence.)

BY MS. LASTER:

Q. Mr. Cates, did you attend the September 28, 2020 Board meeting?

A. I did.

Q. And were you the Chair at that meeting?

A. Yes, I was.

Q. All right.

MS. LASTER: With the panel's permission, I'd like to show the witness what's been pre-marked as C-5.

MS. BALLARD: And, I'm sorry. What was the date again?

MS. LASTER: 28, 2020. September 28, 2020, Commission Exhibit 5.

MS. BALLARD: I don't have that one printed out, but that's -- I have no objection.

MR. CHAIRMAN: Without objection.

BY MS. LASTER:

Q. Mr. Cates, have you had a chance to review that?

A. I have.

Q. And does it accurately depict what occurred at the September 28, 2020 Board meeting?

A. It does.

Q. Okay.

MS. LASTER: At this time, I'd like to move Commission Exhibit C-5 into evidence.

MR. CHAIRMAN: Moved without objection --

MS. BALLARD: Without objection.

MR. CHAIRMAN: -- so admitted.

MS. LASTER: And for the record, it's 54 pages long.

(Commission Exh. #5, September 28, 2020 Board Meeting, was moved into evidence.)

BY MS. LASTER:

Q. Mr. Cates, when you were the Board Chair, did you ever do a site visit to Piney Woods Elementary School?

A. Yes, we did.

Q. Do you recall attending a site visit on June 18th, 2020?

A. I did.

Q. Did the respondent attend that site visit?

A. He did.

Q. Did Mr. Hughes of Contract Construction attend that site visit?

A. Yes.

Q. Did you observe Mr. Hughes and the respondent speaking to one another at the site visit?

A. Yes, ma'am, I did.

Q. Okay. Thank you.

MS. LASTER: That's all the questions I have for Mr. Cates.

MR. CHAIRMAN: Ms. Ballard, cross-examination?

MS. BALLARD: Thank you very much.

CROSS-EXAMINATION

BY MS. BALLARD:

Q. Mr. Cates, with reference to C-1, the minutes of the June 15th, 2020 meeting, you identified the people who were sitting. You left out Nikki Gardner who was

participating by conference call. Do you agree that she was participating at that meeting?

A. Yes.

Q. Okay.

A. I was asked who was pictured.

Q. Right. I just wanted for the record to be clear --

A. Yes.

Q. -- that it was a full Board meeting.

A. It was.

Q. Okay. And did District Five have policies in place that required you, as Chairman, to ensure the integrity and accuracy of the minutes that were recorded for that meeting?

A. I would expect so. Were you asking me about a specific policy? I'm not sure what --

Q. Well, let me back up. When you became a member of the School Board were you provided in training what your obligations and responsibilities --

A. Certainly.

Q. Let me finish the question. As to what your obligations and responsibilities were as a Board member?

A. Yes.

Q. When you became the Secretary were you given training and education as to what your responsibilities and

obligations were as Secretary?

A. Yes.

Q. When you became Board Chair were you given training regarding the obligations and responsibilities incumbent upon you as Chairman?

A. All -- yes. All through the resources available through the South Carolina School Board Association.

Q. So may we assume that you or, at least, you had access to District Five's Board policies regarding the obligations of maintaining minutes and ensuring the integrity and accuracy of the minutes?

A. No assumption. I certainly did.

Q. Okay. That's fine.

COMMISSIONER HOLLOWAY: Hey, Ms. Ballard?

MS. BALLARD: Yes?

COMMISSIONER HOLLOWAY: I can hear what you're saying but if you could just make sure to stay close to that mic it'll make it a little easier to hear.

MS. BALLARD: Absolutely. I've never been accused of being too quiet. I promise you that won't happen today.

BY MS. BALLARD:

Q. Mr. Cates, let's look, if you would, at C-3, which are the minutes of the September 14th, 2020 meeting. I believe you identified those earlier.

A. Yes, ma'am. I have them in front of me.
Q. Does that document contain a record of the votes and decisions that were made by the School Board that day at that meeting?
A. Yes, ma'am.
Q. All right.
MS. BALLARD: For the panel, I'm referring specifically to page three and four of Exhibit C-3.
BY MS. BALLARD:
Q. Mr. Cates, would you agree with me that there were no motions or actions taken with reference to Elementary School number 13, also known as Piney Woods Elementary School, at the Board meeting on September 14th, 2020?
A. I agree with that.
Q. Okay. I have the same question with reference to the June 15th -- the June 15th, 2020 minutes which have been introduced into evidence as C-1. Does that also include a record of the votes and decisions that were made during that Board meeting?
A. It does.
Q. And is that on page three and four of the exhibit?
A. It is.
Q. Do you agree with me that there was no action or

votes regarding Elementary School number 13, also known as Piney Woods Elementary School, at the June 15th, 2020 meeting?

A. I agree with that.

Q. Okay. Thank you. Oh. We don't have the agenda. Do you recall whether the agenda for either of those meetings propose that there would be any action or any votes taken with reference to Piney Woods Elementary School at either of those occasions?

A. Are you asking about the agenda that's in front of me?

Q. I don't know that there is an agenda in front of you.

A. Then I wouldn't -- I can't speak to that if I don't have it to view.

Q. If it was on the agenda, would it be -- would a vote be reflected in the pages that you and I have just been discussing in C-1 and C-3?

A. If action was taken.

Q. Right.

A. Because it was on the agenda doesn't -- I mean, there are other ways that an agenda item could have been disposed of. You're asking me about something I'm not -- again, I don't have it in front of me so I'm not certain. Had there been a motion and action taken, I would expect it

to be reflected in the minutes --

Q. All right.

A. -- if that's what you're asking me.

Q. Yes. There is a section of the Board meeting called discussion agenda, is there not?

A. That's correct.

Q. And there are no votes or actions taken during the discussion agenda, are there?

A. Typically not.

Q. Okay. So is it fair to say that C-1 and C-3 indicate that Mr. Loveless did not participate in any actions or votes regarding Contract Construction or anything related to Elementary School 13 either on June 15th, 2020 as reflected in C-1, or on September 14th, 2020 as reflected in C-3?

A. There were no action items regarding Elementary 13, Piney Woods.

Q. My question was, is it correct that Mr. Loveless did not participate in any actions or votes taken on either of those dates according to the official records of the School District.

A. Yes.

Q. You were describing, in response to Ms. Laster's question, the concept of a construction manager at risk. What are the benefits to the School District of employing a

construction manager at risk?

A. Well, there can be several. I think the timeliness of the project is improved, you have all the principal parties together early on so there's not as much discrepancy when it comes time to actually build the project. You've got the designer and the contractor together early enough that you know the guaranteed maximum price. Those are some of the benefits that I understand.

Q. And the building of Piney Woods Elementary, Elementary School 13, was the second time during your tenure as Chairman that the Board had used a construction manager at risk; is that correct?

A. I believe that's correct.

Q. And the prior time that you used a construction manager at risk was some modifications or additions to Chapin Elementary School, I believe?

A. That was the only other project that was done during my tenure on the Board.

Q. So am I correct that your total experience with a construction manager at risk are both the Chapin project and the Piney Woods project?

A. That's correct.

Q. Okay. Now, with reference to the Chapin project, would you agree with me that things went way wrong with the construction of the Chapin project?

MS. LASTER: Objection as to relevance.

MS. BALLARD: Mr. Chairman, it's extremely relevant as to why Mr. Loveless, as a member of the Board in the beginning of 2018, asked certain questions about the ongoing construction of Elementary School 13, because the construction manager at risk program had created such a diaster at the Chapin school that Mr. Loveless had an obligation in his mind to closely monitor the implementation of a construction manager at risk in the Piney Woods Elementary School.

So I will be asking Mr. Loveless in detail about all the things that went wrong with the Chapin project using the same contractor, as a matter of fact and the same architect, as was used in Piney Woods Elementary School and how the School District went to considerable additional expense to remedy the problems associated with the Chapin project.

MR. CHAIRMAN: I will allow it.

MS. BALLARD: Thank you.

BY MS. BALLARD:

Q. You may answer the question.

A. Well, first, there's -- well, can I clear up a, what I think I heard was a -- it's not factual.

Q. Would you answer my question first and then you can explain it any way you'd like.

A. I don't -- you'll have to repeat your question.

MS. BALLARD: Would you replay my question, please?

UNIDENTIFIED FEMALE: I received a message, the folks online are having a difficult time hearing Ms. Ballard. If she can move closer to the mic.

MS. BALLARD: I'll do my best.

UNIDENTIFIED MALE: Thank you.

UNIDENTIFIED FEMALE: It's impossible to hear Ms. Ballard. It's not easy to hear you, so if you could --

MS. BALLARD: I now have it almost in my mouth. How is that?

UNIDENTIFIED FEMALE: I'll have to check in the other room. But on Zoom it's hard to hear the questions. Everybody else is coming in fine, but it's hard to hear Ms. Ballard.

UNIDENTIFIED MALE: Ms. Ballard, would you prefer sitting or -- to get closer to the microphone?

MS. BALLARD: That's not in my DNA.

UNIDENTIFIED MALE: That's what I thought.

UNIDENTIFIED FEMALE: (Inaudible).

MS. BALLARD: I'll hold the microphone, your Honor.

MR. CHAIRMAN: Okay. Please proceed.

MS. BALLARD: I'm waiting for the court reporter

to read back my question.

COURT REPORTER: I don't believe -- I believe it just has a record function. I don't know that I have the ability to play back --

MS. BALLARD: All right.

BY MS. BALLARD:

Q. My question was, as best I can restate it, would you agree with me that there were significant problems with the development of the projects that were done in Chapin during the previous construction manager at risk undertaking that was taken by District Five?

A. I can't answer that question because you've conflated two different projects. If I understand, previously you asked me if I'd been involved with CM at risk and what projects. I may have misunderstood. The project I was referring to was Elementary 13 and the addition at Chapin Middle School.

Q. Okay.

A. Is that what you're asking me about or are you asking about Chapin High School?

Q. I'm asking you about the construction manager at risk project in the Chapin school. I don't know which school it was.

A. Well, then I can't answer your question if you don't know which school it was because there are two

different -- there were two different projects, one I was involved in and one I was not. So I'm not sure how I can answer your question if -- without specifically knowing which school you're speaking of. If you're speaking of Elementary 13 and Chapin Intermediate, I can speak to that.

I don't believe construction management at risk was used at Chapin High School. If it was, I don't believe it was the same architect and contractor. So it's hard for me to answer the question the way you pose it.

Q. Well, let me back out and ask a larger-scale question. Was part of the construction that was done in Chapin done under a -- at the different schools -- done under a construction manager at risk project?

A. I belive Chapin Intermediate, Chapin -- the new wing to that school may have been CM at risk. I would have to go back and look at the minutes. I don't recall from the, you know -- off the top of my head without reviewing that.

Q. If you don't recall, though, you agree those are the only two events that you've had any experience with --

A. The only two projects I was --

Q. Let me finish the question. Those are the only two projects in which you've had any experience as a Board Chair or otherwise with a construction manager at risk program; is that correct?

A. The project at Chapin, the additional wing at Chapin Intermediate, at Chapin Middle -- excuse me. Chapin -- I get those -- the one near Spring Hill High School, that project, and the Elementary 13 - Piney Woods, are the two projects I was involved with.

Q. All right. Mr. Cates, you testified about a site visit to Piney Woods Elementary School. How do you know what date that occurred?

A. That information was provided to me, the date. I'd have to go back and look at the exact date.

Q. Would you be surprised if there was no site visit on June 18th, 2020? Somebody gave you that information and so you said that it was accurate?

A. The information that was given me was information I relied on. I'd have to go back and look at my own calendar or the District's calendar to see the date of that visit.

Q. All right. So you do not know of your own knowledge that the visit, the site visit at Piney Woods Elementary, occurred on June 18th, 2020, do you?

A. No, ma'am.

Q. Okay.

MS. BALLARD: That's all I have. Thank you.

MR. CHAIRMAN: Thank you. Any redirect?

MS. LASTER: No additional questions for

Mr. Cates. Thank you, Mr. Cates.

MR. CHAIRMAN: Mr. Cates, you may be excused. Ms. Laster, please call your next witness.

MS. LASTER: Thank you. Commissioners, at this time I'd like to call Dr. Christina Melton.

MR. CHAIRMAN: Ms. Melton, please raise your right hand.

Whereupon,

Christina Melton, having been duly sworn and cautioned to speak the truth, the whole truth and nothing but the truth, testified as follows:

MR. CHAIRMAN: Please be seated and state your full name for the record.

DR. MELTON: My name is Christina Melton.

MS. LASTER: Thank you.

MR. CHAIRMAN: Please be seated.

DIRECT EXAMINATION

BY MS. LASTER:

Q. Good morning, Dr. Melton.

A. Good morning.

Q. Dr. Melton, where are you from?

A. Originally I'm from Pageland, South Carolina.

Q. Okay.

A. Currently I reside in Prosperity --

Q. Okay.

A. -- with my husband.
Q. Okay. What do you currently do for work?
A. My full-time employment is with the South Carolina Department of Education. I'm the Director of Assessment and Standards Office.
Q. What did you do before you worked for the Department of Education?
A. Prior to working with the Department, I was with School District Five from 2007 until my departure June 30th, 2021.
Q. And what positions did you hold from 2007 to 2021?
A. In 2007, I came to District Five to be an elementary principal at Nursery Road Elementary and then from there was promoted into District Administration where I was Director of Elementary Education for one year and then Chief of Construction for five years, I believe, and then Superintendent. I was named Superintendent-elect December of 2017, started the elect period from January through June of 2018 and then became full-time Superintendent in July of 2018.
Q. Okay. You had a lot of different positions, huh?
A. (No verbal response).
Q. Are you familiar with the Piney Woods Elementary

School?

A. I am.

Q. And was that the school previously known as Elementary School 13?

A. It was.

Q. When you became Superintendent, was the District already in the process of building Piney Woods?

A. Building not necessarily, but preparing to build, yes.

Q. Okay. And what was your role as Superintendent as it related to the building of the Piney Woods?

A. Well, during my Superintendent-elect six months or so, my predecessor would include me with different projects that were underway that the Board was focused on to make sure that I had awareness and exposure. And then when I became full-time Superintendent we had a variety of decisions to make to include how the school would be paid for, plans, the decisions to contract execution. So from the idea of implementation all way through the structure to have the building ready for the academic year of 2021/22 was the goal.

Q. Okay. Is the school open now?

A. It is my understanding that it is.

Q. Okay. Did the District hired Contract Construction with regard to the Piney Woods Elementary

School?

A. The Board of Trustees, yes, made that decision.

Q. Okay. Did you have a hand in executing the contract between those two entities?

A. I had the responsibility and the authority to sign contracts to execute on behalf of the project, yes.

Q. I see.

MS. LASTER: With the panel's permission, I'd like to show what has been pre-marked as Commission Exhibit 6. This is also in -- this is your exhibits as well.

MS. BALLARD: Okay.

MR. CHAIRMAN: Without objection?

MS. BALLARD: Which one is it?

MS. LASTER: It's 6, C-6.

MS. BALLARD: I know. But what is it?

MS. LASTER: Oh. The contract between Contract and Bush.

MS. BALLARD: Quackenbush. Are you meaning to refer to Quackenbush or are you meaning to refer to --

MS. LASTER: Contract Construction. That's the one you have right here.

MS. BALLARD: Okay. That's Exhibit D for the respondent.

MS. LASTER: Yes.

MS. BALLARD: We have no objection.

MS. LASTER: Thank you.
MR. CHAIRMAN: Let me make sure I understand what you're saying. That's Exhibit C-6 you're introducing now?
MS. LASTER: Yes, sir, that's correct. And I think Ms. Ballard is saying she's also included it in her materials.
MS. BALLARD: Correct. It's Exhibit D in our materials.
MR. CHAIRMAN: Thank you.
BY MS. LASTER:
Q. Dr. Melton, do you recognize that document?
A. I do.
Q. And what is that document?
A. I will defer to the title: The Standard Form of Agreement Between Owner and Construction Manager as Constructure -- as Constructor.
Q. And what was the date that agreement was executed?
A. December 19th, 2018.
Q. And, if you would, flip to the last page of C-6. Is that your signature there?
A. That is my signature, yes.
Q. Okay.
MS. LASTER: With the panel's permission, I'd

like to introduce into the record C-6. That is the agreement between the District and Contract Construction and it is 19 pages long.

MR. CHAIRMAN: Introduced without objection.

MS. BALLARD: Correct.

(Commission Exh. #6, Agreement - Contract Construction, was admitted into evidence.)

BY MS. LASTER:

Q. Dr. Melton, I'd like to show you what has been marked as C-1. It's been introduced into evidence as C-1. It's the Board meeting minutes from June 15th, 2020. Can you turn to the fifth page of that document, please?

MS. BALLARD: I have four numbered pages. Can you tell me what you're referring to as page five?

MS. LASTER: The page after page four.

MS. BALLARD: All right. I have it. Thank you.

MS. LASTER: Thank you.

BY MS. LASTER:

Q. Dr. Melton, do you recognize this document?

A. Yes, I do.

Q. Okay. What is this?

A. This is a submission from Board member Ed White to add to the record a letter from Mr. Loveless addressed to me, March 24th, 2020.

Q. And do you recall receiving this letter at any

time?

A. I do recall receiving this letter within a notebook of information.

Q. Okay. And do you recognize the signature on the last page of the letter?

A. It's Mr. Loveless' signature, yes.

Q. And you recognize that as Mr. Loveless' signature?

A. I -- yes. I would say I recognize it.

Q. Okay. What was the substance of this letter, generally speaking?

A. Mr. Loveless outlined areas of his concern, there were ten that I see noted, and had information. Where you see the letter includes attachments, there were attachments and sections that followed in a notebook binder that had photographs and other things to explain the concerns that he was noting.

So this was delivered to the District office. We were in the beginning of the pandemic operation so it was in a notebook that he delivered to the District office.

Q. Okay. Was the respondent requesting you to take any action in this letter by your reading of it?

A. Yes. Mr. Loveless in the letter asked me to please act accordingly. In the next-to-last page, the page before his signatures, he requested action and a reply on

the matters within the next two weeks.

Q. Okay. When you received this letter, what did you do with it?

A. A variety of things. We were dealing -- this was when -- well, we talked at the beginning of COVID pandemic operations.

Q. Sure.

A. Little did we know then just the effect of how long that would last. So the School District itself was actually not operating as we customarily did at that time. I was in the office, my administrative assistant was in the office. She actually -- Mr. Loveless had reached out, I believe via email, but he communicated in advance to schedule a time that he could drop by.

So I was in the office, my assistant was there, I was not available to meet him in the parking lot so she went out to retrieve it. I was in a variety of meetings at that time with State officials and other midlands Superintendents. So we were available to receive but I was not available to engage at that point.

So collected the notebook. I did a quick, what I would call preview, read the letter and then fanned through the things that were attached and had concerns of some of the things that I read and so -- I am not confident with the order of events, but the order of events included

reaching out to Mike Montgomery who was legal counsel for construction projects at the time, reached out to Dan Neil. He was under contract with the District so he was a liaison in some regards. Reached out to Lynn Richardson, Chief Financial Officer.

Mike Montgomery sent a courier from his office over to pick up the packet so that the notebook could be duplicated, the parts that needed to be reviewed, and then we tried to divide the content with the appropriate specialist to have the right people doing the review so that we could follow through to see what needed to be attended to.

Q. Okay. Did you receive responses to the concerns that you distributed amongst these folks?

A. There was a flow of responses that we received, so, yes. But I cannot say there was a specific date, but I do see included with what you've given to me, there are letters of record.

Q. And you're saying that those were received in response to what you distributed?

A. That's correct.

Q. Okay.

A. A letter from Dan Neil and then a letter from Greg Hughes that was addressed to Dan Neil.

Q. Okay.

MS. BALLARD: Just for clarification, are those attachments to C-1 that you're referring to?

DR. MELTON: Yes, ma'am, they are.

MS. BALLARD: Thank you.

BY MS. LASTER:

Q. Dr. Melton, were you in attendance at the February 8, 2021 Board meeting that was held at Spring Hill High School?

A. If there was a meeting, I was in attendance. I did not miss a meeting as Superintendent.

Q. And were you Superintendent on February 8, 2021?

A. I was.

Q. Okay.

MS. LASTER: With the panel's permission, I'd like to show the witness what has been pre-marked as C-7.

MS. BALLARD: Which is what?

MS. LASTER: February 8, 2021 Board meeting minutes.

MS. BALLARD: I think I have a copy of that. But as long as it's complete, I have no objection.

MR. CHAIRMAN: Okay. That's no objection, Ms. Ballard?

MS. BALLARD: That's no objection if it is complete. I don't know if it is or not because I don't have one to compare it to.

MS. LASTER: I can get you a copy.
MS. BALLARD: I'll take your word for it being complete.
MS. LASTER: Okay.
MR. CHAIRMAN: So that's without objection?
MS. BALLARD: Based on her response, it is without objection.
MR. CHAIRMAN: Please proceed.
MS. LASTER: Thank you.
BY MS. LASTER:
Q. Dr. Melton, do you recognize that document in front of you?
A. It is a standard packet of information summarizing Board meetings, so, yes, this is recognizable.
Q. Okay. And have you had a chance to review that document?
A. I have.
Q. And does it accurately depict what occurred at the February 18, 2021 Board meeting?
A. Based upon preview, have I gone back to compare it side by side with the video? I have not compared the two. I can say that based upon this packet, it is customary and standard that the Board approve the minutes from the previous meeting and they had a chance to preview prior to the ask for a vote, so my response to you will be, yes.

Q. Okay. Thank you.

MS. LASTER: Commissioner Starkes, with the panel's permission, I'd like to introduce that as C-7 into evidence and that is from the February 8, 2021 Board meeting and it is 35 pages long, for the record.

MR. CHAIRMAN: Submitted without objection.

MS. LASTER: Great.

(Commission Exh. #7, 2/8/21 Board Meeting Minutes, was admitted into evidence.)

BY MS. LASTER:

Q. Thank you, Dr. Melton. I don't have --

MS. BALLARD: Correct.

MS. LASTER: I'm sorry.

BY MS. LASTER:

Q. Thank you, Dr. Melton. I do not have any additional questions for you.

MR. CHAIRMAN: Cross-examination, Ms. Ballard?

MS. BALLARD: Yes. Thank you very much.

CROSS-EXAMINATION

BY MS. BALLARD:

Q. Dr. Melton, when you became employed by the School District as Superintendent you required the School District to sign a written agreement with you outlining your terms of employment, did you not?

MS. LASTER: Objection as to relevance.

MR. CHAIRMAN: What's the relevance of that question, Ms. Ballard?

MS. BALLARD: The relevance of that is that Ms. Melton required, as part of her employment contract, that all questions from the Board members had to be provided directly to her and she was -- and everything had to go through her. Nobody on the Board could go directly to any employee of the School District. They had to go directly through Ms. Melton and that was a requirement of her contract. I'll be happy to show it to her.

MR. CHAIRMAN: That's fine. I'll allow the question.

MS. BALLARD: Thank you.

BY MS. BALLARD:

Q. Isn't it correct, Dr. Melton, that when you became the Superintendent you signed a contract setting forth the terms under which you were agreeable to serve as Superintendent?

A. It is correct that I signed a contract. The terms were reached mutually with the Board at that time of 2017 and myself.

Q. Since I can't carry the microphone and the paper, I'm going to bring the contract over to let you review it and tell me if this is accurate, okay?

A. Yes, ma'am. (Pauses). I did not bring a copy

of my own. This appears to be standard. So your question was, was this the contract I signed. It appears to be, yes. Your second question, and correct me if I'm mistaken was, my requirement of the Board to come before me --

Q. My first question, is that a copy of the contract that you signed when you became Superintendent at District Five?

A. It appears to be.

Q. All right. My second question, if you'll look at page two over onto page three, and read out loud for the panel hearing one of the requirements that is set forth in the employment contract that you signed with the District. It's the underlined portion in purple.

A. The underlined portion in purple states: The Superintendent shall investigate such matters or call such matters to be investigated and when requested as it is otherwise necessary. The second portion, this -- that is underlined in purple is, requests for substantial information shall be made to the Superintendent and not to the individual members of the District staff.

Q. Read the first sentence of that paragraph if you would. I didn't underline it.

A. Of the paragraph, meaning --

Q. Yes.

A. -- the (inaudible) highlight?

Q. Yes.

A. The Board individually and collectively shall refer all substantial criticisms, complaints and suggestions called to the Board's attention to the Superintendent for study and appropriate action. And then the rest is what I've read already.

Q. Thank you.

MS. BALLARD: Since Ms. Laster said she objections to some of my exhibits, I'll have to ask individually. I'd like to introduce Exhibit B into evidence.

MR. CHAIRMAN: Any objection?

MS. LASTER: I object for relevance but you've already ruled on that.

MR. CHAIRMAN: Admitted over objection.

(Respondent's Exh. B, Superintendent Contract, was admitted into evidence.)

BY MS. BALLARD:

Q. Were there also policies in place adopted by District Five that governed your interaction with the Board of Trustees while you served as Superintendent?

MS. LASTER: Objection as to relevance.

MR. CHAIRMAN: Overruled.

BY MS. BALLARD:

Q. Do you need me to repeat the question?

A. There are policies, but can I cite them for you? I cannot.

Q. Okay. Would you agree with me that there were policies in effect during your entire term as Superintendent that required, any questions or complaints regarding matters going on within the District had to come directly to you and could not be addressed to any other member of the staff?

A. Their policies are Board approved.

Q. My question was, was there one that required all questions or criticisms from Board members to be directed to you rather than to any other member of the staff.

A. I do not recall a policy that states that, the contract did.

Q. So as far as you're concerned it doesn't matter what the policy said, your contract required that, correct?

A. Policy did matter, yes, ma'am. But when it comes to policies and contracts the Board used legal counsel that would align contracts with policies as expected.

Q. I'm going to show you four policies and procedures that were in effect during the period of time that you were Superintendent. I've labeled those J, K, L and M, and I would ask you to review them and tell me if those were, in fact, in effect during the period of time that you acted as Superintendent of District Five.

MS. LASTER: Which ones are these, counsel?

MS. BALLARD: J, K, L and M.
BY MS. BALLARD:
A. Are you expecting me to go through individually or collectively as you noted four?
Q. However you'd like to do it.
A. So looking at Exhibit J --
Q. However you'd like to do it.
A. Looking at Exhibit J, this is policy ARBDR, organization of the School Board. It was issued in 2006. It shows the updates of the policy dating back to 1969 with incremental revisions to include '81, '85, 2006. And so the policy that you've given to me, assuming this is accurate and up to date, which I don't know that it is because I've not looked, but the first one you've drawn attention to is, assign the instruments, acts and orders necessary to carry out the State requirements and the will of the Board.
I have not read the policy to see if that requires complaints or not. This is duties of the Chairperson.
Q. My question was, are those four exhibits, exhibits of the policies that were in effect during the period of time that you were the Superintendent of District Five. If you're not able to answer the question, that's fine.
A. Would you ask your question again?

Q. I'm asking you if those four exhibits -- and, I'm sorry, I can't call the numbers of them at this point, or the letters of them at this point -- J, K, L and M, were those policies in effect during the period of time that you served as Superintendent at District Five?

A. According to the dates that are showing on these policies, these were in the range of the time that I served. Assuming that these are the ones taken from the School District website, then I would say yes.

Q. Okay. Thank you.

MS. BALLARD: I would move the introduction of Exhibits J, K, L and M, which are policies that were in effect during the period of time that Ms. Melton was the Superintendent of District Five.

MS. LASTER: Objection as to relevance.

MR. CHAIRMAN: They're admitted.

MS. BALLARD: Thank you very much.

(Respondent's Exh. J, Organization of the School Board, was admitted into evidence.)

(Respondent's Exh. K, School Board Policy, was admitted into evidence.)

(Respondent's Exh. L, school Board Policy, was admitted into evidence.)

(Respondent's Exh. M, School Board Policy, was admitted into evidence.)

BY MS. BALLARD:

Q. I notice on Exhibit J, which is the organization of the School Board, the Chairman is required to sign the instruments, acts and orders necessary to carry out the State requirements and the will of the Board. Why is it that you were the one that signed the contract with the architect and construction company for ES-13?

A. I do not have that information in front of me. I would have followed the expectations of the Board and the responsibilities executed to the Superintendent, so at that time it was my understanding that the Superintendent was responsible to sign.

Q. Okay. But do you know if there's any policy that was in place that authorized you to sign those contracts on behalf of the Board?

A. I couldn't cite policy for you for that. At this time, I could not.

Q. Would you agree with me that since that policy, or since that contract was signed by you as opposed to the members of the Board or the Chairman of the Board, that you have no evidence that those contracts were reviewed by the Board?

A. I would not agree with that. Because during Executive Session, contracts were often previewed and I --

Q. No votes were taken in Executive Session; is

that correct?

A. You're not allowed to take votes, nor is anybody allowed to speak to it. And, obviously, I don't have archives of information for that, but things that were signed as far as something that was this substantial, the Board would have seen it and had the opportunity to be involved with reviewing and being informed.

Q. Reviewing and being informed but not making decisions or making votes, correct?

A. Votes were taken in public to be a public record.

Q. All right. And your testimony is that they were reviewed in Executive Session, correct?

A. Contracts were reviewed. Not every contract, but contracts of something this size and scale.

Q. And I don't recall the exhibit number of the one that's already been introduced, but the one that you signed, is it your testimony that all the members of the Board reviewed and approved you to sign that contract on behalf of District Five?

A. I would agree that I had been given responsibility to sign, yes.

Q. Okay. But you don't have anything in writing to produce that, do you?

A. I do not.

Q. Okay. Thank you. Now, you were asked about Mr. Loveless' March 24th, 2020 letter and you said it was delivered to you with a notebook; is that correct?

A. It was correct, yes.

Q. And it had 20 or 30 some odd exhibits with it, all marked with tabs; is that correct?

A. As far the number of exhibits, I would not know without looking back at Mr. Loveless' letter. But, yes, there were tabs, there were dividers within the sections.

Q. All right. I'm going to hand you a copy of that and ask if you will tell -- if you can tell the Board whether there -- or, excuse me -- the panel whether this is an accurate copy of the full letter that Mr. Loveless delivered to you.

A. (Pauses). Obviously, I've done a cursory preview. Nothing looks unusual, but without the original side by side, I would hesitate to say that this is a complete match. For example, their section 18 doesn't have anything behind it, section 20 doesn't have anything behind it, and I would not recall Mr. Loveless having something without things being organized in a way.

So that's why I would question -- nothing looks unusual. This appears similar. It appears to be similar, but is it the same as the original? I will not confirm that.

Q. Well, you will confirm that the original had a number of tabbed exhibits contained with it, would you not?

A. Yes, that is correct.

Q. All right. And the copy of the March 24th, 2020 letter that is attached to minutes in one or more of the Board meetings contain no attachments; is that correct?

A. Based on this current packet is what you're asking?

Q. Or anything else that you know of.

A. Not that I'm aware of.

Q. All right. It is accurate, is it not, that only the letter and not the attachments were submitted to the various people by either yourself or Mike Montgomery in preparation for the responses that you got; am I correct?

A. No, you are not correct.

Q. So who provided both the letter and the exhibits to the individuals who were asked to respond to the questions that were raised by Mr. Loveless in the March 24th letter?

A. The courier that picked up the notebook was responsible to take the notebook back to Mr. Montgomery's office to have copies made that we could distribute to the appropriate personnel, specialist, contractors, to review things specific to their responsibilities. So there -- there was to be a collective discussion and assignment of

who was to take what responsibilities.

Q. Let's stay with the attachments. Did you personally deliver the attachments to each of the people that were delegated to provide responses to the Board?

A. I did not.

Q. And you had no personal knowledge of whether any of those individuals were provided with the exhibits that Mr. Loveless provided to you that documented the concerns that he had regarding the questions that were set out in his March 24th letter, correct?

A. That is not correct. That is -- Mike Montgomery, being of legal counsel, the conversations I had, I had the assurance that the appropriate actions had been taken for the review.

Q. So you don't know of your own knowledge whether Mr. Montgomery provided the entire package to anyone, do you?

A. I have confidence in that.

Q. You have confidence --

A. Yes, I have confidence --

Q. -- but you don't have knowledge, do you?

A. If you want to debate words, yes, ma'am, you're correct.

Q. Okay. You have no firsthand knowledge of what was delivered to anybody other than yourself, correct?

A. I have firsthand knowledge that the notebook was picked up, taken to Mr. Montgomery's office. I have firsthand knowledge of multiple conversations that I held with individuals and with groups regarding things in the notebooks -- in the notebook that people knew about. So had I had concerns that I was having conversations or receiving feedback and there were gaps of understanding, that would have been an alert to me.

Q. Was it your responsibility to ensure that the entire letter and attachments were distributed to the people from whom you were seeking responses?

MS. LASTER: Objection as to relevance.

MR. CHAIRMAN: Ms. Ballard, I'm giving you a lot of leeway. I'm tending to agree with the objection on this, but please wrap it up.

MS. BALLARD: I'll be happy to.

BY MS. BALLARD:

Q. Ms. Melton, we have no evidence, do we, from which this Board can conclude that the people that were given the March 24th, 2020 letter also were given the exhibits that Mr. Loveless provided to you as the basis for his questions and concerns, do we?

A. Ms. Ballard, I've not provided any evidence besides the fact of being here today per a subpoena to answer questions. If evidence were needed to be provided, I

would imagine we could still retrieve that evidence if it were needed. Personally, I left the notebook in possession of School District Five upon my departure.

Q. I think you've answered my question. Was Mr. Loveless' letter to you, dated March 24th, 2020, what he was required to do under the terms of your employment contract, if he had any questions about the construction that was going on at ES-13 or any other issue that came before the District, he had to address that to you, did he not?

A. That is correct. And that is the date on this letter, this copy, the March 24th.

Q. Okay. So, in fact, you were the gatekeeper through which his March 24th letter and attachments, if any, were transmitted to the people who were tasked with providing responses to them; is that correct?

A. A gatekeeper would be an appropriate description, yes.

Q. Okay. And you would agree with me that the responses that you received -- who were those responses from? After you sent the March 24th, 2020 letter out, you made reference to responses that were attached to C-1. Who were those responses from?

A. Included in packet C-1, following Mr. Loveless' letter that appeared -- that were added to the record by Ed

White as a note, a letter from Dan Neil dated April 20th, 2020, and a letter to Dan from Greg Hughes dated April 20th, 2020.

Q. Are those the only two?

A. There is a letter dated March 31st, 2020 from Bruce Todd.

Q. Who is Bruce Todd?

A. He is with an engineering firm. This was addressed to Quackenbush that was the architect to Barb Haller's attention.

Q. Okay. What else?

A. Well, there's a -- again, added to the record by Board member Ed White, a Knight's Ready Mix. A copy of two pages of copies.

Q. Thank you. So did Mr. Loveless comply with his obligation by going through you to raise those questions that he had?

A. Yes, he did.

Q. Okay. And he had every reason to believe that you would pass along both his letter and all of the attachments to the people that you were using to provide responses to his questions, did he not?

MS. LASTER: Objection. She doesn't have any -- she can't have knowledge of what he believed.

MS. BALLARD: Mr. Chairman, she contractually

required that all questions go through her and her contract specifically says that she will be responsible for obtaining responses and information regarding it, so I -- I'm simply asking her if she complied with her contract.

MR. CHAIRMAN: If that's the question, please answer.

BY MS. BALLARD:

A. I complied with my contract.

Q. You were required to investigate such matters or cause such matters to be investigated and when requested or as is otherwise necessary, inform the Board of the results of such investigations. Did you that?

A. I did.

Q. Did you inform the Board of the results of such investigations?

MS. LASTER: Mr. Chair, I'm going to have to object again on relevance. I don't know what --

MR. CHAIRMAN: Sustained.

MS. LASTER: -- Ms. Melton's compliance with her contract has to do with anything.

BY MS. BALLARD:

Q. I didn't hear in your direct testimony, Ms. Melton, did you attend a site visit at Piney Grove -- or Piney Woods Elementary School?

A. I visited the school many times, yes.

Q. Okay. So you're not aware of any particular visit that occurred on June 20th, 2020, are you -- June 19th, 2020, are you?

A. As far as a calendar event, I could not say with assurance the date. I heard Mr. Loveless correct the date that you suggested just then. We had -- we were operating during the time of COVID so some of the events we had prepared we had to change, so it was our effort to get the Board on site. And when a new Board was elected in the fall of 2020, we tried to reach out to give those new Board members the opportunity to be on site. So dates can be found on social media.

We tried to publicize that so that the community would know when the Board was on site. Dates were worked on with Board officers, would help select times that we could have Board members available who would like to have those visits. But the routine and the original plans were definitely altered due to COVID operations.

Q. So am I correct that you have no personal knowledge of any visit to the site in June of 2020 of Piney Woods Elementary School that members of the Board attended? Is that correct?

A. If there were members of the Board in attendance, I was in attendance as well.

Q. That wasn't my question. You have no personal

knowledge, do you, of a site visit by members of the Board in June of 2020 at the site of Piney Woods Elementary School, do you?

A. I can tell you I was there during the month of June. But can I say that it was the 19th? I cannot.

Q. You can say you were there.

A. I can say that when the Board was on site, I was physically in attendance with them walking through the site. But I cannot confirm the date.

Q. Or the year.

A. I could confirm the year.

Q. What year was it?

A. We were -- 2020. We were on site for 2020, we were on site in '19, but as far as the Board dates, I cannot confirm that.

Q. Okay.

A. When construction started, dates were altered.

Q. Okay. Thank you.

MS. BALLARD: I have no further questions.

MR. CHAIRMAN: Any redirect, Ms. Laster?

MS. LASTER: Commissioner Starkes, could I take a brief recess to print something out? I have a document I want to show Dr. Melton and I need to print it.

MR. CHAIRMAN: Sure.

MS. LASTER: Thank you.

MR. CHAIRMAN: We'll stand in recess for five minutes. Is that enough?
MS. LASTER: That's enough. Thank you.
(Recess)
MR. CHAIRMAN: Please be seated. And we're back on the record.
MS. LASTER: Thank you, Commissioner Starkes. With the panel's permission, I would like to hand Dr. Melton what has been marked as --
UNIDENTIFIED FEMALE: C-9.
MS. BALLARD: I thought you said C-8.
MS. LASTER: I'd already had a C-8 so I'm going to move it to C-9. I'm sorry.
MS. BALLARD: No objection.
MR. CHAIRMAN: Thank you.
MS. LASTER: And I have a copy for the Board as well.
MR. CHAIRMAN: Ms. Laster, let me ask you this question.
MS. LASTER: Yes, sir.
MR. CHAIRMAN: I had an exhibit marked C-8 on the desk. Is that now going to be C-9?
MS. LASTER: No. This is will be C-9.
MR. CHAIRMAN: Okay: So this is the actual C-8?
MS. LASTER: Correct. Thank you.

REDIRECT EXAMINATION

BY MS. LASTER:

Q. Dr. Melton, during Ms. Ballard's cross-examination she had asked you a question about something along the lines of having Board approval to sign the contract between the District and Contract Construction and I was wondering if you could refer to the third page of this exhibit. Down at the bottom, number nine, and just read what that item was for the panel and tell me the date that this occurred.

A. The date on Exhibit 9 is December 10th, 2018. Item eight that is on the third page --

Q. I'm sorry. Item nine.

A. Oh, okay. Item nine on the third page was a motion: I hereby move that the Board approve the execution of the contract for construction manager at risk services for the elementary school to be located on Amicks Ferry Road with Contract Construction, Inc. Contract Construction was the highest ranked proposal -- do you want me to read all of this?

Q. Yes, ma'am, please.

A. Okay. Proposal for solicitation administration has recommended the proposal -- the proposed contract which has been negotiated with that firm for the services needed. The services have been procured as the result of the

competitive solicitation process in accord with the District's procurement code. We are advised that having the construction manager at risk work in concert with our selected design professional will benefit both the District and reducing the cost of the project and improving the outcome of this school.

This motion is to authorize the Superintendent to confirm the acceptability of all contract terms with the District's counsel and either execute the contract and move forward with the development and construction of the new elementary school or return the matter to the agenda for a special called meeting for further approval.

Q. Thank you. So looking at that, would you say that you had the Board's authorization to sign the contract?

A. Looking at this record of number nine --

Q. Yes, ma'am.

A. -- one, two, three, four, five of the seven voted yes, two were members put on record with a no.

Q. Okay. Thank you.

MS. LASTER: I'd like to just introduce that as Commission Exhibit 9.

MS. BALLARD: No objection.

MR. CHAIRMAN: Okay. Admitted without objection.

(Commission's Exh. #9, Contract, was admitted

into evidence.)

MS. LASTER: Thank you, Dr. Melton.

MR. CHAIRMAN: Any further questions?

MS. LASTER: No other questions, no, sir.

MR. CHAIRMAN: Ms. Ballard?

RECROSS-EXAMINATION

BY MS. BALLARD:

Q. The same exhibit, Dr. Melton, paragraph eight with reference to the execution of the contract with Quackenbush Associates, or Quackenbush Architects, you were not given the authority to sign that contract, were you?

A. (Pauses). According to number eight on page three of Exhibit C-9, the original motion had three, four, five noes, two yeses. The original motion was three, four, five yeses and two noes on the original motion. So the amendment did not pass, the original motion did pass.

Q. And the motion authorizes you to confirm the acceptability of all contract terms but it did not authorize you to sign it, did it?

A. (Pauses). As the motion is written it's as you said, yes.

Q. Thank you.

A. You're correct.

Q. I have one other question I failed to answer (sic). May I have leave -- or ask. May I have leave to ask

one more question?

MR. CHAIRMAN: Yes, ma'am.

BY MS. BALLARD:

Q. During the period of time that you were Superintendent, Mike -- you made reference to Mike Montgomery -- what was he, with reference to the School District?

A. He was one of the Board attorneys approved by the Board to be available and was used by the Board for different purposes and used by staff for different purposes. But what I have referenced today was his involvement with construction and being the attorney of guidance for support of construction projects.

Q. Who did he represent in that capacity?

A. He represented the Board.

Q. Okay. Didn't he also represent several other Board members individually at the same time?

MS. LASTER: Objection as to relevance.

MR. CHAIRMAN: Sustained.

MS. BALLARD: I'll bring that out through another witness. Thank you.

MR. CHAIRMAN: Thank you. Any further questions?

MS. LASTER: No, sir.

MR. CHAIRMAN: Commissioner Frick, do you have

any questions of this witness?

COMMISSIONER FRICK: I do not have any questions.

MR. CHAIRMAN: Commissioner Holloway, do you have any questions of this witness?

COMMISSIONER HOLLOWAY: No questions. Thank you.

MR. CHAIRMAN: And none from me. You may be excused, Dr. Melton.

DR. MELTON: Thank you.

MR. CHAIRMAN: Ms. Laster, please call your next witness.

MS. LASTER: Thank you. At this time with the panel's permission, I would like to call Investigator Ryan Caldwell.

MS. BALLARD: For witness-planning purposes, may I ask what time we might be recessing and what time I might need to have a witness here?

MR. CHAIRMAN: It depends on the length of this witness. Any idea how long this witness is going to be, Ms. Laster?

MS. LASTER: So, Commissioner Starkes, I do have the intention to play some video during this and the first few clips total about four minutes and the second few clips total about 33 minutes. So that combined with Investigator

Caldwell's testimony, I would say an hour perhaps --

MR. CHAIRMAN: Why don't --

MS. LASTER: -- and then whatever Ms. Ballard takes up on cross.

MR. CHAIRMAN: Why don't we get the testimony of this witness and take a break after this witness, then we'll break for lunch and come back after --

MS. BALLARD: That helps me. Thank you very much.

MR. CHAIRMAN: Yes, ma'am.

MR. CHAIRMAN: Investigator Caldwell, please raise your right hand.

Whereupon:

Investigator Bryan Caldwell, having been cautioned to speak the truth, the whole truth and nothing but the truth, testified as follows:

MR. CHAIRMAN: Please be seated and state your full name for the record.

MS. CALDWELL: Yes, sir. Bryan Caldwell.

DIRECT EXAMINATION

BY MS. LASTER:

Q. Good morning Investigator Caldwell.

A. Good morning.

MS. LASTER: Commissioner Starkes, just so I understand, we're going to do direct of Ms. Caldwell and

then recess after that? Is that what I understood?

MR. CHAIRMAN: Depending on the time.

MS. LASTER: Okay.

MR. CHAIRMAN: You know, if it goes long, we may break before cross. But I'd like to get all of the witness testimony in if we can before lunch.

MS. LASTER: Yes, sir.

BY MS. LASTER:

Q. Okay. Investigator Caldwell, where are you currently employed?

A. Here at the State Ethics Commission.

Q. And what's your job title here at the Commission?

A. I am the Chief Investigator.

Q. And what are your job duties as Chief Investigator?

A. I supervise the investigations department, training and investigate complaints and other duties assigned to me from -- by the Executive Director.

Q. Okay. Were you the investigator on this complaint that's currently being presented to the panel?

A. Yes, ma'am.

Q. And who is the Respondent in this case?

A. Kenneth Loveless.

Q. And when you received the complaint did you go

about determining whether or not Mr. Loveless held or holds a public office?

A. I did.

Q. And does he, or did he?

A. He did at time, yes, ma'am. He was a Board member on the Lexington-Richland School District Five Board.

Q. And what years did Mr. Loveless serve on the Board?

A. From 2018 to 2022.

Q. Did he serve on any other terms?

A. Not that I'm aware of, no, ma'am.

Q. Okay. Investigator Caldwell, what do you typically do when you receive a complaint for investigation?

A. I review the complaint and develop an investigative plan, review the allegations of any potential violations and then investigate those allegations to see if there is any evidence to either support or refute the allegations contained in the complaint.

Q. Okay. What did the complaint in this matter allege?

A. That Mr. Loveless had a financial relationship with a company that contracted to do business with the District and then that he participated in certain matters regarding that company.

Q. Okay. What was the company that Mr. Loveless

was alleged to have had the relationship with?

A. Contract Construction.

Q. And what is Contract Construction?

A. They're a general construction firm.

Q. Okay. What type of conduct did the complaint allege that could be violations of the Ethics Act?

MS. BALLARD: I would object to the relevance of that. The Notice of Hearing sets forth the actual charges that are against Mr. Loveless. What the other possible charges might have been are not relevant to this hearing.

MS. LASTER: I'm simply asking her about her investigation and what she did during the investigation.

MS. BALLARD: Which is not relevant to the questions before this Commission.

MR. CHAIRMAN: Overruled. Please continue.

BY MS. LASTER:

A. I'm sorry. Can you repeat the question? I'm sorry.

Q. Sure. What type of conduct did the complaint allege that could be violations of the Ethics Act?

A. That Mr. Loveless participated in certain discussions during meetings, that there was a letter written to the Superintendent and that there was a visit to the school that was being built by Contract Construction.

Q. Okay. As part of your investigation, did you

look into what Respondent does for work?
A. Yes, ma'am.
Q. And what did you find?
A. He owns and operates Loveless Commercial Contracting.
Q. And where is that?
A. Cayce, South Carolina.
Q. And what does Loveless Commercial Contracting do?
A. Again, a general contracting company.
Q. Okay. You said one of the allegations in the complaint was that Respondent had a relationship with Contract --
A. Yes, ma'am.
Q. -- Construction? And I know that's confusing, Contract Construction --
A. Yes, ma'am.
Q. -- and we're talking about construction contracts, but -- okay. As part of your investigation were you able to determine if there was a relationship between Contract Construction and District Five?
A. Yes, ma'am.
Q. And how did you determine that?
A. Reviewing District records that Contract Commercial Construction was hired to oversee the building of

Piney Woods Elementary School during the time it was known as Elementary School 13.

Q. Okay. What sort of documents did you review during your investigation, if any?

A. I looked at meeting minutes of the Board, some agendas, the video recordings of Board meetings, the letter and the attachments to the minutes.

Q. And you said you watched some District meetings?

A. Yes, ma'am.

Q. Do you recall what District meeting minutes you reviewed?

A. I looked at all the meeting -- well, minutes from February of 2020 through February of 2021.

Q. Okay. Did you review the meeting minutes, I guess, then from June 15, 2020?

A. Yes, ma'am.

MS. LASTER: All right. With the panel's permission, I'd like to show Investigator Caldwell what's been entered into evidence as Commission Exhibit 1, which is the June 15th, 2020 Board meeting minutes.

MS. BALLARD: That's already in evidence. No objection.

MR. CHAIRMAN: Thank you.

MS. BALLARD: That's already in evidence. No objection.

MR. CHAIRMAN: Thank you for repeating that in the microphone.

BY MS. LASTER:

Q. Investigator Caldwell, did you review those meeting minutes in your investigation?

A. Yes, ma'am.

Q. And was there anything in the minutes themselves that you found of relevance to your investigation?

A. Yes, ma'am. Toward the bottom of page one there is a paragraph that states during the Superintendent's report that there was an update on Elementary School 13, and then there was an attachment submitted for the record that was a letter from Mr. Loveless.

Q. And why did you consider that relevant?

A. Because Mr. Greg Hughes is the President of Contract Construction and this was a discussion -- it was a discussion of the Elementary School 13 and then a letter that Mr. Loveless submitted regarding that project.

Q. Okay. And were there attachments to these meeting minutes that you found relevant to your investigation?

A. Yes, ma'am.

Q. Can you describe those?

A. Yes, ma'am. There is, right after the chart of the votes taken during the meeting, is a letter dated March

24th, 2020 and on the last page of that letter it says: Respectfully submitted, Kenneth B. Loveless, Trustee.

Q. Okay. And what was the substance of that letter?

A. There are numerous concerns. Mr. Loveless outlines in the letter about the construction project at Piney Woods Elementary.

Q. Okay. Did you ultimately watch the video recording from the June 15th, 2020 Board meeting?

A. Yes, ma'am.

Q. Okay. And did you see anything of relevance in your investigation watching that recording?

A. Yes, ma'am. There was a, during the Superintendent report portion, there is a discussion of the construction project and Mr. Loveless spoke several times during that discussion.

Q. Okay.

MS. LASTER: With the panel's permission, I'd like to just publish a few little clip-its from Commission Exhibit 2, which is the June 15th, 2020 Board meeting.

MS. BALLARD: I have no objection --

MS. LASTER: We might need that switched out.

MR. CHAIRMAN: Is the green light on, Ms. Ballard?

MS. BALLARD: It is. I have no objection as

long as she identifies the timing on the clip that she's playing.

MR. CHAIRMAN: Without objection.

MS. LASTER: There it is. Let me get a screen share going on for Commissioner Holloway if I can.

MS. BALLARD: And be sure to put the time on there if you don't mind.

MS. LASTER: Yes, ma'am. Okay.

MR. CHAIRMAN: Commissioner Holloway, can you see the share screen?

COMMISSIONER HOLLOWAY: I can. Thank you.

MS. LASTER: Okay. I'm just going to play a minute, 1303 to 1441 --

MS. BALLARD: 1303 --

MS. LASTER: To 1441.

MS. BALLARD: Thank you.

MS. LASTER: Thank you. And I do know the minute marks because -- but you'll have this when you deliberate, obviously. So if the recording is a little hard to hear --

MS. BALLARD: This is exhibit what?

MS. LASTER: 1 -- or 2, I'm sorry. The video is 2.

(Video played)

MS. LASTER: I'm going to pause it and have

Investigator -- I'll just put it right up to the speaker and it should work.

MS. BALLARD: The full video is on your thumb drive.

MS. LASTER: Yes, it is.

(Video played)

MS. LASTER: All right. So that is 1303 to 1441.

BY MS. LASTER:

Q. And, Investigator Caldwell, who is this down here in the bottom corner that was speaking?

A. In the lower right-hand corner?

Q. Yes, ma'am.

A. That's Mr. Loveless.

Q. Okay. I'm going to fast forward to 2250, 22 minutes and 50 seconds.

MS. BALLARD: Through what?

MS. LASTER: Through 2311.

MS. BALLARD: Thank you.

MR. CHAIRMAN: What's the beginning of the time?

MS. LASTER: 2250.

(Video played)

MS. LASTER: That's that for that. Again, that was 2250 to 2311. And then next I will play 2815 through 2945.

(Video played)

MS. LASTER: All right. Those are the only three portions I'll be playing from Commission Exhibit 2.

BY MS. LASTER:

Q. Investigator Caldwell --

A. Yes, ma'am?

Q. -- did you review the meeting minutes from September 14, 2020?

A. Yes, ma'am.

Q. I'd like to show you what has been entered into the record as Exhibit 3, Commission Exhibit 3, and ask you if those are the meeting minutes that you reviewed.

MS. BALLARD: Already in evidence. Already in evidence, no objection.

MR. CHAIRMAN: Thank you, Ms. Ballard.

BY MS. LASTER:

A. Yes, ma'am, they are.

Q. Was there anything in these minutes themselves that you found relevant to your investigation?

A. Yes, ma'am. On page two about the middle of the page under discussion agenda, the minutes reflect that there was an update on the construction of Piney Woods Elementary School given by Dan Neil Consultant and Greg Hughes of Contract Construction, and then a discussion regarding testing took place between the Board members and included

questions directed to certain people.

Q. Okay. And why did you consider that relevant?

A. Because, again, this is involving Contract Construction and their work on Piney Woods Elementary School.

Q. Okay. And did you ultimately watch the video recording from the September 14th, 2020 Board meeting?

A. Yes, ma'am.

Q. And did you see anything of relevance to that to your investigation in that recording?

A. Yes, ma'am. There was a lengthy discussion that Mr. Loveless participated in and spoke several times during that discussion.

Q. And that dealt with Piney Woods Elementary and Contract Construction?

A. Yes, ma'am.

Q. Okay.

MS. LASTER: At this time with the panel's permission, I'll play some selected excerpts from September 14, 2020.

MS. BALLARD: No objection as long as they're identified for the record by the timing.

MS. LASTER: Sure.

MR. CHAIRMAN: Without objection.

MS. LASTER: Okay. I believe Ms. Ballard has

submitted a transcript from this meeting that she had transcribed by a court reporter.

MS. BALLARD: I did. Exhibit FF and GG are the verbatim transcripts of these video meetings to save you your ears. So you can actually read what was said --

MR. CHAIRMAN: Yes, ma'am.

MS. BALLARD: -- we had it transcribed by Garber Court Reporting.

MR. CHAIRMAN: Thank you.

MS. LASTER: The only thing I would note is that on page 58, which is where I will pick up when I'm playing this video, is that the court transcription identifies Dr. Melton as a female Board member.

MR. CHAIRMAN: Okay. We do not have those exhibits in our possession here.

MS. BALLARD: You have them on the thumb drive.

MR. CHAIRMAN: On the thumb drive? Okay.

MS. LASTER: Let me get this shared so that Commissioner Holloway can see it.

MS. BALLARD: Time and minute, please?

MS. LASTER: Commissioner Starkes, could you ask if Commissioner Holloway is able to see that?

MR. CHAIRMAN: Commissioner Holloway, can you see the shares screen?

COMMISSIONER HOLLOWAY: I am. I'm able to see

it. Thank you.

MS. LASTER: Okay. The first thing I'm going to play is from the beginning to two minutes even. And this appears on pages 58 and 59 in the transcript in the event that you're looking.

MS. BALLARD: Thank you.

(Video played)

BY MS. LASTER:

Q. All right. Investigator Caldwell, just based on that clip, what's going on here?

A. Mr. Neal is -- they're getting ready to present the update on construction at Piney Woods and he just introduced members of the team who were involved in the project.

Q. Thank you.

MS. LASTER: All right. The next mark I'll go to is 745 and that'll go to 850. And if you happen to be looking at the transcript, that's on pages 63 and 65.

(Video played)

BY MS. LASTER:

Q. All right. Investigator Caldwell, who is this standing here at the podium?

A. That's Greg Hughes.

Q. Okay. And he was responding to questions from a Board member?

A. Yes, ma'am.
Q. Okay.
MS. LASTER: All right. The next minute mark I'm going to go to is 1501 and I will go until 2706. And if you're on the transcript it's 72 to 82.
(Video played)
MS. LASTER: All right. The next portion is 53 from 1:01:39. (Inaudible) -- 39 seconds.
MS. BALLARD: 53 even --
MS. LASTER: Yes, ma'am.
MS. BALLARD: -- through what?
MS. LASTER: 1:01:39. One hour, one minute and thirty-nine seconds.
MS. BALLARD: Thank you.
MS. LASTER: And for transcript referral it's 104 to 111.
COMMISSIONER FRICK: Ms. Laster, give me those times again, please.
MS. LASTER: The one for this current one or all of them?
COMMISSIONER FRICK: The current one.
MS. LASTER: 53 minutes even to one hour, one minute and thirty-nine seconds.
(Video played)
MS. LASTER: All right. One final snip. Hour

one, minute nine even, so 109. And that'll go to 1:16:31, one hour, sixteen minutes, thirty-one seconds.

MS. BALLARD: And the pages are?

MS. LASTER: The pages are 118 through 126.

MS. BALLARD: Thank you.

(Video played)

BY MS. LASTER:

Q. Investigator Caldwell, did you review the meeting minutes from September 28th, 2020?

A. Yes, ma'am.

MS. LASTER: I'd like to show Investigator Caldwell what's been entered into the record as Commission Exhibit 5. It's the District Board meeting minutes from September 28, 2020.

BY MS. LASTER:

Q. Investigator Caldwell, are those the meeting minutes you reviewed?

A. Yes, ma'am.

Q. Was there anything in the minutes themselves that you found relevant to your investigation?

A. Yes, ma'am. On the second page, again about the middle of the page under the discussion agenda, the minutes indicate there was discussion regarding District construction, not to include Piney Woods Elementary, and then there were also items for the record that were

submitted by Mr. Loveless.

Q. Okay. And did you look at the attachments to the minutes?

A. Yes, ma'am.

Q. Was there anything in the attachments that you found relevant?

A. Yes, ma'am.

Q. And what is that?

A. There is a -- these pages aren't numbered. The eleventh page of the attachment starting after the chart with the vote counts is a document titled AIA, document A41-2017, Standard Form of Agreement Between Contractor and Subcontractor. It is a contract between Contract Construction and Loveless Commercial Contracting, Inc. that is signed by Mr. Loveless as the President of Loveless Commercial Contracting.

Q. What's the date of this agreement?

A. February 11th, 2020.

Q. And then are there any other dates on here?

A. In the lower right-hand corner there is a date stamp that says received March 12, 2020, Loveless Commercial Contracting. And then there are handwritten notes that say date subcontract received, received back signed from Contract Construction.

Q. Okay. Looking at this contract, what did you

conclude the nature of the relationship to be between Respondent and Contract Construction?

A. That Respondent was a subcontractor --

MS. BALLARD: I object to that question. Loveless Commercial Contracting is not on trial here. The charges here are against Mr. Loveless individually. The testimony clearly was, this is a contract between Loveless Commercial Contracting and Contract Construction, so that's irrelevant.

MR. CHAIRMAN: Ms. Laster?

MS. LASTER: I asked the relationship between the Respondent and Contract Construction.

MR. CHAIRMAN: Overruled. You can answer.

BY MS. LASTER:

A. That Mr. Loveless signed this contract with Contract Construction to perform work and it lists the job as a SLED forensic services laboratory on Broad River Road in Columbia.

Q. Okay. Did you watch the recorded meeting from September 28, 2020?

A. Yes, ma'am.

Q. Was there any discussion of Piney Woods Elementary in there?

A. No, ma'am.

Q. And did you ultimately recommend charges against

Respondent for anything that occurred during the September 28, 2020 meeting?

A. No, ma'am.

Q. Okay. Did you review the meeting minutes from February 8, 2021?

A. Yes, ma'am.

MS. LASTER: I'd like to show Investigator Caldwell what has been marked as Commission Exhibit 7. These are the meeting minutes from February 8, 2021.

MS. BALLARD: And it's C-7?

MS. LASTER: Yes, ma'am.

MS. BALLARD: Thank you.

BY MS. LASTER:

Q. Investigator Caldwell, did you review those meeting minutes in your investigation?

A. Yes, ma'am.

Q. Was there anything in them that you found relevant to your investigation?

A. Yes, ma'am. On the bottom of page one under discussion agenda, the minutes reflect, or state: Financial relationship of Board member with a vendor and recusal requirements, and then that the Respondent submitted items for the record.

Q. And did you review these attachments to the February 8, 2021 meeting minutes?

A. Yes, ma'am.
Q. Was there anything relevant to your investigation in those attachments?
A. Yes, ma'am.
Q. And what was that?
A. I'm counting. Just a moment. Again, on the eleventh page after the chart showing votes, there is a letter from Kenneth Loveless to Janice Hammond, Chairperson of the Board of Trustees, and the reference line is recusal of Kenneth B. Loveless on certain matters. And then there is a three-page document after that.
Q. And what's in the three-page document?
A. The three-page statement raises some concerns that Mr. Loveless had and his involvement in discussions on the Piney Woods project, the SLED lab project, who bid on that project. Again, on the second page it talks about Mr. Loveless' subcontract with Contract Construction dated February 11, 2020, his actions in regard to Elementary School number 13.
Q. Okay. Why did you consider these things relevant?
A. Well, the first page, the document addressed to Janice Hammond, Mr. Loveless states that he will be recusing himself from any and all votes, deliberations and other actions on any matter coming before the Board relating to

Contract Construction because of his contract with Contract Construction on the SLED lab.

Q. Okay.

A. And then, again, his statement talks about his involvement on that -- on matters coming before the Board on the Piney Woods project up to that point.

Q. Okay. Investigator Caldwell, during your investigation did you receive a written response to the complaint from Respondent or his attorney?

A. Yes, ma'am.

Q. All right. I'm going to show you what's been pre-marked as Commission Exhibit 8. This is the response from Mr. Bowers.

MS. BALLARD: That's also in your pleadings on the thumb drive.

MR. CHAIRMAN: Thank you. So without objection?

MS. BALLARD: Without objection.

BY MS. LASTER:

Q. Investigator Caldwell, is that the response you received from Respondent, or from his attorney?

A. Yes, ma'am, it is. His attorney, yes, ma'am.

Q. Okay.

MS. LASTER: We'll just put that into evidence as C-8. For the record, it's 27 pages long.

(Exhibit C-8, Respondent's Response, was