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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 II OF III**

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Certificate of Counsel

1 admitted into evidence.)

2 BY MS. LASTER:

3 Q. Investigator Caldwell, did you conduct any
4 interviews in this case?

5 A. Yes, ma'am.

6 Q. Who did you interview?

7 A. Michael Cates and Greg Hughes.

8 Q. And who is Michael Cates?

9 A. Michael Cates was the Board Chair during the
10 time of these meetings and events.

11 Q. Okay. And who was Greg Hughes?

12 A. He's the President of Contract Construction.

13 Q. Okay. Going back to C-8 which is the response
14 from the Respondent, was there anything in that letter that
15 caused you concern with regard to the Ethics Act?

16 A. Yes, ma'am. On the bottom of the fourth page,
17 the Respondent's attorney indicates that he participated in
18 a site visit to the construction site at Piney Woods
19 Elementary School.

20 Q. And had the complainant made the allegation that
21 Mr. Loveless had made a site visit to Piney Woods Elementary
22 School?

23 A. Yes, ma'am, it did.

24 Q. Do you recall when the complainant alleged that
25 Mr. Loveless had gone?

1 A. In June of 2020. I think she said June 18th, I
2 think is what the complaint was stating.

3 Q. Okay. And did you read Mr. Bowers' response as
4 confirmation of that?

5 A. Yes, ma'am.

6 Q. Okay. Did you find any evidence that the
7 Respondent ever provided a statement of recusal to the
8 Board?

9 A. Not until the February 8 meeting.

10 Q. Those two documents you've just referenced?

11 A. Yes, ma'am.

12 Q. I see. And after you concluded your
13 investigation did you ultimately decide to recommend
14 charging Respondent with violations of the Ethics Act?

15 A. Yes, ma'am.

16 Q. And what specifically did you recommend?

17 A. The four counts of violating 8-13-700B for the
18 participation in the June and September 2020 Board meetings,
19 the site visit to Piney Woods Elementary and the letter that
20 he wrote to Dr. Melton in March of 2020.

21 Q. Okay.

22 A. All of which occurred after he had this
23 financial relationship with Contract Construction.

24 Q. I see. Investigator Caldwell, are you aware of
25 an administrative cost for investigating this complaint?

1 A. Yes, ma'am.

2 Q. And what is that number?

3 A. \$900.

4 Q. And how did you arrive at that number?

5 A. That is the hourly average staff rate multiplied
6 by a conservative estimate of hours spent in this
7 investigation.

8 Q. How many hours did you estimate you had spent in
9 this investigation?

10 A. Approximately 30. That's a conservative
11 estimate.

12 Q. Would you consider it an extremely conservative
13 estimate?

14 A. Yes, ma'am.

15 Q. Okay.

16 MS. LASTER: I don't have any additional
17 questions for Investigator Caldwell.

18 MR. CHAIRMAN: Ms. Ballard, prior to
19 cross-examination, it's already 12:08 --

20 MS. BALLARD: Yes.

21 MR. CHAIRMAN: -- would you like to take a break
22 now or would you like to move forward?

23 MS. BALLARD: I think I'll need about 30
24 minutes. I suggest we take a break now.

25 MR. CHAIRMAN: That'll be fine. Is that okay

1 with you, Ms. Laster?

2 MS. LASTER: Yes, sir.

3 MR. CHAIRMAN: Good deal. We'll stand in recess
4 until one o'clock. Is that good?

5 MS. BALLARD: Or 1:08?

6 MR. CHAIRMAN: Okay. 1:08. Is that fine?

7 MS. LASTER: It's fine with me.

8 MS. BALLARD: Thank you.

9 MR. CHAIRMAN: And, Investigator Caldwell,
10 during the break, please do not discuss your testimony with
11 anyone --

12 INVESTIGATOR CALDWELL: Yes, sir.

13 MR. CHAIRMAN: -- because you're still under
14 oath.

15 INVESTIGATOR CALDWELL: Yes, sir.

16 MR. CHAIRMAN: Thank you.

17 MS. BALLARD: Thank you.

18 MS. LASTER: Thank you.

19 (Recess)

20 MR. CHAIRMAN: We have a hard stop today at four
21 that we have to stop then. Ms. Laster, how many more
22 witnesses do you have? Okay. Investigator Caldwell is your
23 last witness?

24 MS. LASTER: Yes, sir.

25 MR. CHAIRMAN: Ms. Ballard, how many witnesses

1 will you be calling?

2 MS. BALLARD: Four.

3 MR. CHAIRMAN: Four?

4 MS. BALLARD: My problem is that Mr. Loveless
5 (inaudible).

6 MR. CHAIRMAN: Okay. I would assume that'll be
7 your last witness?

8 MS. BALLARD: Yes.

9 MR. CHAIRMAN: Okay. Do you think you can get
10 to your three today by four o'clock?

11 MS. BALLARD: It depends on how long the other
12 three take. I don't see how (inaudible).

13 MR. CHAIRMAN: Okay. How is your schedule
14 looking for tomorrow?

15 MS. BALLARD: (Inaudible).

16 MR. CHAIRMAN: Ms. Laster?

17 MS. LASTER: Me, too.

18 MR. CHAIRMAN: What we'll probably need to do
19 is, we need to be done. If we go tomorrow we need to be
20 done by midday tomorrow.

21 MS. BALLARD: That'll be fine.

22 MR. CHAIRMAN: Do you think we can get it done
23 by noon tomorrow if we start at 9:30?

24 MS. BALLARD: Yes.

25 MR. CHAIRMAN: Okay. Ms. Laster?

1 MS. LASTER: Yes, sir. I think that's feasible.

2 MR. CHAIRMAN: Commissioner Holloway, is that
3 good with you?

4 COMMISSIONER HOLLOWAY: Yes, sir.

5 MR. CHAIRMAN: Good deal. Commissioner Frick?

6 COMMISSIONER FRICK: It is. Thank you.

7 MR. CHAIRMAN: So we'll -- our goal is to get as
8 much done as we can today, as many witnesses as we can, and
9 we'll pick up tomorrow and conclude the hearing tomorrow by
10 midday.

11 MS. BALLARD: Thank you.

12 MR. CHAIRMAN: Okay.

13 MS. BALLARD: I could start Mr. Loveless' today,
14 but (inaudible).

15 MR. CHAIRMAN: Okay. Let's go at 9:30 tomorrow.
16 Is that good for you Commissioner Frick since you've got to
17 drive in?

18 COMMISSIONER FRICK: It is. Thank you.

19 MR. CHAIRMAN: A 9:30 start time tomorrow?

20 MS. LASTER: Yes, sir.

21 MS. BALLARD: (Inaudible).

22 MR. CHAIRMAN: Okay. We're back on the record.
23 Investigator Caldwell, you're still under oath.

24 INVESTIGATOR CALDWELL: Yes, sir.

25 MR. CHAIRMAN: And you may proceed.

1 CROSS-EXAMINATION

2 BY MS. BALLARD:

3 Q. Ms. Caldwell, I'm Desa Ballard. I represent
4 Mr. Loveless. Can you hear me okay?

5 A. Yes, ma'am.

6 Q. Okay. I'd like you to look at some of the
7 exhibits that Ms. Laster reviewed with you. Specifically, I
8 think she started with C-1 which were the minutes of the
9 June 15th meeting.

10 A. Yes, ma'am.

11 Q. Your testimony was that there were discussions
12 and a letter and a visit in which Mr. Loveless participated
13 during the June 15th, 2020 meeting; is that correct?

14 A. The meeting minutes reflect discussion and items
15 attached.

16 Q. Well, your testimony is what I'm asking about.
17 Your testimony, I wrote it down when you said it, it was
18 discussions, a letter and a visit that Mr. Loveless
19 participated in; is that correct?

20 A. The -- I testified to what the meeting minutes
21 indicate.

22 Q. All right. So if you testified to the fact that
23 Mr. Loveless participated in discussions, a letter and a
24 visit on the -- as reflected in the June 15th minutes that
25 are introduced as C-1, you stand by that testimony, correct?

1 A. I'm sorry?

2 Q. You agree that if the minutes reflect and you
3 earlier testified that Mr. Loveless participated in
4 discussions, a letter and a visit, that is accurate
5 testimony by you, correct?

6 A. The minutes reflect a discussion and documents
7 submitted as attachments which is the March 24th letter.

8 Q. All right. And you also mentioned a visit of
9 some sort. I wasn't clear about what that was. Do you know
10 what that was?

11 A. In my earlier testimony I did talk about the
12 site visit that was discussed at a later meeting.

13 Q. Okay. So your testimony is that the June 15th
14 minutes and your review of them does not reflect any site
15 visit?

16 A. Not in this -- not in the meeting minutes, no,
17 ma'am.

18 Q. Okay. Thank you. When you reviewed the
19 transcripts of the Board meetings, there are six videos of
20 each Board meeting, aren't there?

21 A. Transcripts?

22 Q. No. The videos.

23 A. When I watched the videos?

24 Q. Yes.

25 A. There are how many?

1 Q. Each Board meeting is saved on video in six
2 sections. One is called Called to Order, Approval of Agenda
3 and Enter Executive Session. The second one is called
4 Welcoming Invocation and Pledge of Allegiance. The third
5 video is called Superintendent's Report. The fourth video
6 is called Approval of Minutes and Public Participation.
7 Video five is the Action Agenda and video six is the
8 Discussion Agenda and Adjournment, and that's consistent for
9 all of the videoed School Board meetings; is that correct?

10 A. Yes, ma'am. I recall the different portions of
11 the meeting minutes. I don't remember the exact number for
12 each particular meeting, but, yes, there were different
13 sections of video, yes, ma'am.

14 Q. And is it your testimony that you watched all
15 six of the videos for each of the Board meetings that you've
16 testified about?

17 A. I watched portions of the video in particular
18 where the minutes reflected some type of discussion or
19 participation either about Piney Woods or something where
20 something was submitted by Mr. Loveless for the record.

21 Q. Okay. Did you specifically review for the June
22 15th, 2020 meeting any of the votes that were taken during
23 that Board meeting?

24 A. I watched the meeting in its entirety once and
25 then when I would go back to review, I watched in particular

1 the portions where the -- like, for example, on the June 15
2 minutes, the Superintendent's report, where Piney Woods
3 Elementary was discussed.

4 Q. Okay. Would you look at C-1 and see if you're
5 able to tell the panel whether or not there were votes taken
6 by the Board at that meeting?

7 A. Yes, ma'am. There is a record of voting
8 attached to the meeting minutes.

9 Q. And you believe that to be accurate?

10 A. Yes, ma'am. It's the District's record of what
11 took place at the meeting.

12 Q. All right. And you'll agree with me that there
13 is no action or vote in which Mr. Loveless participated at
14 any time during the June 15th, 2020 meeting; is that
15 correct?

16 A. Yes, ma'am. I don't recall any vote being
17 taken.

18 Q. Okay. So is it your testimony you said in
19 response to Ms. Laster's questions that you were concerned
20 about his participation at the meeting, but you agree that
21 he did not take action or participate in a vote at that
22 meeting, correct?

23 A. He did not participate in a vote. He
24 participated in discussion directly of Contract Construction
25 representatives --

1 **Q. Okay.**

2 **A. -- and discussion of the building -- the**
3 **construction project at Piney Woods.**

4 **Q. Okay. The same question with reference to the**
5 **meeting on September 14th, 2020. You testified with that**
6 **one that -- that's C-3.**

7 **A. Yes, ma'am.**

8 **Q. You testified that there was a discussion and**
9 **some portions of that discussion were played by video during**
10 **the testimony.**

11 **A. Yes, ma'am.**

12 **Q. Would you agree with me that there were no votes**
13 **or action taken by Mr. Loveless at any time during the**
14 **September 14th, 2020 meeting regarding Piney Woods?**

15 **A. Yes, ma'am.**

16 **Q. There's no vote or action taken whatsoever in**
17 **which Mr. Loveless participated. He participated only in**
18 **discussions; is that correct?**

19 **A. There's no vote, yes, ma'am.**

20 **Q. Okay.**

21 **A. Yes, ma'am, he participated in the discussion**
22 **portion of Contract Construction and other representatives.**

23 **Q. Okay. And no decision was made by the Board as**
24 **a whole following that discussion about Piney Woods, was**
25 **there?**

1 A. I don't know if there was a decision --

2 Q. Well, please look at the votes.

3 A. -- made -- there doesn't appear to be a vote,
4 no, ma'am.

5 Q. Okay. The next one you testified about, I
6 believe, was September 28th, 2020. Do you have C-5 in front
7 of you?

8 A. Yes, ma'am.

9 Q. All right. And your testimony regarding that
10 one was that there were discussions as part of the
11 discussion agenda and there were some attachments I think
12 that you made reference to. You said there was no
13 discussion, per se, of Piney Woods but the attachments made
14 reference to Piney Woods; is that correct?

15 A. Yes, ma'am.

16 Q. Okay. So you'd agree with me then as to
17 September 28th of 2020 that Mr. Loveless did not participate
18 in any action or any vote regarding Piney Woods Elementary
19 School on that date, correct?

20 A. Yes, ma'am.

21 Q. Okay. Thank you. And with reference to the
22 February 8th -- I believe that's C-7 -- you testified
23 regarding the discussions, and I think we played a portion
24 of the video from that. You would agree with me on that
25 occasion that Mr. Loveless did not participate in taking any

1 action or voting on anything regarding Piney Woods
2 Elementary on that occasion, correct?

3 A. We did not play any portion of these meeting
4 minutes. Mr. Loveless read into the record his statement of
5 recusal.

6 Q. So my question was, you agree with me that
7 Mr. Loveless did not take any action or vote on anything
8 regarding Piney Woods Elementary School at the meeting
9 that's reflected on February 8th of 2021, correct?

10 A. He did not take any vote. I mean, he submitted
11 his letter of recusal from anything having to do with
12 Contract Construction.

13 Q. All right. And just to be sure just so the
14 record is clear, please look at the votes as recorded in the
15 official minutes in C-7 and see if you think there's
16 anything in there that Mr. Loveless participated in an
17 action or a vote.

18 A. Regarding Piney Woods?

19 Q. Regarding Piney Woods, yes.

20 MS. BALLARD: Which exhibit was the ballot
21 letter?

22 MS. LASTER: It's 8.

23 MS. BALLARD: Does she have that? I think
24 they're all up there.

25 BY MS. BALLARD:

1 A. There's an item number nine, has to -- it looks
2 like a motion made by Huddle, Board member Huddle who
3 states -- she asks the Commission to rule on certain items
4 and then the motion is amended by Blackburn-Hines to include
5 a question of whether or not the opinion provided by
6 Mr. Loveless precludes him from inspection of the Piney
7 Woods Elementary School site and there does -- there is a N
8 in the column for Mr. Loveless to indicate that he voted no
9 against that issue.

10 **Q. All right. Other than that, there was no action**
11 **or vote that he participated in regarding Piney Woods**
12 **Elementary School, correct?**

13 A. I don't see anything on this list other than
14 that item.

15 **Q. Okay. So you agree with me then, all of the**
16 **minutes that have been introduced into the record and**
17 **testified to by you reflect no actions taken by Mr. Loveless**
18 **or no votes in which Mr. Loveless participated as it related**
19 **to Piney Woods Elementary School, correct?**

20 A. No votes.

21 **Q. And no actions, correct?**

22 A. Well, I think action could be participating in
23 discussion. So there's no votes.

24 **Q. Oh. So you read 700B to mean discussions are**
25 **also prohibited? Is that your testimony?**

1 A. Yes, ma'am. That has been the Commission's
2 historical stance.

3 **Q. Is that your testimony?**

4 A. Yes, ma'am.

5 **Q. Okay. You realize the statute doesn't say that,**
6 **right? I'll be happy to show it to you.**

7 A. Yes, ma'am. That has been the Commission's
8 interpretation of that statute and application of that
9 statute.

10 **Q. But my question was, the statute does not**
11 **prohibit him --**

12 MS. LASTER: Objection.

13 BY MS. BALLARD:

14 **Q. -- participating in discussions, correct?**

15 MS. LASTER: The witness has been asked and
16 answered it.

17 MR. CHAIRMAN: Hold on. One at a time.

18 MS. BALLARD: I didn't get an answer.

19 MR. CHAIRMAN: Hold on one second. What's the
20 objection?

21 MS. LASTER: That she's asked and answered.

22 MS. BALLARD: I didn't get an answer.

23 MS. LASTER: It also is calling for a legal
24 conclusion.

25 MR. CHAIRMAN: Okay. Overruled. Please

1 proceed.

2 BY MS. BALLARD:

3 Q. You agree with me that 700B, the section under
4 which the charge of the Notice of Hearing was issued against
5 Mr. Loveless does not prohibit him participating in
6 discussions, correct?

7 A. I believe it says deliberations or some other --

8 Q. Let me show it to you so you can be sure.

9 MS. LASTER: Mr. Chair, again, I'd like to state
10 an objection. I think this is the Commission's purview.
11 This is what the panel is for is to determine the
12 construction of the statute.

13 MS. BALLARD: I wouldn't have brought it up but
14 she testified to it already so I felt the right to
15 cross-examine her on that issue.

16 MR. CHAIRMAN: Overruled. Proceed, Ms. Ballard.

17 MS. BALLARD: Thank you.

18 BY MS. BALLARD:

19 Q. Ms. Caldwell, I'm showing you a section of
20 18-13-700. I would point you specifically to subsection B
21 which is the section that is cited in the Notice of Hearing
22 in this case. It's the only section that's cited in the
23 Notice of Hearing in this case. Would you agree with me
24 that there's nothing in that statute that prohibits
25 Mr. Loveless from participating in discussions?

1 A. No, ma'am. I would not agree with that.

2 **Q. What language in that statute do you believe --**
3 **I know you said that's the Commission's interpretation --**
4 **what language in that statute do you believe prohibits him**
5 **from engaging in discussions on any particular topic?**

6 MS. LASTER: Again, objection.

7 MR. CHAIRMAN: Overruled.

8 BY MS. BALLARD:

9 A. The statute says no public official may make,
10 participate in making or in any way attempt to use his
11 public position to influence a governmental decision in
12 which he has or a business which he is associated has an
13 economic interest, and then that he is required to recuse
14 himself from any votes, deliberations and other actions on
15 the matter in which the potential conflict of interest
16 exists.

17 **Q. So you agree with me, there was no prohibition**
18 **on him participating in discussions as long as he doesn't**
19 **take action, vote, or influence someone else's vote,**
20 **correct?**

21 A. Or that he -- but the statute also requires him
22 to recuse himself from any deliberations.

23 **Q. Read that language to me that says that he must**
24 **recuse himself from any deliberations.**

25 A. If he is a public official other than a member

1 of the General Assembly, he shall furnish a copy of the
2 statement, meaning the recusal statement --

3 **Q. I'm not talking about the statement. Read me**
4 **the part of the statute that says he may not participate in**
5 **discussions.**

6 A. This is the part of the statute that says --

7 **Q. You're reading me about the letter of recusal.**

8 MR. CHAIRMAN: Do not talk over each other,
9 please. One at a time.

10 BY MS. BALLARD:

11 **Q. Why don't you just publish 700B fully to the**
12 **record. Just read the whole thing aloud.**

13 MS. LASTER: Mr. Chair, can we just enter that
14 into the record if need be? I mean --

15 MR. CHAIRMAN: Ms. Ballard, I think we know what
16 the statute says --

17 MS. LASTER: Right.

18 MR. CHAIRMAN: -- but go on with your question.

19 BY MS. BALLARD:

20 **Q. Is there any portion of 700B that prohibits**
21 **Mr. Loveless from participating in discussions as long as**
22 **they do not lead to a vote or an action taken by the Board?**

23 MS. LASTER: Objection, asked and answered.
24 She's already answered this question.

25 MS. BALLARD: I've asked it, it's not been

1 answered.

2 MR. CHAIRMAN: I think it has, but -- I think it
3 has been answered. Go ahead and answer the question,
4 Investigator.

5 BY MS. BALLARD:

6 A. The statute reads that he has to recuse himself
7 from any action on the matter to include votes,
8 deliberations and it says and any other action. By recusing
9 himself he is therefore required to not participate. If
10 you're recused you therefore cannot participate.

11 Q. That's your interpretation and it's your
12 testimony that that's the Commission's interpretation?

13 A. That has been the Commission's interpretation,
14 that if it is a matter with which a business which you are
15 associated has an economic interest, you're required to
16 recuse yourself.

17 Q. And it's also your testimony by virtue of the
18 Loveless Commercial Contracting contract with Contract
19 Construction as it related to the SLED project, which is
20 totally unrelated to District Five, it's your testimony that
21 that creates a -- that Contract Construction is therefore a
22 business with which Mr. Loveless personally is associated
23 under the statute; is that correct?

24 A. Yes, ma'am.

25 Q. Are you familiar with what the statute actually

1 says?

2 A. I'm familiar with the definition.

3 Q. Well, I'll let you be more familiar. I'm going
4 to put it in front of you. Please publish the definition of
5 business with which he has interest to the panel.

6 A. 8-13-100 subsection 4, business with which he is
7 associated means a business of which the person or a member
8 of his immediate family is a director, an officer, owner,
9 employee, a compensated agent, or holder of stock worth
10 \$100,000 or more at fair market value and which constitutes
11 5 percent or more of the total outstanding stock of any
12 class.

13 Q. And it's your position that Mr. Loveless falls
14 into one of those categories as it relates to Contract
15 Construction?

16 A. Yes, ma'am. Loveless Commercial Contracting had
17 a subcontract with Commercial Contract -- I'm sorry.
18 Contract Construction, apologies, therefore making that a
19 business with which he is associated.

20 Q. Where is the word subcontract in there?

21 A. It is not in this definition.

22 Q. Okay. And the business with which it's
23 referring to is the business whether he has an ownership
24 interest in it, correct?

25 A. (Pauses).

1 **Q. I think you said \$100,000 or more?**

2 A. That's for a holder of stock. It also lists
3 other positions.

4 **Q. Okay. So which of those positions do you**
5 **contend that Mr. Loveless was holding while his company was**
6 **a subcontractor with Contract Construction as it related to**
7 **the SLED project which was unrelated to District Five?**

8 A. He's a compensated agent.

9 **Q. Mr. Loveless?**

10 A. As a representative of Contract -- apologies.
11 As a representative of Loveless Commercial, he's the owner,
12 President and operator of that business.

13 **Q. What investigation did you look into to**
14 **determine whether he was a compensated agent of Contract**
15 **Construction?**

16 A. I researched his company with the Secretary of
17 State. All of the documents that they provided listed him
18 as the registered agent, the -- I'm sorry. The principal,
19 the only member of the Board of Directors, later the --
20 apologies. I can't recall the exact term it used. The
21 incorporator, the sole incorporator of that business. A
22 Google search also showed on his LinkedIn profile that he is
23 the President and owner. He's listed as the owner on a
24 Statement of Economic Interest filed by his wife.

25 **Q. Well, filed by his wife doesn't have anything to**

1 do with him, does it?

2 A. No, ma'am. But it is an indication. I mean,
3 all of the things that I looked at indicated that he was the
4 owner and President of Loveless Commercial Contracting and
5 that is his company. The company bears his name. Their
6 website indicates -- I mean, when you pull up their website,
7 he is sitting in the middle of what appears to be all of the
8 company employees which would lead me to believe that that
9 is his company.

10 Q. So your testimony is, under 700B he was a
11 compensated agent of what company?

12 A. He is the owner and operator of Loveless
13 Commercial Contracting, and then when they signed the --
14 when they signed their subcontract with Contract
15 Construction, at that point they become -- Contract
16 Construction becomes a business with which he is associated
17 by virtue of that relationship.

18 Q. Between one LLC and another?

19 A. Mr. Loveless signed that contract as the
20 President of Loveless Commercial Contracting.

21 Q. So my question is, as between one LLC and
22 another?

23 A. As both.

24 Q. Both, what?

25 A. That Mr. Loveless' relationship with Contract

1 Construction through his own company makes that a business
2 with which he is associated, makes Contract Construction a
3 business with which he is associated.

4 **Q. What's your educational background?**

5 A. I have a Bachelor's degree in History from the
6 University of South Carolina-Aiken and I have a law degree
7 from Seattle University.

8 **Q. Are you a member of the South Carolina Bar?**

9 A. No, ma'am.

10 **Q. Have you ever practiced law in South Carolina?**

11 A. No, ma'am.

12 **Q. Have you ever been retained to offer a legal**
13 **opinion regarding the applicability of Title 8, subsection**
14 **13 as it relates to --**

15 A. No, ma'am.

16 **Q. Well, I guess I don't need to finish the**
17 **question. You never interviewed Mr. Loveless, did you?**

18 A. I reached out. He was -- he had counsel,
19 therefore I reached out to his counsel.

20 **Q. You never asked to interview him through his**
21 **counsel, did you?**

22 A. I advised Mr. Bowers, his counsel at the time,
23 that I had questions that I would like to discuss and
24 offered ever how he would like for that to happen; I could
25 submit them in writing or we could participate in an

1 interview. Mr. Bowers indicated that something in writing
2 would be fine so I sent him an email.

3 Q. And you never interviewed Mr. Loveless, correct?

4 A. No, ma'am. I made the offer but they did not
5 accept the offer.

6 Q. Okay. So all of these conclusions about what
7 his role is with Loveless Commercial Contracting is your
8 conclusion from Google and the Secretary of State and all of
9 these other places that you've referred to in your prior
10 testimony, correct?

11 A. From my investigation.

12 Q. Okay. Are you a member of any Bar?

13 A. No, ma'am.

14 Q. Do you have Exhibit C-8 in front of you?

15 A. Yes, ma'am.

16 Q. You testified earlier that that letter confirmed
17 that Mr. Loveless attended a site visit to the construction
18 site at Piney Woods Elementary School in June of 2020. Do
19 you recall that testimony?

20 A. That he participated in a site visit, yes,
21 ma'am.

22 Q. All right. If you would look at page four of
23 five, the last paragraph --

24 A. Yes, ma'am.

25 Q. -- there is no date in Mr. Bowers' statement

1 about what date the visit to the construction site occurred,
2 is there?

3 A. No, ma'am. I read this statement previously.
4 It just says which included a site visit to the construction
5 site at Piney Woods Elementary School.

6 Q. Well, when you answered Ms. Laster's question
7 earlier you said that you read this to confirm that he had
8 participated in a site visit at Piney Woods Elementary
9 School in June of 2020. That's not what it says, is it?

10 A. No, ma'am. It just says a site visit to the
11 construction site.

12 Q. And you have no idea when that site visit
13 allegedly occurred, do you?

14 A. I do.

15 Q. Based on what?

16 A. Based on my investigation.

17 Q. So when did it occur based on your
18 investigation?

19 A. In June of 2020.

20 MS. BALLARD: Ms. Laster, can we pull up the
21 photographs of the June 2020 Board meeting that shows the
22 pictures of the site during June 2020?

23 MS. LASTER: Do you know which portion it is?

24 MS. BALLARD: The same one you played. It's
25 toward the beginning.

1 MS. LASTER: I just played from here. I'll
2 share it. Push play.

3 (Video played)

4 MS. BALLARD: We don't need the volume. I just
5 need the photos. You can scan if you want to until the
6 photos come up.

7 MS. LASTER: Sure.

8 MS. BALLARD: The photos of District -- of Piney
9 Woods Elementary, it'll be in this section. All right.
10 There you go. Go back one. There.

11 BY MS. BALLARD:

12 Q. Is it your understanding, Ms. Caldwell, that
13 this was the view of the site of Piney Woods Elementary in
14 June of 2020?

15 A. I would assume so. That is what the header to
16 the left-hand side of this photograph says.

17 Q. And this was shown during the June 2020 Board
18 meeting, correct?

19 A. Yes, ma'am. I believe this was part of the
20 presentation from Mr. Hughes.

21 Q. And this building is partly constructed, if at
22 all?

23 A. Partially constructed, yes, ma'am.

24 Q. All right. The site visit that you testified
25 occurred, occurred (inaudible), didn't it?

1 A. No, ma'am. There was a second site visit upon
2 completion, I think, in January of 2021, also. But my
3 investigation and speaking with witnesses, there was a site
4 visit in which Mr. Loveless participated in June of 2020.

5 **Q. Would it surprise you to know there was no site**
6 **visit on June 20th of '20?**

7 A. It would surprise me.

8 **Q. I thought it would.**

9 MS. BALLARD: I have no further questions.

10 MR. CHAIRMAN: Any redirect, Ms. Laster?

11 MS. LASTER: I don't have any additional
12 questions for Investigator Caldwell.

13 MR. CHAIRMAN: Commissioner Frick, any questions
14 of this witness?

15 COMMISSIONER FRICK: I have a question,
16 Investigator Caldwell. What did your investigation reveal
17 about Mr. Loveless' statements or questions during the site
18 visit in June other than merely being there?

19 MS. BALLARD: Subject to my objection.

20 MR. CHAIRMAN: Please answer.

21 INVESTIGATOR CALDWELL: That he participated in
22 the site visit, that he asked some questions as they were --
23 as the Board members were given a tour of the site.

24 COMMISSIONER FRICK: Do we know who he posed the
25 questions to?

1 INVESTIGATOR CALDWELL: To Mr. Hughes.

2 COMMISSIONER FRICK: Okay. Thank you. Nothing
3 further.

4 MR. CHAIRMAN: Commissioner Holloway, do you
5 have any questions for this witness?

6 COMMISSIONER HOLLOWAY: No questions from me.
7 Thank you.

8 MR. CHAIRMAN: Ms. Laster?

9 MS. LASTER: No. I don't have any additional
10 questions for her.

11 MS. BALLARD: Just one further question.

12 BY MS. BALLARD:

13 Q. Are there any minutes of the site visit that
14 allegedly occurred on June 15th of 2020?

15 A. Not that I'm aware of, no, ma'am.

16 Q. So you would agree with me that there was no
17 action taken and no votes taken on whatever date there may
18 have been a site visit at Piney Woods Elementary School,
19 correct?

20 A. I would assume there would be no votes taken.
21 Certainly not all the Board members were there.

22 Q. And no action taken because it requires action
23 of the full Board, correct?

24 A. Yes, ma'am.

25 Q. Okay.

1 MS. BALLARD: Thank you.

2 MR. CHAIRMAN: Any further questions of this
3 witness?

4 MS. LASTER: No, sir, not from me.

5 MS. BALLARD: Not from the Respondent.

6 MR. CHAIRMAN: Investigator Caldwell, you're
7 excused.

8 INVESTIGATOR CALDWELL: Thank you.

9 MR. CHAIRMAN: Ms. Laster, please call your next
10 witness.

11 MS. LASTER: The staff doesn't have any
12 additional witnesses at this time.

13 MR. CHAIRMAN: Thank you. Ms. Ballard, are you
14 ready to proceed?

15 MS. BALLARD: Yes, I am. I just wanted to
16 remind the panel that I had made a Motion to Dismiss based
17 on the insufficiency of the Notice of Hearing which does not
18 allege any violation of 8-13-700B and I believe Ms. Caldwell
19 has verified that. I'm not asking the panel to rule on
20 that. We've already appealed that to the full Commission.
21 But I would point out that there's been no witnesses testify
22 that Mr. Loveless took any action or participated in any
23 vote related to Piney Woods Elementary School at any time.
24 He, in fact, was elected to the Board after they had been
25 selected as a subcontractor, so we'll --

1 COMMISSIONER HOLLOWAY: Ms. Ballard, sorry to
2 interrupt you. Could you pick up the microphone again,
3 please?

4 MS. BALLARD: I just wanted -- can you hear me
5 now? Hello? Hello?

6 MR. CHAIRMAN: Now we can hear you.

7 MS. BALLARD: Okay. Thank you. My question, or
8 my point was that no one has testified that Mr. Loveless
9 participated in any action or any votes as it related to
10 Piney Woods Elementary School at any time while he was on
11 the Board. The testimony is that he was elected to the
12 Board in November of 2018. We've gone through the minutes
13 of just about every Board meeting that occurred during that
14 relevant period of time. We've looked at the voting record.
15 There is no evidence of any vote in which Mr. Loveless
16 participated. There is no record of any action in which
17 Mr. Loveless participated. And as we argued before,
18 Mr. Starkes, earlier, we believe that the Notice of Hearing
19 is defective on its face and that it does not allege a
20 violation of statute. We'll leave that issue preserved for
21 the full Commission.

22 MR. CHAIRMAN: Duly noted.

23 MS. BALLARD: Thank you. We'll call Cathy
24 Huddle.

25 MR. CHAIRMAN: Ms. Huddle, please raise your

1 right hand.

2 Whereupon:

3 Catherine Huddle, having been duly sworn and
4 cautioned to speak the truth, the whole truth and
5 nothing but the truth, testified as follows:

6 MR. CHAIRMAN: Please state your full name for
7 the record.

8 MS. HUDDLE: Catherine Huddle.

9 MR. CHAIRMAN: Would you spell Catherine for me?

10 MS. HUDDLE: C-a-t-h-e-r-i-n-e.

11 MR. CHAIRMAN: And it's H-u-d-d-l-e?

12 MS. HUDDLE: Yes, sir.

13 MR. CHAIRMAN: Please proceed.

14 DIRECT EXAMINATION

15 BY MS. BALLARD:

16 **Q. Ms. Huddle, are you on the --**

17 MS. BALLARD: The green light is on, your Honor.
18 I don't know why it's not recording me.

19 MR. CHAIRMAN: We can hear you now.

20 BY MS. BALLARD:

21 **Q. Ms. Huddle --**

22 MS. BALLARD: Is it transmitting?

23 MR. CHAIRMAN: I think so.

24 MS. BALLARD: All right.

25 BY MS. BALLARD:

1 Q. Ms. Huddle, are you a member of the District
2 Five School Board?

3 A. I am.

4 Q. When were you elected?

5 A. November of 2020.

6 Q. So when did you take office?

7 A. I don't know the exact day but it was November
8 of 2020.

9 Q. All right. Was Mr. Loveless already on the
10 Board at that time?

11 A. He was.

12 Q. Have you attended all of the Board meetings
13 since you became a member?

14 MS. BALLARD: It's not working.

15 BY MS. BALLARD:

16 Q. Have you attended all of the Board meetings to
17 the best of your knowledge that have occurred since you
18 became a member of the Board?

19 A. I have. There was two I think where I was
20 remote, but I was -- I participated in all of them.

21 Q. Are you aware of any action or votes taken by
22 Mr. Loveless on any issue related to Piney Woods Elementary
23 School at any time during your membership on the Board?

24 MS. LASTER: Objection as to relevance.

25 Ms. Huddle just testified she came on in November of 2020

1 and all of the actions alleged against Mr. Loveless occurred
2 before then.

3 MR. CHAIRMAN: Sustained.

4 MS. BALLARD: Okay.

5 BY MS. BALLARD:

6 Q. Did you participate -- did you attend the
7 meetings prior to being elected?

8 A. Some of them, yes.

9 Q. Okay. Have you had an opportunity to review the
10 minutes and review the votes that were taken, the minutes
11 prior to your being elected to the Board?

12 A. I have.

13 Q. Have you made an effort to determine whether
14 Mr. Loveless participated in any votes related to Piney
15 Woods Elementary School during the period of time prior to
16 your election?

17 A. I have.

18 Q. And what, if anything, have you determined about
19 whether Mr. Loveless participated in taking any actions or
20 participated in any votes as it related to Piney Woods
21 Elementary School during the period of time in November 2018
22 when he went on the Board and when you started as a Board
23 member two years later?

24 MS. LASTER: Objection. Ms. Huddle's
25 determination as to what Mr. Loveless did has no relevance

1 in this matter.

2 MS. BALLARD: Mr. Chairman, she testified that
3 she's reviewed the minutes, she's reviewed the voting
4 record, she attended some of the meetings. Her knowledge is
5 at least as thorough as Ms. Caldwell's, if not more.

6 MS. LASTER: I would disagree with that and
7 restate the objection.

8 MR. CHAIRMAN: I'll allow the question.

9 BY MS. BALLARD:

10 A. I believe that there were some votes taken that
11 included Mr. Loveless when he first took office. I think
12 there may have been some adjustments to the contract, but
13 not when I was on the Board. And I -- and not after -- like
14 I said, when he first went on the Board there were some
15 actions taken but nothing after that, that I'm aware of.

16 Q. Okay. Let me ask you to look at what we've
17 marked as Exhibit E. I'll take it out of the notebook and
18 bring it to you and maybe this will work when I get back.

19 MR. CHAIRMAN: What's that exhibit number,
20 Ms. Ballard?

21 MS. BALLARD: It is E, I believe. Yes, E.

22 MR. CHAIRMAN: E. That's Respondent's E?

23 MS. BALLARD: Yes, Respondent's E. I apologize.

24 COMMISSIONER FRICK: Are there any other copies
25 of that exhibit?

1 MS. BALLARD: Not in hand, but I'll pass it
2 around as soon as she finishes testifying, if that's all
3 right with you.

4 COMMISSIONER FRICK: Yes, ma'am.

5 BY MS. BALLARD:

6 Q. Ms. Huddle, can you identify what's been marked
7 as Exhibit number E -- or, excuse me, Exhibit E for the
8 Respondent?

9 A. Yes. It's a picture that I took at a School
10 Board, South Carolina School Board Association meeting in
11 February of 2022 in the exhibit hall.

12 Q. And who appears in that picture that's testified
13 here today?

14 A. Dr. Christina Melton.

15 Q. And who is she appearing for in that photograph?

16 A. She had a name tag on that she was there with
17 Contract Construction.

18 Q. Ms. Huddle, was that more than one year after
19 her resignation as Superintendent of District Five?

20 A. It was not.

21 MS. LASTER: Mr. Chair, I think I'm going to
22 have to object to this line of questioning. I don't see the
23 relevance in it.

24 MR. CHAIRMAN: What's the relevance,
25 Ms. Ballard?

1 MS. BALLARD: The relevance is that Ms. Melton,
2 who's already testified, lacks credibility in that she
3 herself is in violation of the State Ethics Act by accepting
4 an --

5 MR. CHAIRMAN: But that's not why we're today.
6 We're here for Mr. Loveless so I'm going to sustain the
7 objection.

8 MS. BALLARD: All right. I'd move to introduce
9 the photo. It's been authenticated, it's been dated, the
10 relevant people in it have been identified. I'd like to
11 introduce it into the record or, at least, proffer it for
12 the record.

13 MS. LASTER: I object to introduction based on
14 the relevance.

15 MR. CHAIRMAN: I'm going to sustain that
16 objection. I don't see the relevance of that photo.

17 MS. BALLARD: All right. I'll proffer it to the
18 record to preserve my objections.

19 MR. CHAIRMAN: Yes, ma'am.

20 MS. BALLARD: Do you want to see it?

21 MR. CHAIRMAN: If it's not in the record I don't
22 want to see it. Thank you.

23 MS. BALLARD: Would you mark this as proffered
24 by the Respondent?

25 (Respondent's-E, Photograph, was identified for

1 the record)

2 BY MS. BALLARD:

3 Q. Ms. Huddle, I know you weren't on the Board when
4 the COVID breakout occurred. When you came into the Board
5 in 2020, was COVID still a hot topic?

6 A. Oh, yes.

7 Q. And when we say a hot topic, was it frequently
8 discussed during public participation?

9 A. It was.

10 Q. Was it a divisive issue?

11 A. It was.

12 Q. In your experience, did it put unnecessary
13 pressure on the Board and Board members to deal with their
14 ordinary obligations?

15 A. Yes, ma'am. There were -- we received probably
16 over a hundred emails and calls, et cetera. There was a lot
17 of pressure.

18 Q. Okay. During the period that overlapped when
19 you and Mr. Loveless were on the Board together, are you
20 aware of him asking questions during public participation or
21 the Superintendent's report during any of the Board
22 meetings?

23 MS. LASTER: I'm going to object to that
24 question on the same grounds as before, that this all
25 occurred after the violations Mr. Loveless has been alleged

1 to have taken.

2 MS. BALLARD: Well, I want to show he continued
3 to have discussions after the SLED contract ended.

4 MS. LASTER: I would object --

5 MR. CHAIRMAN: What's the relevance of that,
6 Ms. Ballard, to the charges?

7 MS. BALLARD: The testimony before the panel
8 reflects that he did recuse himself, improperly so, I
9 believe. But that when his work with Contract Construction
10 concluded on the SLED project he continued to participate in
11 discussions as he had all along. Ms. Huddle was there when
12 the SLED project was finished and can testify as to whether
13 he continued to discuss the Piney Woods Elementary School
14 project as a member of the Board.

15 MR. CHAIRMAN: Okay. I'll allow limited
16 questions on that.

17 MS. BALLARD: Okay.

18 BY MS. BALLARD:

19 Q. Do you recall Mr. Loveless participating in
20 discussions during the discussion portion of any Board
21 meetings as it related to Piney Woods Elementary School?

22 A. Yes, I do.

23 Q. Of what value to the Board was Mr. Loveless'
24 knowledge in the construction field as it related to the
25 decisions, if any, that the School Board had to make?

1 MS. LASTER: Objection. I don't think
2 Ms. Huddle can speak as to the value that the Board held.

3 MS. BALLARD: I'll rephrase the question.

4 BY MS. BALLARD:

5 Q. What values did you perceive that Mr. Loveless
6 contributed to the School Board in reviewing the
7 construction of Piney Woods Elementary School and
8 discharging your duties as a Board member?

9 MS. LASTER: I'll object to relevance.

10 BY MS. BALLARD:

11 Q. You can answer.

12 MR. CHAIRMAN: I'm sorry. Overruled.

13 BY MS. BALLARD:

14 A. I think every Board member brings qualities to
15 the Board and Mr. -- in different varying backgrounds and
16 Mr. Loveless' background enabled him to see things that
17 other Board members may not have seen because he does have a
18 construction background. For example, he -- we did request
19 a -- I can't remember exactly what it was called, but a
20 closeout at Piney Woods because of the enormous problems the
21 school -- the District had had, particularly at Chapin High
22 School, with construction and Mr. Loveless was aware of that
23 and I think that that type of thing helped ensure that the
24 school was safe and within budget and we were not going to
25 have problems later.

1 **Q. What knowledge do you have of the problems that**
2 **existed in the Chapin project?**

3 MS. LASTER: Objection as to relevance.

4 MR. CHAIRMAN: Sustained.

5 BY MS. BALLARD:

6 **Q. Are you aware of any problems during the**
7 **construction, if any, of the Chapin project?**

8 MS. LASTER: Objection as to relevance.

9 MR. CHAIRMAN: Sustained.

10 BY MS. BALLARD:

11 **Q. Ms. Huddle, when you became a member of the**
12 **Board, how were you trained?**

13 A. I went to the State School Board Conference and
14 attended a workshop as part of that conference. Actually,
15 let me rephrase that. I did a virtual new Board member
16 orientation because of COVID and then I attended the State
17 South Carolina School Board meeting.

18 **Q. Did you also review the policies that had been**
19 **adopted by District Five?**

20 A. Yes.

21 **Q. To the best of your knowledge, during your**
22 **period on the Board did Mr. Loveless comply with the**
23 **policies of the Board?**

24 A. Yes.

25 MS. LASTER: Objection as to relevance.

1 MS. BALLARD: Is that sustained?

2 MR. CHAIRMAN: It's sustained.

3 MS. BALLARD: Okay.

4 BY MS. BALLARD:

5 Q. I'm just going to get you to identify some of
6 the exhibits. Give me just a minute and I'll bring them
7 over to you. Ms. Huddle, I'm showing you what we've marked
8 as Exhibit number E, I believe.

9 A. J.

10 Q. J, excuse me. Not only can't I count, I don't
11 know the alphabet. Can you identify what that is?

12 A. It's policy ARBD-R, Organization of the School
13 Board.

14 Q. Was that policy in effect when you became a
15 member of the Board?

16 A. It was.

17 Q. Okay. What's the next one?

18 A. The next tab?

19 Q. Yes.

20 A. Exhibit K, Policy BA, School Board Operational
21 Goals.

22 Q. Does it have a date on it, Ms. Huddle?

23 A. It does. It was issued January '06 and -- well,
24 it was adopted 2/17/75 and revised January 9th, 2006.

25 Q. To the best of your knowledge, was that policy

1 in force when you were elected to the Board?

2 A. It was.

3 Q. Okay. And the next one?

4 A. Exhibit L, Policy BB, School Board Legal Status.
5 It was adopted August 1st, 1973 with several revisions in
6 1977, 1981, 1986, 1991 and 1992, with the last revision
7 January 9th, 2006.

8 Q. Was this Board policy in effect when you became
9 a member of the Board in 2020?

10 A. It was.

11 Q. Do you know whether it was in effect in 2018
12 when Mr. Loveless became a member of the Board?

13 A. It was.

14 Q. Okay. I would ask you the same question with
15 reference to the prior two. To your knowledge, were those
16 two in effect when Mr. Loveless was elected to the Board in
17 2018?

18 A. They were.

19 Q. Okay. What's the next one?

20 A. Exhibit M, Policy BBA, Board Powers and Duties.
21 This policy was first adopted in 1969, revised in 1981 and
22 then revised on January 9th, 2006.

23 Q. Was that policy labeled as Exhibit M in effect
24 when you became a member of the Board of Trustees?

25 A. It was.

1 Q. To your knowledge, was that policy in effect
2 when Mr. Loveless became a member of the Board of Trustees?

3 A. It was.

4 Q. Okay. And what is the next one after that? I
5 think there's one more.

6 A. Exhibit N, Policy BC, Board Member Conduct.
7 This policy was issued -- adopted and issued on March 28th,
8 2022.

9 Q. Were you a member of the Board when it was
10 adopted?

11 A. I was.

12 Q. Do you recall the circumstances which led to its
13 adoption?

14 MS. LASTER: Objection to relevance.

15 MR. CHAIRMAN: What's the relevance of that,
16 Ms. Ballard?

17 MS. BALLARD: The relevance of that is that
18 there was no Board policy in effect related to this topic
19 when Mr. Loveless became a member of the School Board. It
20 had to be adopted in March of '22.

21 MR. CHAIRMAN: Which topic?

22 MS. BALLARD: Conflict of interest.

23 MS. LASTER: I would object to that as well.
24 This panel is not concerned with enforcement of Board
25 policies --

1 MR. CHAIRMAN: Objection sustained.

2 MS. LASTER: -- or any other kind of guidance.

3 MS. BALLARD: All right. Mr. Chairman, I would
4 move the introduction of Exhibits K through M, which are the
5 policies that were in effect when Mr. Loveless was elected
6 to the Board and remained in effect when Ms. Huddle became a
7 member of the Board.

8 MS. LASTER: I would object to those and
9 relevance.

10 MR. CHAIRMAN: Ms. Ballard, what are the
11 relevance of those objections (sic)?

12 MS. BALLARD: I'm sorry.

13 Unidentified Female: Those policies were
14 admitted with Dr. Melton, J through M.

15 MS. BALLARD: Okay. Those have already been
16 admitted.

17 MS. LASTER: Okay.

18 MS. BALLARD: It saves us the trouble.

19 MR. CHAIRMAN: Without objection.

20 MS. BALLARD: I think so.

21 MS. LASTER: Yeah. Withdrawn.

22 MS. BALLARD: Could I have just one minute?

23 MR. CHAIRMAN: Sure.

24 MS. BALLARD: I don't have any further questions
25 for Ms. Huddle.

1 MR. CHAIRMAN: Thank you. Ms. Laster?

2 MS. LASTER: I don't have any questions for
3 Ms. Huddle.

4 MR. CHAIRMAN: Commissioner Frick?

5 Commissioner Frick: No questions. Thank you.

6 MR. CHAIRMAN: Commissioner Holloway?

7 Commissioner Holloway: No questions from me
8 either.

9 MR. CHAIRMAN: And none from me. You may be
10 excused, Ms. Huddle.

11 MS. BALLARD: We would call Trey McDaniel.

12 MR. CHAIRMAN: Good afternoon, Mr. McDaniel.
13 Please raise your right hand for me, please.

14 Whereupon,

15 Trey McDaniel, having been duly sworn and
16 cautioned to speak the truth, the whole truth and
17 nothing but the truth, testified as follows:

18 MR. CHAIRMAN: Please state your name for the
19 record.

20 MR. MCDANIEL: Trey McDaniel.

21 MR. CHAIRMAN: Okay. Could you spell your name
22 for me, please?

23 MR. MCDANIEL: T-r-e-y M-c-D-a-n-i-e-l.

24 MR. CHAIRMAN: Thank you. Please proceed,
25 Ms. Ballard.

1 MS. BALLARD: Well, I'm attempting to. One of
2 the notebooks that I had has disappeared and I haven't left
3 the room.

4 DIRECT EXAMINATION

5 BY MS. BALLARD:

6 Q. Mr. McDaniel, how old are you?

7 A. I'm 39.

8 Q. And how are you employed?

9 A. I'm employed by Loveless Commercial Contracting.

10 Q. How long have you been employed by Loveless
11 Commercial Contracting?

12 A. Approximately seven years.

13 Q. And what is your title?

14 A. I'm a project manager.

15 Q. In summary fashion, what does that mean?

16 A. So my role at Loveless is, essentially I handle
17 projects from the discovery, discovery of construction,
18 through the estimating, the three-kind process, all the way
19 through the management of a project, negotiating contracts,
20 closeout and basically from start to finish.

21 Q. Do you have knowledge of the different profit
22 centers that make up Loveless Commercial Contracting and how
23 the income is generated to the company as a whole?

24 A. Yes, I do. We're -- essentially, we're -- we
25 call it three profit centers. Myself, Jason Bursting and

1 Tyler Rhodes essentially, we operate -- operate our own
2 profit center from estimating projects through managing
3 through the closeout process.

4 Q. Okay. Do you know how long Loveless Commercial
5 Contracting has been in business?

6 A. Since 1986, about 37 years.

7 Q. Okay. What does your shirt say?

8 A. 36.

9 Q. Okay.

10 A. I need a new shirt.

11 Q. What's the gross income of Loveless Commercial
12 Contracting on an annual basis on average?

13 A. It varies, but about 25 million a year.

14 Q. That's gross?

15 A. Yeah, gross.

16 Q. Okay. So a 1.2 million dollar contract is what
17 percentage of the business that Loveless Commercial
18 Contracting does in a year?

19 A. Probably roughly about 3 percent.

20 Q. Okay. When you all are picking which jobs to
21 bid on, what are your considerations?

22 A. So we look at -- obviously we look at the
23 general contractors that are looking at a project, we look
24 at the location of the project, we look at the size and
25 scope of the project as it relates to how well we fit. We

1 also look at the timing, the construction schedule, you
2 know. As we go through a year, we're trying to -- trying to
3 fit gaps in holes in a labor schedule to keep our men
4 working.

5 **Q. So what effect, if any, does the length of time**
6 **a proposed project would take factor into your decision on**
7 **whether to bid a project?**

8 A. Not much. Depending on, you know -- you say
9 length. Do you mean as far as our scope of work is
10 concerned?

11 **Q. How long you'll have to be on the job.**

12 A. Yeah. It's -- at the time of bid, not that
13 much.

14 **Q. Okay. What is bonding performance?**

15 A. Bonding is essentially the capability of a
16 company to insure themselves for the work that they're going
17 to perform.

18 **Q. Are there certain requirements in commercial**
19 **construction in South Carolina that you're aware of**
20 **regarding limits or minimums of bonding obligations that**
21 **companies have to meet in order to bid certain jobs?**

22 A. Yes. State and Federal projects require
23 subcontractors to be bonded.

24 **Q. Do they have a financial minimum that they have**
25 **to bond?**

1 A. Yes. You have to bond obviously your contract
2 value, along with any other work that you may have ongoing
3 that is bonded.

4 Q. And approximately how much in bonding
5 performance value does Loveless Construction carry at any
6 given time?

7 A. We are capable of about 52 million.

8 Q. Okay. So at the time -- and we'll come back to
9 this -- at the time that Loveless Commercial Contracting did
10 the, what I'm referring to as the SLED project, what portion
11 of Loveless Commercial Contracting bonding capacity was
12 allocated to the SLED project?

13 A. About 2.4 percent.

14 Q. Are you licensed as a general contractor
15 anywhere?

16 A. I am. In the state of Georgia.

17 Q. Do you happen to know of your own knowledge
18 where Mr. Loveless is licensed and what his licenses are?

19 A. I do know that he's licensed in the state of
20 South Carolina.

21 Q. And what states do you guys do business in?

22 A. Typically South Carolina and Georgia and
23 occasionally North Carolina.

24 Q. Are those primarily commercial projects?

25 A. They're all commercial.

1 Q. Trey, did you, on behalf of Loveless Commercial
2 Contracting, did you make a bid as a subcontractor to
3 participate as a subcontractor in the construction of a
4 forensic laboratory at SLED?

5 A. Yes. I solely did, yeah.

6 Q. When you say you solely did, what do you mean by
7 that?

8 A. No one else was involved. Just as normal course
9 of business I take a project, as I said earlier, from the
10 time I'm notified to bid the project. I handle the
11 estimating for my projects. I handle the project
12 management. I handle the contract negotiations. I handle
13 the day-to-day operations of the project, you know. And,
14 further, I obviously handle the closeout billings,
15 et cetera, start to finish.

16 Q. You, as one of the profit centers, do you have
17 to get clearance from Mr. Loveless or permission from
18 Mr. Loveless before you place a bid?

19 A. No, I do not.

20 Q. Is Mr. Loveless ever aware of the projects on
21 which you're bidding on your profit center?

22 A. He is not.

23 Q. So at what point in time would he become aware,
24 if at all, of a bid that your company made?

25 A. Typically, unless it comes in passive

1 conversation, typically Mr. Loveless doesn't know what
2 projects I'm bidding or awarded until the time he signs the
3 contracts.

4 Q. So in most circumstances, would the time he
5 signs the contract be the first time Mr. Loveless was aware
6 of a subcontract that you were the successful bidder on?

7 A. That's correct.

8 Q. In the SLED project -- I'll show you some
9 exhibits in a minute -- but in the SLED project was there
10 some delay after the bid was awarded to Contract
11 Construction?

12 A. There was. After we bid the project I was
13 notified from Cleveland Construction, who was another
14 general contractor that we bid the project to, that they
15 finished second but that they were -- they were protesting
16 the bid and essentially that, you know, that delayed the
17 award of the project.

18 Q. I'm going to show you some exhibits so I'll have
19 to play this little game again. Can you identify
20 Respondent's F?

21 A. Yes. This is the agreement, Standard Form of
22 Agreement between Contract Construction and Loveless and
23 which I negotiated the terms with Greg Hughes for the SLED
24 project.

25 Q. And this is for the SLED project, right?

1 A. It is.

2 Q. And when did Loveless Commercial Contracting
3 accept the subcontractor bid or the request to serve as
4 subcontractor? What's the date?

5 A. It was stamped March 12th of 2020.

6 Q. Okay. And how long were you actively on that
7 job?

8 A. I don't recall. As far as start to finish, I
9 don't -- I don't recall the exact dates.

10 Q. Okay. Let me come and turn some more pages for
11 you.

12 MR. CHAIRMAN: Mr. McDaniel, can you come a
13 little closer to the microphone when you speak?

14 MR. MCDANIEL: Absolutely.

15 BY MS. BALLARD:

16 Q. Could you identify Exhibit AA for the panel?

17 A. Yes. This is a email that I received from Greg
18 Hughes dated November the 23rd of 2019 that had attached a
19 NOI, which is a Notice of Intent to Award the SLED project
20 to Loveless Contracting.

21 Q. Was that tender of the NOI to Loveless
22 Commercial Contracting premature?

23 A. In my opinion it was as the project was still
24 under protest.

25 Q. So at the time Exhibit AA was transmitted to

1 Loveless Commercial Contracting, Contract Construction had
2 not yet been awarded the contract to build the SLED forensic
3 laboratory; is that correct?

4 A. Yeah. That is correct, yeah.

5 Q. Okay. And the date you testified earlier, March
6 2nd, of 2020, is the first date that Loveless Commercial
7 Contracting became a subcontractor on the SLED project?

8 A. Yes. If it was March 12th.

9 Q. Oh, excuse me. March 12th. Okay. Could you
10 identify Exhibit JJ for the panel?

11 A. This is a invoice for the SLED project for final
12 payment.

13 Q. And what's the date of that?

14 A. The date is 10/22 of '21.

15 Q. Okay.

16 MS. BALLARD: Mr. Chairman, I'd move the
17 introduction of AA and JJ into evidence.

18 MR. CHAIRMAN: Objection?

19 MS. LASTER: No objection.

20 MS. BALLARD: Thank you.

21 MR. CHAIRMAN: Admitted without objection.

22 MS. BALLARD: I have a couple of others, hang
23 on.

24 (Respondent's-AA, Notice of Intent to Award, was
25 entered into evidence.)

1 (Respondent's -JJ, Invoice for Final Payment,
2 was entered into evidence.)

3 BY MS. BALLARD:

4 **Q. Trey, what is the warranty that is issued by**
5 **Loveless Commercial Contracting after the completion of a**
6 **subcontract?**

7 A. We issue -- unless the contract documents are
8 different. In this case it's a standard one-year guarantee.

9 **Q. All right. In connection with the SLED forensic**
10 **laboratory, on what date does Exhibit LL reflect Loveless**
11 **Commercial Contracting issued its one-year guarantee?**

12 A. It was February the 1st of 2022.

13 **Q. Was there some reason, or were you asked to**
14 **extend the date of that contract?**

15 A. Yes, we were. I issued this originally and the
16 (inaudible) for Contract Construction had asked us to redate
17 our one-year guarantee.

18 **Q. Turn to the next exhibit. So based on Exhibit**
19 **MM, was there a delay on the part of Contract Construction**
20 **in concluding its work on the SLED forensic laboratory that**
21 **caused Loveless to have to extend its warranty date?**

22 A. Yes. Correct. Typically it appeared their
23 hopes were February and we were asked to extend April the
24 18th, extend our one-year guarantee.

25 **Q. So on what date would your one-year guarantee**

1 have been issued?

2 A. Well, originally February and asked to be
3 revised April the 18th.

4 Q. Okay.

5 MS. BALLARD: Mr. Chairman, I would move the
6 admission of JJ, LL and MM. Those are the ones that
7 Mr. McDaniel has just testified to.

8 MR. CHAIRMAN: Any objection?

9 MS. LASTER: No objection.

10 MR. CHAIRMAN: Admitted without objection.

11 (Respondent's-LL, One-Year Guarantee, was
12 entered into evidence.)

13 (Respondent's -MM, Extension Request, was
14 entered into evidence.)

15 BY MS. BALLARD:

16 Q. In Loveless Commercial Contracting performance
17 of the SLED contract, what, if anything, did Ken Loveless
18 personally do to execute the work that was done by Loveless
19 Commercial Contracting?

20 A. Provide his signature. Provide his signature on
21 the contract.

22 Q. Did he have any other involvement whatsoever?

23 A. Absolutely not.

24 Q. Okay. That's all I have. Thank you.

25 MR. CHAIRMAN: Ms. Laster?

1 MS. LASTER: I don't have any questions for
2 Mr. McDaniel.

3 MR. CHAIRMAN: Commissioner Frick?

4 COMMISSIONER FRICK: No questions.

5 MR. CHAIRMAN: Commissioner Holloway?

6 COMMISSIONER HOLLOWAY: No questions. Thank
7 you.

8 MR. CHAIRMAN: None from me. Mr. McDaniel, you
9 are excused.

10 MR. MCDANIEL: Thank you.

11 MR. CHAIRMAN: You're welcome, sir.

12 MS. BALLARD: Our witness was supposed to call
13 in at two o'clock, Audrey Jaramillo --

14 MS. WALKER: She's up there.

15 MS. BALLARD: Is she here?

16 MR. CHAIRMAN: Oh, yeah. She's here.

17 MS. BALLARD: Okay.

18 MR. CHAIRMAN: Please proceed, Ms. Ballard.

19 COMMISSIONER HOLLOWAY: Actually, could we take
20 like literally two minutes just to run to the restroom real
21 quick?

22 MS. LASTER: Sure.

23 MR. CHAIRMAN: No, no. Let's take a four-minute
24 break. How about that?

25 MS. BALLARD: How about six?

1 MR. CHAIRMAN: We stand adjourned.

2 (Recess)

3 MS. BALLARD: Ms. Jaramillo, can you hear me?

4 MS. JARAMILLO: Yes, I can.

5 MS. BALLARD: Am I pronouncing your name
6 incorrectly?

7 MS. JARAMILLO: I didn't even catch that. But
8 it's an e-m. The J is an H.

9 MR. CHAIRMAN: Ms. Ballard, I think I need to
10 swear the witness in.

11 MS. BALLARD: I'm sorry. The Chairman is going
12 to swear you in. Would you raise your right hand?

13 MS. JARAMILLO: Yes, ma'am.

14 Whereupon,

15 Audrey Jaramillo, having been sworn and
16 cautioned to speak the truth, the whole truth and
17 nothing but the truth, testified as follows:

18 MR. CHAIRMAN: Please state your name and spell
19 it for the record.

20 MS. JARAMILLO: Yes. It is Audrey Jaramillo,
21 A-u-d-r-e-y J-a-r-a-m-i-l-l-o.

22 MR. CHAIRMAN: Thank you. Please proceed.

23 DIRECT EXAMINATION

24 BY MS. BALLARD:

25 Q. Can I call you Audrey?

1 A. Yes.

2 Q. Thank you. Audrey, what is your profession?

3 A. I am a CPA, Certified Public Account, and
4 Certified Forensic Examiner.

5 Q. And where is your office located? In what
6 state?

7 A. We are based out of Albuquerque, New Mexico.

8 Q. Did your company bid on a project for District
9 Five School District to perform an evaluation, procurement
10 audit?

11 A. Yes.

12 Q. What was the scope of the audit that you bid on?
13 What projects were you bidding to undertake on behalf of the
14 District?

15 A. We undertook the examination and consulting
16 services as it related to questions the District had
17 regarding procurement, compliance and other areas that they
18 were seeking answers on.

19 Q. You've not been here, but we've been talking a
20 lot today about Piney Woods Elementary School and some about
21 some of the SLED project. Was the scope of the examination
22 that you bid on broader than that?

23 A. Yes.

24 Q. Were you the successful bidder?

25 A. Yes.

1 Q. When were you retained to undertake your
2 investigation for the determination of the procurement
3 review that you were retained to do? Approximately when?

4 A. Approximately one year ago.

5 Q. Have you produced a Phase I and Phase II report
6 that has been transmitted to the School District?

7 A. Yes.

8 Q. The one I want to ask you about is the Phase II
9 report. Do you have a copy of the Phase II report in front
10 of you?

11 A. I do.

12 MS. LASTER: Mr. Chair, I would object to any
13 questions about this report. I believe it's dated September
14 19, 2022 which is well after Mr. Loveless' tenure on the
15 Board and the allegations that we are here about today.

16 MR. CHAIRMAN: Ms. Ballard, what's the relevance
17 of that --

18 MS. BALLARD: I'll lay a foundation, your Honor.

19 BY MS. BALLARD:

20 Q. Audrey, how far back did your examination of the
21 procurement activities of District Five go?

22 A. How far back did the testing regarding
23 procurement go?

24 Q. How far back -- your review of the financial
25 records and other records of District Five, how far back did

1 it go?

2 A. So there were various areas reviewed, but as far
3 back as 2008.

4 Q. Okay. Can you summarize what topics you were
5 asked by District Five to look into from a procurement
6 standpoint?

7 A. Sure. We were asked to look at the Piney Woods
8 Elementary School and other potential evaluations of
9 procurement during the time period generally from fiscal
10 year '17 through '21. But we had the responsibility if we
11 identified any risk areas, to bring those to the attention
12 of the Board of Trustees as well. They also had us take a
13 look at the 2008/'09 bond referendum which did go back
14 further.

15 Q. Okay. And for the benefit of the Board, what is
16 a forensic accountant as opposed to a CPA?

17 A. Forensic accounting is, the way I would describe
18 it, to make a deeper dive into things, but just in general,
19 external audit.

20 Q. And what's the purpose of a forensic audit
21 normally?

22 A. The main purpose that I saw with this engagement
23 was serving the Board of Trustees and providing answers to
24 the questions on non-compliance and other areas of concern.

25 Q. So what materials were you provided generally to

1 **perform your review and audit report?**

2 A. Well, it was a little difficult obtaining
3 information, but we did have available to us items on the
4 website as it related to procurement and to the bonds. I
5 requested of the administration and of the Board any risk
6 areas and information that we needed to review to take a
7 look at any particular procurement situations. So we did
8 take a look at procurement documents, general ledgers,
9 invoices, PAPS, supporting documentation and just the
10 typical things that you would look at in an audit or
11 examination.

12 **Q. In that audit or examination as you undertook**
13 **it, did you include anything related to the Piney Woods**
14 **Elementary School project?**

15 A. Yes.

16 **Q. What, with reference to the Piney Woods**
17 **Elementary School project, did you review, what topics?**

18 A. So we took a look at what's really related to
19 procurement. If I remember correctly we looked at the
20 procurement of the land, the broker and the architect, the
21 construction company, the consultant at the time for the
22 District services, such as that.

23 MR. CHAIRMAN: Ms. Ballard, may I ask you a
24 question?

25 MS. BALLARD: Sure.

1 MR. CHAIRMAN: Could you explain to me what
2 relevance this witness' testimony has to the allegations
3 against Mr. Loveless?

4 MS. BALLARD: Well, Mr. Loveless will testify
5 that the Board retained Audrey after concerns were raised
6 about how the money was being spent on Piney Woods
7 Elementary School and they voted to have this audit done so
8 as to determine whether there had been improper use of funds
9 in the construction of Piney Woods Elementary School.

10 Ms. Audrey conducted that audit and filed a
11 substantial report that the School District adopted and
12 published reporting the violations in which it had engaged
13 in the procurement process as it pertained to Piney Woods
14 Elementary School.

15 MR. CHAIRMAN: I guess the issue I'm having
16 getting my head around is how does that testimony relate to
17 the allegations against Mr. Loveless specifically?

18 MS. BALLARD: Hold on a second. Somebody is
19 whispering in my ear. (Pauses). The point that I was
20 trying to make with this audit was that there were financial
21 irregularities throughout the construction of Piney Woods
22 Elementary School and that Mr. Loveless was merely carrying
23 out his duties as a Board member in questioning the quality
24 of the work that was being done and the expenditures that
25 were being made. He was required by law to make those

1 inquiries.

2 So after the construction of Piney Woods
3 Elementary School was completed, Audrey was retained to look
4 into whether some of those financial concerns, or some of
5 those concerns had merit and whether there were financial
6 concerns with the handling of the money as it related to
7 that project.

8 MR. CHAIRMAN: Okay. I'll let you go a little
9 bit further but I will have an issue with relevance to the
10 allegations, but I'll let you go a little bit further.

11 MS. BALLARD: Okay. Thank you.

12 BY MS. BALLARD:

13 **Q. Audrey, with reference to the Piney Woods**
14 **Elementary School, what conclusions, if any, did you draw**
15 **after conducting your audit as to any financial problems**
16 **that, or any financial issues that were engaged in by**
17 **Contract Construction as it related to the construction of**
18 **Piney Woods Elementary School?**

19 A. I would refer everyone back to our report of, or
20 Phase II that is dated September 19th, 2022. It's a
21 condensed report and has a lot of information, but just for
22 the summary, I would say there were questions that we had as
23 it related to the pay apps and the financial reimbursements
24 from the District to CCI in the project, in the construction
25 project. Those are listed in great detail of all of the

1 different questions that we had.

2 A Board member also had asked us to look into an
3 ethics complaint, one of which was Mr. Loveless, and we
4 included information regarding that in this report as well.

5 Q. I'm not going to ask you about your
6 investigation regarding ethics, alleged ethics violations by
7 Mr. Loveless. That's the issue that's before the panel.
8 I'm not going to ask you about your conclusions for that.
9 But I did want to ask you to identify -- can you see the
10 front page that I'm holding up here?

11 A. Yes.

12 Q. All right. This is the first page of a 40-page
13 document that we've marked as Exhibit Y. Have you and I
14 reviewed this together in a virtual manner like we're doing
15 here so that you could authenticate this Exhibit Y as an
16 accurate copy of the report that you submitted to the
17 District?

18 A. Yes.

19 MS. BALLARD: I would move the introduction of
20 Exhibit Y which is the complete Phase II procurement
21 examination and consult performed by the accounting company
22 that I can't pronounce at the District, or at the --

23 MS. JARAMILLO: JAG.

24 MS. BALLARD: JAG. At the request of District
25 Five.

1 MR. CHAIRMAN: Any objection?

2 MS. LASTER: I would object as to relevance.

3 MR. CHAIRMAN: Does that exhibit contain the
4 ethics investigation that she just mentioned?

5 MS. BALLARD: It contains all of her
6 conclusions, but I'm not offering it for that purpose. I
7 didn't want to offer just pages of it.

8 MR. CHAIRMAN: I hear you. But my question is,
9 does it contain that information?

10 MS. BALLARD: It does.

11 MR. CHAIRMAN: Okay. It's admitted. Objection
12 overruled. Submit it.

13 MS. BALLARD: All right. Thank you.

14 (Respondent's-Y, Forensic Examination, was
15 admitted into evidence.)

16 BY MS. BALLARD:

17 **Q. Are you still doing work --**

18 COMMISSIONER HOLLOWAY: (Inaudible) -- the
19 foundation (inaudible) for this expert here in this area?

20 MR. CHAIRMAN: Yes.

21 COMMISSIONER HOLLOWAY: So, Ms. Ballard, is
22 there going to be, I guess, testimony from this witness
23 about the extent of the involvement of Mr. Loveless in these
24 decisions or is this solely going to be about the, I guess,
25 the finances as far as outside the normal range for

1 contracting? I'm trying to understand the foundation for
2 this witness a little better.

3 MS. BALLARD: JAG did look into the degree, if
4 any, of Mr. Loveless in participating in the votes and
5 decisions that were made by the Board and the School
6 District as it related to Piney Woods Elementary School, so
7 she does have some report on that as well.

8 COMMISSIONER HOLLOWAY: Okay. And is that --
9 can you just give me the foundation or the basis for the
10 expert or expertise in that area?

11 MS. BALLARD: All I can do is tell you, have her
12 tell you and you can see in the report the documents that
13 she reviewed which include the minutes and the voting
14 records and all of those things that we've been talking
15 about today. So she did review those to determine whether
16 or not Mr. Loveless participated in any votes or actions as
17 it related to Piney Woods Elementary School and Contract
18 Construction. And she looked at the same things we're
19 looking at.

20 COMMISSIONER HOLLOWAY: Okay. And sorry for
21 interjecting. I was trying to get a better understanding of
22 the events of the -- of letting y'all proceed as you wish.

23 MS. BALLARD: Thank you.

24 BY MS. BALLARD:

25 Q. Audrey, are you still there?

1 A. I am here.

2 Q. Good. I thought you would have to say something
3 to show up. Were you able to hear the colloquy between
4 myself and the panel member just then?

5 A. Yes.

6 Q. Okay. Did you look into, as part of your
7 procurement audit, the participation, if any, of
8 Mr. Loveless in any votes or actions as it related to Piney
9 Woods Elementary School?

10 MS. LASTER: I would object as to relevance,
11 Mr. Chair.

12 MR. CHAIRMAN: Overruled. Please answer the
13 question.

14 BY MS. BALLARD:

15 A. We did.

16 Q. And what, if anything, did you find from
17 reviewing -- well, let me ask you, what documents did you
18 review in order to determine what the public records
19 reflected regarding Mr. Loveless' participation in votes or
20 decisions or actions taken by the Board as it related to
21 Piney Woods Elementary School at any time?

22 A. I reviewed emails, agendas, minutes, legal
23 invoices and any information provided to me by the District.

24 Q. Did you have sufficient information made
25 available to you to form a conclusion as to whether or not

1 Mr. Loveless participated in any votes or actions as it
2 related to Piney Woods Elementary School during the period
3 of time that you looked at it?

4 A. I would say with what I was provided, I was
5 comfortable with what I put in the report.

6 Q. Well, let me ask you, were there some people who
7 would not respond to your inquiries?

8 A. Yes.

9 Q. Would you identify the persons or companies that
10 refused to cooperate with your audit?

11 MS. LASTER: Objection as to relevance,
12 Mr. Chair. Also, is she an expert witness? She hasn't
13 qualified as such. Is she trying to get --

14 MR. CHAIRMAN: She's not an expert witness, is
15 she?

16 MS. BALLARD: She's reporting factually on what
17 she did and what she concluded, but she's not trying to
18 infringe on the decision-making of this panel.

19 MR. CHAIRMAN: Overruled. Please proceed.

20 BY MS. BALLARD:

21 Q. Audrey, who or what companies did not cooperate
22 with you and your company as you were undertaking this
23 procurement examination and review?

24 A. I don't have that information right in front of
25 me and I guess I would just refer everyone back to the

1 report. But as it relates to decisions, which I wouldn't
2 call them decisions, in fact, but discussions of the Board,
3 I did review those. There were videos on the website,
4 agendas, minutes and emails, and I felt comfortable with the
5 information that I had. I also had information from the
6 Ethics Commission.

7 Q. And can you be more specific as to what you had
8 from the Ethics Commission? Again, I'm not going to ask you
9 what your conclusions were regarding an ethics complaint
10 against Mr. Loveless. I think that's beyond the scope of
11 what you're allowed to be testifying to.

12 MS. LASTER: I would object as to what she had
13 if it's not relevant to what she's testifying to.

14 MS. BALLARD: Well, she volunteered she had it
15 so I thought she ought to identify it.

16 MR. CHAIRMAN: Overruled. Please answer the
17 question.

18 BY MS. BALLARD:

19 A. I had contacted Meagan Walker and she provided
20 me some FOIA information, including information of how on a
21 pending complaint that was provided to us because
22 Mr. Loveless had previously voluntarily and transparently
23 signed a release form to allow these records to be released
24 to the public, and also on Board member John Hammond. And
25 this is on page nine of our report.

1 Q. Okay. That's the part that I'm not going to ask
2 you about if you don't mind. The only thing I want to ask
3 you about is what, if any, evidence you found in your
4 procurement review of whether or not Mr. Loveless
5 participated in any acts or votes as it related to Piney
6 Woods Elementary School at any time during the period of
7 time that was covered by your procurement review.

8 A. Okay. From my review, the minutes and videos
9 and agendas and information that was provided to me, it
10 appeared that the last date of any vote by Trustee Loveless
11 was in December of 2019, which were not in favor of CCI,
12 which was not during the time period of any conflict. And
13 much later, I could see that an appearance of a possible
14 conflict of interest began in February of 2020. During that
15 time I did not see any decisions by Mr. Loveless that I felt
16 was a conflict. If I didn't see any decisions, I saw some
17 discussion within Mr. Loveless' Board oversight role and
18 that appeared to end in 2022. And so I guess that's pretty
19 much a summary of the timeline. And I guess I didn't see
20 any Trustee decisions by Mr. Loveless as it related to that
21 time period.

22 Q. Okay. Bear with me just one minute, if you
23 don't mind. (Pauses). I don't have any other questions for
24 you, Audrey. Ms. Laster may have some questions and the
25 panel members may have some questions.

1 MR. CHAIRMAN: Ms. Laster?

2 MS. LASTER: Thank you.

3 CROSS-EXAMINATION

4 BY MS. LASTER:

5 Q. Ms. Jaramillo, is it?

6 A. It's Jaramillo.

7 Q. Jaramillo.

8 A. You can call me Audrey.

9 Q. Okay, Audrey. Thank you so much. Audrey, do
10 you have any experience in the legal field?

11 A. I do have some.

12 Q. What is that?

13 A. I have my Master's degree in American Law from
14 Liberty University, as well as just working in the industry
15 for 25 years I've been auditing governments (inaudible) in
16 my career and have served on elected Boards such as my local
17 school district for eight years, Past President of the New
18 Mexico School Boards Association, also involved in
19 legislative matters, et cetera.

20 I currently serve as Mayor of my small town and
21 am the Treasurer of the New Mexico Municipal League. And,
22 in fact, after I finish this I have to run to the
23 Legislature to meet them for purposes of going over
24 legislation.

25 Q. Well, God bless you. Do you know the

1 **Respondent?**

2 A. No.

3 **Q. You do not know Mr. Loveless?**

4 A. Oh. Sorry. Yes. I do know Mr. Loveless from
5 my work at the District.

6 **Q. When did you first meet him or come to know him?**

7 A. Through my work at the District when I -- I'm
8 not sure of the first like date that I met him.

9 **Q. Tell me about the procurement process that**
10 **brought you, a company in New Mexico, to South Carolina.**

11 A. We saw the posting for the need for this
12 examination and provided a bid and were chosen.

13 **Q. Okay. How much were you paid by the District to**
14 **complete this audit?**

15 A. So the audit -- or I shouldn't use the word
16 audit. But the examination and consulting work is not
17 completed fully yet. The original quote, I believe, was
18 about \$46,000-plus and the RFP had asked for an hourly rate
19 for additional services and so I would estimate at this
20 point -- I don't know. It would be just an estimate, but
21 it's probably about 70,000 at this point --

22 **Q. Okay.**

23 A. -- and we still have invoices outstanding.

24 **Q. So does that mean that this report, the Phase**
25 **II, is that a final Phase II report or is there still work**

1 to be done on that?

2 A. The District has not asked me to go back and
3 perform additional work on the questions we -- and the facts
4 that we raised here, so, no. In Phase III we moved on to
5 other areas of risk.

6 Q. How many phases are there in total?

7 A. Three.

8 Q. Okay. So you're working on the final one?

9 A. Yes, ma'am.

10 Q. Is it possible that this report could be amended
11 in the future?

12 A. Not likely.

13 Q. Okay.

14 A. Unless the Board of Trustees asks us to.

15 Q. Okay. Before you issued this Phase II report,
16 did you send it to any Board members?

17 A. Yes.

18 Q. Which Board members did you send it to?

19 A. I would have to go back and look at the emails,
20 but typically I always send the draft reports to the entire
21 Board of Trustees. Before the meeting we would have an
22 Executive Session meeting to review the drafts.

23 Q. Do you receive feedback on those and then make
24 edits accordingly?

25 A. Yes.

1 Q. Okay. In your report you draw some conclusions
2 about the legality of some people under the State Ethics
3 Act, so I just wanted to clarify if you had ever worked for
4 the South Carolina Ethics Commission.

5 MS. BALLARD: I made it clear, I was not asking
6 for her testimony or opinions regarding those topics.

7 MS. LASTER: But it's still in the report which
8 has been admitted, right?

9 MR. CHAIRMAN: Please continue.

10 BY MS. LASTER:

11 Q. Was that a no, Ms. Audrey?

12 A. Could you repeat the question?

13 Q. Yes, ma'am. Have you ever worked for the Ethics
14 Commission?

15 A. No.

16 Q. Okay. And you've never been appointed to the
17 Ethics Commission obviously?

18 A. No.

19 Q. Okay. You said you were provided materials for
20 this audit from a variety of people; is that correct?

21 A. That is correct.

22 Q. Was Mr. Loveless one of those people?

23 A. Yes.

24 Q. Okay. Do you happen to have the report in front
25 of you?

1 A. I do.

2 Q. Can you look at page 11 with me?

3 A. Okay.

4 Q. There's one, two, three -- the fourth column
5 down it references a time period from December 2019 to
6 February 2021. Do you see that?

7 A. Yes.

8 Q. There's a sentence in here that begins with, we
9 note.

10 A. Okay.

11 Q. Do you see that sentence?

12 A. Yes.

13 Q. So you noted here that carrying out these duties
14 which you've described as requesting information and answers
15 and exercising oversight did not seem to impact
16 Mr. Loveless' company's finances. Am I reading that
17 correctly?

18 A. Yes.

19 Q. Did you review Mr. Loveless' company's finances?

20 A. No. Just in principle that a fixed price
21 contract was fixed.

22 Q. Okay. What were the other areas of concern that
23 were brought to your attention other than procurement? You
24 mentioned there was a handful of them, I think.

25 A. So on page three of the report, we just know at

1 the end of the first paragraph that the report focuses on
2 Piney Woods Elementary School procurement and transactions
3 and known Ethics Commission complaints.

4 **Q. Why was the Ethics Commission stuff specifically**
5 **included in this procurement review?**

6 A. Again, we serve at the pleasure of the Board of
7 Trustees and when we presented the Phase I report it was
8 requested that we look at Ethics Commission complaints, so
9 we did.

10 **Q. And who requested that of you?**

11 A. That was Board of Trustees member Rebecca
12 Blackburn-Hines. And later -- I think I have it in the
13 report here -- but later at the direction of the
14 Superintendent and at -- or, I guess, advice of the
15 Superintendent. And another Board member, Ms. Huddle,
16 Trustee Huddle, I called the Ethics Commission to get more
17 information.

18 **Q. Okay. Have you been to South Carolina before?**

19 A. I have. I have been out in the field doing some
20 of this work --

21 **Q. You went to --**

22 A. -- a few times.

23 **Q. Okay. To Lexington-Richland School District**
24 **Five?**

25 A. I'm sorry. What?

1 Q. To Lexington-Richland School District Five?

2 A. Yes, ma'am.

3 Q. You did some site work there?

4 A. Does what?

5 Q. You did some site work there?

6 A. Yes.

7 Q. Okay.

8 MS. LASTER: I don't think I have any additional
9 questions for Ms. Jaramillo.

10 MR. CHAIRMAN: Ms. Ballard?

11 MS. BALLARD: I don't have any further questions
12 for Audrey. The green light is on and I'm speaking into the
13 microphone.

14 MR. CHAIRMAN: You're good. Commissioner Frick?

15 COMMISSIONER FRICK: I have just one question.

16 Ma'am, are you a lawyer?

17 MS. JARAMILLO: No. And I make that very clear
18 in the report. I'm not.

19 COMMISSIONER FRICK: Thank you.

20 MR. CHAIRMAN: Commissioner Holloway?

21 COMMISSIONER HOLLOWAY: No additional questions
22 from me. Thanks.

23 MR. CHAIRMAN: Thank you. Audrey, I have maybe
24 a couple of questions. You testified that you would send a
25 draft to the Board members to review to discuss at a

1 meeting. Do you recall receiving any feedback from
2 Mr. Loveless or any other Trustees?

3 MS. JARAMILLO: Yes. It is common to receive
4 feedback from Trustees/Board members about draft reports.

5 MR. CHAIRMAN: Okay. Do you recall
6 specifically, did Mr. Loveless ask for any feedback or give
7 any feedback on the report?

8 MS. JARAMILLO: I don't -- I don't recall
9 specifically if he gave me feedback.

10 MR. CHAIRMAN: How about any other Board
11 members? Do you recall any feedback from any other Board
12 members?

13 MS. JARAMILLO: Yes. I do recall -- and I don't
14 recall exactly what the feedback was -- but I do recall that
15 Trustee Huddle as the procurement Chair did respond
16 (inaudible).

17 MR. CHAIRMAN: Okay. That's all I have. Thank
18 you. Any other questions?

19 MS. BALLARD: No follow-up from the Respondent.

20 MS. LASTER: None from me.

21 MR. CHAIRMAN: Thank you, Audrey. We appreciate
22 it. Have a good day.

23 MS. BALLARD: Enjoy the Legislature.

24 MS. JARAMILLO: Thank you all.

25 MR. CHAIRMAN: You're welcome. All right,

1 Ms. Ballard, we're down to your last witness?

2 MS. BALLARD: We are.

3 MR. CHAIRMAN: It is --

4 MS. BALLARD: I would ask the Chairman's advice
5 on whether we want to begin Mr. Loveless, knowing that we
6 can't finish him today, or whether we just want to come in
7 the morning and do it then.

8 MR. CHAIRMAN: I'm good with proceeding now and
9 getting it started --

10 MS. BALLARD: That's fine. Okay.

11 MR. CHAIRMAN: And maybe come to a -- well,
12 we've got an hour --

13 MS. BALLARD: Okay.

14 MR. CHAIRMAN: -- to get through and then we'll
15 pick it up again in the morning.

16 MS. BALLARD: Okay. That's fine. Thank you.
17 We'll call Ken Loveless to the stand.

18 MR. CHAIRMAN: Thank you. Mr. Loveless, please
19 raise your right hand.

20 Whereupon,

21 Kenneth B. Loveless, having been duly sworn and
22 cautioned to speak the truth, the whole truth and
23 nothing but the truth, testified as follows:

24 MR. CHAIRMAN: Please state your full name for
25 the record.

1 MR. LOVELESS: Kenneth Butler Loveless.

2 DIRECT EXAMINATION

3 BY MS. BALLARD:

4 Q. Mr. Loveless, where do you live?

5 A. I live at 228 Lookout Points in Chapin, South
6 Carolina.

7 Q. Because District Five includes both Lexington
8 and Richland, when you were on the Board what seat did you
9 fill?

10 A. I was a Lexington County Trustee.

11 Q. Okay. And you say was. When did your
12 membership on the Board end?

13 A. Oh, I was defeated in the recent election and my
14 Board term ended around November the 15th, I'm guessing.

15 Q. Of 2020?

16 A. 2020, yes.

17 Q. Okay. How many terms on the Board did you
18 serve?

19 A. One.

20 Q. Who is Jondy Loveless?

21 A. That's my wife.

22 MS. BALLARD: And for the panel's benefit, Jondy
23 is seated in the back in the bright pink shirt.

24 BY MS. BALLARD:

25 Q. Was Jondy ever a member of the Board of

1 **Trustees?**

2 A. She was. From 2012 until 2016 she was on the
3 Board of Trustees.

4 Q. During Jondy's service on the Board of Trustees,
5 did you follow developments with the Board of Trustees on
6 issues that were coming before the Board of Trustees either
7 in discussions with her or in reviewing public documents?

8 A. I've got a little bit of a sense of humor. I
9 think they followed me, but, yes. Yes.

10 Q. What issues, if any, regarding problematic
11 construction did Jondy deal with as a Board member?

12 A. Jondy was on the Board during the execution --
13 there was a large bond referendum starting in 2008 and Jondy
14 was on the Board. We were actively involved politically at
15 getting the bond referendum passed and Jondy was on the
16 Board in 2012 with the actualization of the results of that
17 bond referendum.

18 MR. CHAIRMAN: Mr. Loveless, I'm sorry to
19 interrupt. Could you spell Jondy for me?

20 MR. LOVELESS: J-o-n-d-y.

21 MR. CHAIRMAN: Just like it sounds.

22 MR. LOVELESS: Yes, sir.

23 BY MS. BALLARD:

24 A. And so --

25 Q. And do look at the Board if you don't mind.

1 A. I'm sorry.

2 **Q. I'll try to move around here.**

3 A. I don't -- I'm not practiced at this, so I'm
4 sorry.

5 MR. CHAIRMAN: No problem.

6 BY MS. BALLARD:

7 A. But, anyway, she was on the Board and during the
8 construction of the bond referendum. And there were
9 numerous schools and so forth being built and one of the
10 schools, with our home being in Chapin, of course, you know,
11 we were, you know -- people called us because they knew
12 Jondy and they knew, you know, of the construction nature of
13 my past businesses and so forth. So they called her and
14 they -- anyway, there was a large number of problems with
15 the Chapin High School project. I mean, a large number of
16 projects -- problems.

17 To clarify what Ms. Ballard was asking the
18 previous witness, Mr. Cates, it was Chapin High School which
19 was part of the 2008 bond referendum and it did have
20 construction management, but it had construction management
21 that wasn't at risk. It had the construction management
22 team who was a consultant to the owner. There's a
23 difference in there.

24 **Q. Let's back up and get a little more about your**
25 **professional qualifications. Do you hold any licenses in**

1 **the state of South Carolina?**

2 A. I do. I'm a licensed general contractor and a
3 licensed construction manager. I've been licensed since
4 maybe back in the '70s. And I'm licensed in North Carolina
5 as a general contractor there, too.

6 **Q. And what's the nature of the work that Loveless**
7 **Commercial Contracting does?**

8 A. Well, you know, you do what brought you, okay? So
9 we started out, you know, as general contractors basically.
10 We had a lot of experience in renovations of technically, I
11 would say, of things on the historic register in the
12 beginning, and we did that in downtown Columbia, you know,
13 and the Vista and places like that.

14 But, anyway, we became competent with, we got
15 some contracts with Michelin tire and became competent in
16 concrete construction, heavy concrete construction, and
17 that's where we -- where we became most proficient and
18 probably the most efficient so that we could bid projects
19 and, you know, and survive in a tough market. So we became
20 sort of made of half and half, we became general contractors
21 who did general contract work and also construction
22 subcontractors to other contractors, large, large projects
23 on concrete work.

24 **Q. And how long has Loveless Commercial Contracting**
25 **or the earlier iteration of it been in existence?**

1 A. Well, I had my shirt on yesterday. But, no, I
2 could have told you. But 37 years. We started in 1986 and,
3 you know -- so May the 7th, 1986 and pretty soon we'll be on
4 our 38th year.

5 **Q. Mr. Loveless, is it fair to say that you devote**
6 **a significant portion of your attention and professional**
7 **life to Commercial Construction?**

8 A. Yes, and -- that, and I've always been real
9 active in work force development for kids. I mean, that's
10 where I've, you know -- through Clemson University I've
11 always been trying to, you know, get kids into the
12 construction industry. And that was my passion while I was
13 on the Board. I was trying to make sure that we had, you
14 know -- the School Board is not about all this stuff. It's
15 about children and it's about parents and its relationships
16 and it's, you know -- my hang-up with the whole thing was
17 always that I couldn't see wasting money on stuff helped any
18 kid.

19 So I think that video that you played this
20 morning, you know, I don't care what you rule on here, I
21 think that I did my job as a Board of Trustee member to the
22 best of my ability and I didn't do anything, you know,
23 outside of what I should have done, is the way I feel about
24 it.

25 **Q. Well, let's back up, okay?**

1 A. Okay.

2 Q. We were talking about you -- you and Jondy live
3 together, I assume?

4 A. Oh, yes.

5 Q. Okay. So when she was on the Board and going
6 through the problems with the construction defects in
7 Chapin, how knowledgeable did you become about those?

8 A. More than I wanted to, really. But she asked me
9 questions and, you know, I would help her find answers. She
10 poured through specification books and plans and -- I mean,
11 she was active in trying to get her community the best
12 product they could have. And not only that school, but
13 there were others. Hope Point Elementary, I could remember
14 there were problems there. There were problems of the very
15 same nature that we were trying to avoid at Piney Woods.

16 Q. Did the construction problems that you became
17 aware of while Jondy was on the Board play any role in your
18 running for the Board yourself?

19 A. Yes. People came to me and wanted expertise on
20 the Board because they were tired of, you know, paying for
21 things that they didn't get, basically, I mean, to be honest
22 with you.

23 Q. Was there a lot of litigation related to the
24 various Chapin projects and the problems with the
25 construction?

1 A. Yes. They ran up -- they let the construction
2 company run up a four million dollar claim and then had to
3 have all of this legal mumbo jumbo to go on and solve the
4 problems. After the fact, I don't think anybody came out of
5 the situation happy. The architect and the construction
6 manager and the contractor and the owner were all at each
7 other's throats. It was not a happy situation.

8 MR. CHAIRMAN: Ms. Ballard, let me say this. I
9 hate to interrupt you.

10 MS. BALLARD: That's okay.

11 MR. CHAIRMAN: And we certainly want to give
12 Mr. Loveless the opportunity to testify and say what he
13 needs to say. What I'd like to do is, could you kind of
14 stick as much as you can to the allegations and the time
15 frame that relate to the allegations?

16 MS. BALLARD: Yes. Part of the reason I wanted
17 to give that background was to show why Mr. Loveless thought
18 that his expertise on the Board would be useful. So let me
19 just --

20 MR. CHAIRMAN: I think we got it.

21 MS. BALLARD: Well, okay. If you think you've
22 got it then I think that's fair.

23 BY MS. BALLARD:

24 **Q. When were you elected to the Board, Ken?**

25 A. In November of 2018.

1 **Q.** And Jondy had already rotated off; is that
2 **correct?**

3 A. Yeah. She got off in '16.

4 **Q.** Okay. When you were elected to the Board, had
5 the District already selected Contract Construction as the
6 construction manager at risk for what was then referred to
7 as ES-13?

8 A. They had a selection committee and that
9 selection committee made the selection as I -- as I looked
10 back through the records because I wanted to give you
11 exacting information as I could, October the 25th, 2018, and
12 I started on my term around November the 15th, 2018.

13 **Q.** So prior to your membership on the Board, had
14 you had any dealings with Contract Construction whatsoever?

15 A. In the -- I think Trey testified -- if not, in
16 the normal course of business we -- I think we had given
17 them bids before. I don't think we'd ever, you know,
18 actually had a working relationship, no.

19 **Q.** Okay. So you had no personal knowledge of
20 Contract Construction when you were elected to the Board?

21 A. Well, I knew who they were. I mean, you know,
22 of course, I'm in the business and I've known their -- the
23 Chairman of their Board, John Farley. My dad was a
24 deacon -- or a trustee in a Methodist church, which they did
25 their very first job, I mean, you know, so I knew who they

1 were. I mean, I knew John in passing. I don't, you know,
2 didn't know -- and I knew Greg Hughes because his dad used
3 to be -- Hughes, Bone & Sealey used to be our -- it was our
4 CPA for -- or still is -- but used to be our CPA for twenty
5 years before he died. So I knew who they were, you know.

6 **Q. When you were elected to the Board, what kind of**
7 **training did you receive as a new Board member and what**
8 **research did you do to determine what your rights,**
9 **obligations and responsibilities were as a Board member?**

10 A. Well, they have a Board training that's required
11 under -- I don't know whose law, but it's required. And I
12 attended all of that in my very first year down in Hilton
13 Head for the South Carolina School Board Association. And I
14 also read all of the School Board policies. They have a
15 section B of the policies. I didn't read the ones about,
16 you know, about student-related things, but I read
17 everything that was related to me which would be under
18 section B and I studied those as a part of the School Board
19 training.

20 **Q. In the School Board training were you given**
21 **information or education regarding your obligations under**
22 **the State Ethics Act?**

23 A. Yes.

24 **Q. Did you familiarize yourself with the**
25 **restrictions, if any, that were placed on you by the Ethics**

1 **Act?**

2 A. I remember -- I mean, I remember in the training
3 they did go over recusal, and the recusal that they told us
4 is that we couldn't just simply -- we couldn't vote on
5 things if, you know, if we had some kind of, you know,
6 problem, you know, or like had arisen here, that we just
7 couldn't vote on things. I do not remember -- and I did
8 talk to the intervener or the lecturer about that subject.

9 It didn't have anything to do with this, but I
10 did talk with him and I did -- and I did try to familiarize
11 myself with, in general, with the law. But I'm not a
12 lawyer, I'm just a layman practitioner, so -- but that's
13 what I did. And I felt like -- I felt like I did everything
14 that a normal person would do. I mean --

15 **Q. Ken, I'm showing you what we've marked as**
16 **Exhibit Z. Can you tell the Board what that is?**

17 A. Yes. This is a document titled Get on Board,
18 and it was presented at the School Board Association during
19 their Board member training. And it's several pages in here
20 and it has sections in it about -- one of them, you know, is
21 about this topic. But it's got a lot of -- it explains what
22 your role is and how you're supposed to interact and, you
23 know, what you're supposed to do to be a successful Board
24 member. And, you know, I read it, I studied it, I went to
25 the Board training, you know, I paid attention. Life's got

1 three rules, show up, pay attention and have fun, and that
2 was where I was, so --

3 **Q. Did you rely upon the information that was**
4 **provided to you in Exhibit Z as part of the education that**
5 **you undertook when you became a Board member to learn what**
6 **your rights and obligations were?**

7 A. Yes, I did. And further than that, like I said,
8 I went through the policies. The individual -- our
9 individual School Board has policies that are not in here
10 because this is a compilation of all the School Boards in
11 South Carolina and nobody has the same policies, believe it
12 or not. So they're, you know -- it's not one of those
13 things where it's just a cookie cutter cut -- I mean, you
14 can read one sentence of these policies and that makes all
15 the difference in the world. And this is more or less a
16 generalized version, you know, of what you're supposed to do
17 to be a successful Board member.

18 MS. BALLARD: I'd move the introduction of
19 Exhibit Z, which is the --

20 BY MS. BALLARD:

21 **Q. Who's the publisher of that --**

22 A. South Carolina School Boards Association.

23 **Q. Okay.**

24 MS. BALLARD: It was part of the training that
25 Mr. Loveless received as part of his initial training as a

1 Trustee.

2 MR. CHAIRMAN: Any objection?

3 MS. LASTER: I would object to the relevance and
4 hearsay. I don't know who authored this.

5 MS. BALLARD: The South Carolina School Board
6 Association authored it.

7 MR. CHAIRMAN: Overruled. It's admitted.

8 MS. BALLARD: Thank you.

9 (Respondent's Exh. Z, Training Manual, was
10 admitted into evidence.)

11 BY MS. BALLARD:

12 Q. When you campaigned to be elected to the Board,
13 what did you tell the public that you were going to do as a
14 member of the Board?

15 A. One of them was that I was going to, you know, I
16 was going to see to it that our kids got a fair shot to work
17 in industries that were not, you know -- that were not being
18 served and that you didn't have to go to college to do, and
19 that's what I tried to do my whole tenure on the Board. I
20 firmly believe that we're off on the wrong foot with that
21 and that we need to get companies to pay for kids' education
22 and get them good jobs.

23 But the second thing that I campaigned on was
24 that, you know, that I had expertise in the construction
25 field and that I knew that this was a growing district and

1 that, you know -- further than that, I'm not just a bricks
2 and mortar person. I mean, I've run a good sized business
3 for 30-something years and I know that these aren't small
4 dollar amounts that we deal with. I mean, so I'm not afraid
5 to get in there and roll up my sleeves and find out where
6 the, you know, where the nut is turned. And that's what I
7 told people.

8 **Q. When you were elected to the Board what, if any,**
9 **obligation did you think you had, either by statute or by**
10 **the law, morals or otherwise, to supervise the construction**
11 **of the projects that District Five was engaged in?**

12 **A.** I had -- I didn't try to supervise anybody's
13 construction. That was not what I was doing. I think that
14 my whole life in the construction business is you expect
15 what you inspect, okay? And if you don't have somebody
16 looking over your shoulder -- I didn't try to go out on the
17 job and direct anybody. And you hear Ed White on the Board
18 talking about it all the time. I did not do that. But what
19 I did do is I provided oversight on a School Board where
20 there otherwise wasn't any and had cost -- it had cost the
21 public a ton of money because they didn't have anybody in
22 that role before. And that's all I was trying to do.

23 **Q. Did the District have employees whose job it was**
24 **to oversee facilities management and construction management**
25 **for construction that was being done at the District?**

1 A. Employees?

2 **Q. Yes.**

3 A. They had a consultant who was this ex-navy guy
4 that thought he knew, you know, everything under the sun
5 and --

6 **Q. And who was that?**

7 A. Dan Neil. And he just was in there to get a
8 salary, I mean, you know. But I didn't feel -- I had -- I
9 mean, I had meetings with the guy and he promised to do
10 things and he never did them, so -- I mean, I lost, you
11 know, confidence in that, you know.

12 **Q. Did you feel a void in terms of expertise on the**
13 **Board or among the staff in real hands-on experience in**
14 **commercial construction so that your personal experience in**
15 **commercial construction could be used in discussing and**
16 **critiquing the work as it was being done?**

17 A. To be quite frank with you, the School District
18 was more worried about making those vendors happy than they
19 were about protecting the interest of the School District in
20 my opinion.

21 **Q. What do you mean by that?**

22 A. Well, I mean, they drew contracts that were all
23 slanted toward the vendor. They didn't -- I mean, when I
24 made a -- I mean, everybody has seen the letter that I sent
25 to -- I gave it to Dr. Melton. I took it over there. And

1 the first thing they did was give it to this attorney, Mike
2 Montgomery. And then they turned around and gave it to the
3 contractor who was the -- he was just a contractor and they
4 made him an expert. And he was the guy in there that was
5 committing the -- committing the problem. So, you know,
6 that's what I did.

7 MR. CHAIRMAN: Let me state again, the relevance
8 of the testimony to the actual allegations and the time
9 frame, I think you're getting away from that a little bit.
10 Can we kind of hone it in?

11 MS. BALLARD: Well, part of the reason I'm going
12 into some detail is there's a statutory obligation on Board
13 of Trustees members to provide schoolhouses and to visit
14 schools, and Mr. Loveless, in the carrying out of his
15 duties, complied with the statute, or attempted to comply
16 with the statute by doing what he -- with the knowledge that
17 he had, that he brought to the table that he could provide
18 to the Board. Not with reference to voting or actions
19 taken, just with reference to providing information and
20 insight and asking questions. And I think he was carrying
21 out his duties to do that and that's why I was going into
22 this background.

23 MR. CHAIRMAN: Okay. All right.

24 BY MS. BALLARD:

25 A. Yeah. I mean, I did read section 59 of the

1 South Carolina Code of Ethics which has to do with the
2 duties of School Boards and School Board trustees and why I
3 was -- I had my office, why I was there, and the things that
4 I was supposed to do under that office. I did read that and
5 I did understand that I was supposed to visit schools.

6 In fact, I'm one of probably, other than one
7 other Board member, I was the only Board member that went --
8 tried to go to every school every year. And I took that new
9 school to be under the same -- the same, you know,
10 regulations under section 59. And I did -- I did take my
11 obligation seriously and I tried to be a good Board member.

12 **Q. Mr. Loveless, introduced into evidence have been**
13 **a number of the minutes of the -- a number of the minutes of**
14 **the Board meetings of District Five. Have you had an**
15 **opportunity to review the minutes, both the minutes that**
16 **were introduced into evidence as well as others of the**
17 **School District meetings?**

18 **A.** Yes. I mean, and I lived through it so I -- I
19 mean, I've got an insight that nobody else has.

20 **Q. I told the Board earlier that the videos that**
21 **are available on the Board's website are broken in to**
22 **sections. Can you explain that to the Board?**

23 **A.** Yeah. The meetings have different sections to
24 them. The first part of it is what -- there's a preamble to
25 going into Executive Session. Executive Session in our

1 School District was already -- always at the very first of
2 the meetings and then there were other things, you know.

3 You would have -- when you came back from
4 Executive Session you would always have, you know, the most
5 important part of the meeting which was the awards to
6 children and teachers and, you know, and families that have
7 participated and, you know -- like if the Dutch Fork's, you
8 know, football team won, you'd present them with, you know,
9 congratulations and some token, you know. You would do
10 that. And then the next part of the meeting was always
11 aimed at, you got down to the Superintendent's report in
12 which the Superintendent had various subjects that he wanted
13 to present -- or he or she. And then you had, the next part
14 was public participation and then you would get down to the
15 action part of the agenda. And finally at the end would be
16 discussion which would be discussion of some upcoming or
17 some, you know, pertinent issue that parents have raised or
18 something, you know, and so you would discuss that and, you
19 know, that would kind of give you a lead-off into the next
20 meeting. So that's what that was about. So, yeah, there's
21 six -- I think you said six. I don't know if I can --

22 **Q. What portion of the meeting or meetings, Board**
23 **meetings, do Board members vote or take action?**

24 **A. Well, it's in the action agenda which is that**
25 **fifth item.**

1 **Q. Am I correct that you don't take votes in**
2 **Executive Session?**

3 A. No. No, that's prohibited by law.

4 **Q. Are all of the votes and actions taken by the**
5 **School Board recorded in the public minutes?**

6 A. Yes.

7 **Q. So during the discussion agenda or the**
8 **Superintendent's reports, am I correct that there is no vote**
9 **taken or no action taken by the Board of Trustees?**

10 A. There was none that -- while I was on the Board,
11 no action taken at discussion.

12 **Q. Okay. Is someone contemporaneously taking**
13 **records, or taking notes to accurately record the votes?**

14 A. Yes. We have a, what the School District has is
15 an Executive Secretary who's the Secretary to the Board and
16 to the Superintendent, and all the -- any item, like the
17 ones that you've seen that were submitted for the record,
18 you know, were given to them and they would record the
19 votes. And they would also keep minutes of who came in, you
20 know, at public participation, that kind of thing. So that
21 was a function of the Administration through, and the Board,
22 the Board's Secretary and, you know -- would be there to do
23 that.

24 **Q. And like any other public body, are the minutes**
25 **approved by the Board at the subsequent meeting and**

1 **determined to be accurate or amended as necessary?**

2 A. Yes. We had -- we operated under Robert's Rules
3 of Order and we had that opportunity and they were amended
4 several times, this is my -- as I recollect. And for the
5 most part they were accurate but sometimes they had to be
6 amended.

7 Q. Mr. Loveless, during the Superintendent's report
8 or the discussion agenda, what types of things were
9 discussed? This was all public. What types of things were
10 discussed at the Board meetings?

11 A. Well, you know, you've heard everybody state
12 about COVID. For a long time that was all we discussed, you
13 know. I mean, it -- but we -- it was a difficult period of
14 time but we got through it. Nobody knew what to do with
15 that.

16 But that was -- a lot of the Superintendent's
17 report is reporting of, you know, things that have to do
18 with their initiatives that they're trying to do to further
19 different portions of the state education system and the
20 school system. You know, I'm talking about like if you were
21 going to offer teachers a bonus or something like that, that
22 would be in the Superintendent's proposal.

23 The Superintendent would always, you know -- she
24 had, you know, free reign over all that. I mean, nobody was
25 trying to be -- I mean, we had a -- we had excellent

1 educators as our leaders. Nobody was trying to, you know,
2 do anything there. But where, you know -- that's what would
3 happen in the Superintendent's report. And the second part
4 of that, what was the question --

5 **Q. The discussion agenda.**

6 A. The discussion agenda, like I said, was usually
7 limited to things that were, you know, a upcoming nature of
8 things that were presient (phonetic) with the -- or
9 pressing, I maybe got the wrong word in -- pressing from the
10 community. I can think of things like -- and, you know, in
11 particular there was something to do with library books, for
12 example, just recently, you know, that when I was on there
13 that the community had brought forth.

14 So we would discuss the policies that reflected
15 what this community either understood or didn't understand,
16 we would have the committees. We had committees at the time
17 I was on the Board and the committees would bring forth
18 their recommendations. We would discuss, you know, the
19 policies and the things like that that would make the
20 situation better, you know. Those things is what we would
21 do in that period of time.

22 **Q. During the Superintendent's report and the**
23 **public discussion sections of the Board meetings, did the**
24 **Board members discuss topics that were brought to the**
25 **Board's attention?**

1 A. Absolutely. I mean, it was, you know -- that
2 was -- public participation will bring you the items for the
3 next meeting that you know the public wants to know about.
4 And, after all, I mean, that's what we're there for is to,
5 you know, to be servants of the public, so that's what we
6 were doing.

7 **Q. Were you aware of any statute, rule, regulation,**
8 **policy or anything else that prohibited you from**
9 **participating in discussions during the Superintendent's**
10 **report or the discussion agenda or any other portion of the**
11 **Board meeting other than voting?**

12 A. No. And, I mean, I think that the videos you
13 played this morning are -- I mean, I think that's pretty
14 apparent that -- I mean, I was literally shocked that this
15 came up and I know you heard me say, that's ridiculous.
16 Because I didn't -- I didn't know. I mean, I certainly did
17 not have a contract with somebody to take advantage of the
18 School District. I never took a salary and I never took
19 anything from the School District.

20 I mean, I was literally shocked that that was
21 brought up. And so when that happened I came home and I
22 told my wife, I said, what did I do wrong, you know? I
23 mean, I was literally shocked. And so she told me, she
24 said, well, you'd better get in touch with the Ethics
25 Commission because basically, you know, somebody's building

1 a case on you so you'd better get in touch with the Ethic's
2 Commission. So I called down here and I talked to a
3 Mr. James Bagnell --

4 **Q. Bagnell?**

5 A. Bagnell, okay? And I think he's -- he told me
6 that he had 25 years' experience -- I don't -- it was
7 something like that. It was a heck of a lot of experience
8 in this and so --

9 MS. LASTER: Objection as to hearsay.

10 MR. CHAIRMAN: Sustained.

11 BY MS. BALLARD:

12 A. Okay. Well --

13 **Q. Let me rephrase the question and let's back up a**
14 **little bit. You made mention of the fact that you've never**
15 **drawn a salary from the School District. What happens to**
16 **your salary as a Board member?**

17 A. I never took a salary so it was, you know,
18 plowed back into the budget. I mean, I never -- I was an
19 unpaid volunteer is what I was. I wasn't a vendor, nor was
20 I an employee or anything like that. I was not on the
21 books, I was an unpaid volunteer, you know. I didn't do --
22 I've never taken a penny.

23 **Q. When you had to attend conferences or a training**
24 **such as your initial training at the Board of Education, did**
25 **you pay all of those expenses yourself personally?**

1 A. I did. I went -- I came back from the first
2 conference where I did the training and I said, here's my
3 receipts for just staying in a hotel. And they said, well,
4 we can't pay you because you won't sign up as a vendor. And
5 I said, well, I'm not a vendor, I don't want to be a vendor,
6 I just want to be a volunteer. But at least you ought to
7 pay my -- and they said, no, they couldn't do that. So I
8 never asked them again. I just paid my own way.

9 **Q. Is that true for the entire four years that you**
10 **were on the Board?**

11 A. It is.

12 **Q. Did you ever take a penny in salary for any of**
13 **the work that you did as a School Board member?**

14 A. I never received one ounce of compensation for
15 anything.

16 **Q. Was your intent in seeking and being elected to**
17 **the Board to try to financially enrich yourself in any way?**

18 A. No. My intent is entirely the opposite. My
19 wife and I are blessed and -- I guess it's nobody's
20 business, but that -- I intend to die penniless.

21 **Q. Why did you serve on the Board? Why did you**
22 **choose to serve on the Board?**

23 A. I think I went over that earlier. I have been
24 active and I want to see our young people -- you know, I'm
25 interested not just for the construction industry. There

1 are plenty of industries that need qualified young people
2 and they don't need to go, you know, spend fortunes at
3 universities and things like that and then get out with
4 debt. And so, I mean, my take on it has always been that if
5 you can get yourself involved with something and you get
6 interested and you can get yourself known or show a company
7 of your abilities, then that company will make sure that you
8 rise and that you're, you know, that you're educated to
9 whatever they're doing. And I've seen it. I mean, I've
10 seen it with my own eyes.

11 Our kids will come into Michelin where we work a
12 lot and stuff and how just the genning of the positive
13 attitudes and what difference that makes. And that, to me,
14 is why I was doing this. I mean, it really was.

15 **Q. Did you consider your service on the Board of**
16 **Trustees as an act of public service?**

17 A. Yeah. I consider my sitting in this chair right
18 here as an act of public service because, you know -- I
19 mean, that's the way it is.

20 **Q. Okay. Well, there's been testimony that your**
21 **company had a contract with Contract Construction. What, if**
22 **anything, do you know about how that came about?**

23 A. Well, the company -- it's Trey McDaniel, who was
24 here before, bid a job on October the 23rd, 2019 for -- it
25 was on the South Carolina SLED job. It was a competitively

1 bid situation. We competitively bid as subcontractors and
2 we proved that with the documents, I think, I hope --

3 **Q. What is a competitive bid?**

4 A. A competitive bid is where the lowest
5 responsible bidder is awarded the project, you know,
6 provided that he has all the information that was available
7 out there.

8 **Q. When did you first become aware that Loveless**
9 **Commercial Contracting had bid on the SLED project or had**
10 **been awarded a subcontract on the SLED project?**

11 A. As I recollect -- let's see. I was remotely
12 aware that a notice of intent or a Letter of Intent had been
13 sent to our construction company sometime in November of
14 2019. I was told by Mr. McDaniel -- and this is hearsay so
15 I can't say that --

16 MS. LASTER: Yeah. Objection to hearsay.

17 MR. CHAIRMAN: Sustained.

18 BY MS. BALLARD:

19 A. But, anyway, I would say I was made aware that
20 the -- the Notice of Intent but it was not -- it didn't have
21 any standing or backing because the contractor had not been
22 awarded the project because it was under a bid protest.

23 **Q. Can you tell the Board briefly what a bid**
24 **protest is?**

25 A. Well, I mean, contractors have rules that they

1 operate under and one of them is a listing of subcontractors
2 that are qualified and have licenses in the mechanical
3 trades, electrical, mechanical, plumbing. And from what I
4 can understand of it when reading through it, the second
5 bidder claimed that the low bid, apparent low bidder who
6 was -- the second bidder was Cleveland, had a protest in
7 that the low, apparent low bidder who was Contract, had used
8 an unlicensed contractor on its electrical work and their
9 bid was being protested because they didn't follow the
10 rules.

11 **Q. How long can you estimate that the actual**
12 **awarding of the bid to Contract Construction was delayed by**
13 **virtue of the protest filed by Cleveland Construction?**

14 **A.** Well, we bid the job. Later on we, you know, by
15 doing my research from -- but we bid the job November the --
16 I mean, October the 23rd and we received a notice on January
17 the 25th of the following year that the -- that Contract had
18 been notified that the -- Contract Construction had been
19 notified that the award was pending based on a second
20 protest period of 16 days.

21 In other words, just like here, if somebody
22 doesn't agree, they can always appeal again. And so there
23 was a 16-day period that started January the 25th of 2020.

24 **Q. So on what date did Loveless Commercial**
25 **Contracting become a subcontractor to Contract Construction**

1 with reference to the SLED forensic laboratory?

2 A. Okay. Now, that's a little bit of a sticky
3 wicket, but -- so on February the 11th, 2020, we received in
4 the mail a subcontract from Contract Construction. And then
5 at that point what we do, what we would do and did do is
6 went through it and I sent it to our attorney, made changes
7 and so forth, and we returned it to them. And then in the
8 mail came the second iteration of that, which was March
9 13th, or 12th or 13th, 2020 where the -- some of our changes
10 had been accepted and at that point we signed the contract.

11 Q. And the signing of the contract by Loveless
12 Commercial Contracting was March 12th or 13th of 2020?

13 A. Yes, ma'am.

14 Q. Okay.

15 A. That's when the contract became valid. I mean,
16 the way I look at it is, it's not a contract till you can
17 send a bill in, so -- you know, if you can't be paid, you
18 know, it's all just talk up to that point, so --

19 Q. When you signed the contract on behalf of
20 Loveless Commercial Contracting in March of 2020, did it
21 ever occur to you that Contract Construction might be a
22 business with which you were associated as far as the State
23 Ethics Act is concerned?

24 A. No. And I still don't think they are, so --

25 Q. And why is that?

1 A. Well, I read the Act and, you know, like I said,
2 I had talked to the Commission and I can't, you know,
3 that's --

4 MS. LASTER: Objection --

5 BY MS. BALLARD:

6 A. -- I did that --

7 MS. LASTER: -- hearsay.

8 BY MS. BALLARD:

9 A. Well, it's an action I took and I can testify to
10 that?

11 **Q. You can testify to what you did.**

12 A. Okay. Well, I contacted them and I read 700,
13 you know --

14 **Q. A and B?**

15 A. A and B. What is it, 813-700 A and B?

16 **Q. Yes.**

17 A. And in there it talks about, you know, all the
18 things that, if you're an associated thing that said
19 compensated agent, you know. There's no way in the world a
20 subcontractor is an agent. You know, I've got an MBA, I
21 went to school. Well, I can read, I understand what that
22 means and I wasn't an agent. An agent is more or less an
23 employee and a subcontractor certainly isn't an employee.

24 **Q. Do you have you any ownership in Contract**
25 **Construction?**

1 A. No.

2 **Q. Have you ever had any ownership in Contract**
3 **Construction?**

4 A. No.

5 **Q. Did it ever occur to you when Loveless**
6 **Commercial Contracting became a subcontractor for the SLED**
7 **project that that somehow lessened your statutory**
8 **obligations as a Board member to actively participate in the**
9 **duties imposed upon you as a School Board member?**

10 A. Absolutely not until, what was it, September the
11 14th of 2020 when they basically put me on trial. That's
12 when I became aware -- and I'm talking about the other Board
13 members put me on trial without my knowledge and --

14 **Q. Tell the Board in summary fashion what was on**
15 **the agenda for September 14th that you -- that was the topic**
16 **under which the discussion of Elementary School 13 occurred.**

17 A. As I remember it, it said that it was an update
18 on the construction at the site, that's what I remember.
19 But -- and it was on the discussion agenda. I was floored
20 when I walked in there and saw all those engineers that were
21 coming in there. I mean, you saw the video. And, I mean, I
22 was -- I was floored that they would do that. I mean, you
23 know, it was just totally amazing to me that they would
24 spend all that money to have -- what was it? Eleven people
25 in there to sit there and, you know, pot shot me. And I

1 didn't know anything about this. I wasn't told anything. I
2 walked into a slaughter.

3 Q. Let me ask you about your March 24th letter.
4 I've put the notebook in front of you. The March 24th
5 letter 2020 that you addressed to Ms. Melton that has a
6 number of exhibits attached to it, prior to sending that
7 letter had you attempted to have direct communications with
8 Dan Neil or others regarding issues of concern that you had
9 regarding the quality of the construction site that was, or
10 quality of the construction that was going on at Piney
11 Woods?

12 A. I did.

13 Q. And --

14 A. I had that.

15 Q. Did somebody tell you -- did somebody with the
16 School District tell you that your obligation was to go
17 straight to the Superintendent with that and you couldn't
18 talk to anybody else?

19 MS. LASTER: Objection as to hearsay.

20 BY MS. BALLARD:

21 Q. What did you learn as the proper procedure, if
22 you had concerns or questions about a project that was under
23 the auspices of the School Board, who did you have to take
24 that question to?

25 A. Well, I can tell you what I did, if that makes

1 any difference, because --

2 Q. Well, I want to know who you were told or
3 believed you had to communicate with in order to bring an
4 issue to the attention of the Administration.

5 A. Well, in the Board meeting, one of those Board
6 meetings, Mr. Cates -- and Mr. White was always trying to be
7 the, you know -- he knew more than everybody because he's a
8 lawyer. But was told that her contract --

9 Q. Her?

10 A. Christina Melton's contract took precedence over
11 the School Board policies and that if I did anything that
12 was contrary to her contract, that I could be sued
13 personally for it.

14 Q. So when you had questions about the construction
15 that was going at Piney Woods Elementary, what, if anything,
16 did you do?

17 A. Well, first of all, in January -- this is --
18 I'll tell you what I did. In January of 2020, January the
19 9th, somewhere along there, I went and asked Dr. Melton
20 could I have an appointment with this Dan Neil guy who was a
21 construction person. And she did, she arranged it. I went
22 in to meet with him.

23 She was in there for -- she was a very busy
24 person and, you know, I understand that. So we were in
25 there for about a half an hour and then she said, y'all just

1 work this out. Dan, give him your business card. And I
2 took his business card and I was trying to, you know, ask
3 him the questions that I had because I thought he would
4 answer me and I thought he was going to be straight forward
5 about it.

6 **Q. Was that a satisfactory result to the questions**
7 **that you had?**

8 A. No. I mean, that did not happen and --

9 **Q. What, if anything, were you told about who you**
10 **had to address your concerns to?**

11 MS. LASTER: Objection as to hearsay.

12 BY MS. BALLARD:

13 A. Well, I addressed my concerns to the School
14 District Superintendent as the -- as her contract said. And
15 there are passages that you have to pick out of these
16 policies. But, you know, I addressed my concerns to her
17 which was the proper thing to do and I did not publish it to
18 anyone else but her, and that was what the contract and the
19 policy, the way I was led to read it, required.

20 **Q. Introduced into evidence as an exhibit to one of**
21 **the minutes of the Board meeting was your March 24th, 2020**
22 **letter. Do any of the attachments to your letter that was**
23 **given to Ms. Melton appear anywhere in the public record at**
24 **District Five?**

25 A. Yes, I believe they do. I think that was

1 pointed out earlier. But that -- attached to my attachment,
2 or the preface of my attachment that I put in there was a --
3 what is a letter that's sitting right there on that desk if
4 you want to introduce it. But it said that I was being
5 censured because -- first of all, she didn't send my -- the
6 body of the work, she just sent the cover letter with it and
7 she didn't give it -- and I know that because I -- I'm
8 trying to say this without hearsay, but I know that because
9 I conferred with other Board members.

10 So all she ever gave apparently -- well, she
11 gave my -- according to Mr. Mike Montgomery's bills, she
12 gave the bills --

13 MS. LASTER: Objection --

14 BY MS. BALLARD:

15 A. She gave the --

16 MR. CHAIRMAN: Hold on a second. What's the
17 objection?

18 MS. LASTER: Objection as to reference to some
19 bills that we've never seen. Hearsay and also relevance. I
20 don't see the relevance to this testimony.

21 MR. CHAIRMAN: Sustained. Please proceed.

22 BY MS. BALLARD:

23 Q. Exhibit number 1, let me put it in front of you
24 so I can show you what it is.

25 A. All right.

1 Q. Let me see if I can find it first. Or, A,
2 rather. I've just handed you what we've marked as
3 Respondent's Exhibit A. Can you tell the Board what that
4 is, please?

5 A. (Pauses). These are the attorney invoices from
6 Montgomery Willard that I requested as a Board member and
7 was given.

8 Q. Did you receive those in your capacity as a
9 Board member?

10 A. I did.

11 Q. Have you had an opportunity to review those and
12 determine what was going on behind the scenes based on the
13 information that's contained in the bills?

14 A. I have.

15 MS. BALLARD: I'd move the introduction of
16 Exhibit A, which is -- I don't know if it's complete, but
17 it's about four years worth of Montgomery Willard billings
18 to the School District for the various work that they did
19 for the School District. I'd move the introduction into
20 evidence as foundation for Mr. Loveless' testimony.

21 MS. LASTER: I'm sorry. I would object to that
22 on relevance.

23 MR. CHAIRMAN: As a foundation for what,
24 Ms. Ballard?

25 MS. BALLARD: What Mr. Loveless found when he

1 reviewed the bills is that his March 24th, 2020 letter was
2 disseminated to the actual contractors and Mr. Montgomery
3 met with them several times to form responses that attempted
4 to discredit Mr. Loveless' questions and his critiques about
5 the project. So what we have is counsel for the Board, and
6 the records reflect several individual Board members and the
7 individual contractors, all working together with
8 Mr. Montgomery to come up with rebuttals to this March 24th
9 letter, all in secret.

10 Mr. Loveless knew nothing about it. But he has
11 done a thorough review of the bills, as have I, and you can
12 follow the tracks very clearly of what was going on behind
13 the scenes when, in response to Mr. Loveless' March 24th,
14 2020 letter, Mr. Montgomery and others set about to ambush
15 Mr. Loveless at the September 14th, 2020 meeting. In fact,
16 you'll see in the bills them preparing Power Points for that
17 presentation and emails back and forth between Board members
18 that Mr. Montgomery participated in.

19 MR. CHAIRMAN: Ms. Ballard, let me ask you this
20 question.

21 MS. BALLARD: Yes.

22 MR. CHAIRMAN: I hear you and I'm listening to
23 you. How is that relevant to the allegations against
24 Mr. Loveless?

25 MS. BALLARD: I think it's important for the

1 Board to understand the background which led to the ambush
2 on September 14th, 2020, which was followed up on September
3 28th, both videos of which you've seen.

4 MR. CHAIRMAN: If there was an ambush --

5 MS. BALLARD: Yes.

6 MR. CHAIRMAN: -- how is it relevant to the
7 allegations against Mr. Loveless? I'm not following that.

8 MS. BALLARD: During the September 14th meeting,
9 one of the Board members inaccurately cites the State Ethics
10 Act and claims to be an expert and practices law with a
11 former Chairman of the State Ethics Act, and he purports to
12 advise the Board as to what the rules are regarding what
13 their obligations are under the State Ethics Act in an
14 effort to shut Mr. Loveless up so that he would not comment
15 and would not critique and would not otherwise ask questions
16 about the construction that was going on at Piney Woods
17 Elementary School.

18 I think it's important for the panel to know and
19 the Commission to know and eventually the court to know that
20 there was a concerted effort not to answer his questions,
21 but to silence him because he was asking questions.

22 MR. CHAIRMAN: Okay. Hold on, Ms. Ballard.

23 MS. LASTER: Yeah. I would maintain my
24 objection as to relevance. I don't see how Mr. Montgomery's
25 billing invoices to the Board has any bearing on what

1 Mr. Loveless did or did not do in the four instances
2 outlined in the Notice of Hearing. Not only that, but they
3 haven't been authenticated. I mean, I don't know -- we have
4 no way to trace those back to their root.

5 MS. BALLARD: Mr. Loveless provided the
6 foundation for obtaining them. It took him over a year to
7 obtain them because they kept redacting them. They paid
8 lawyers a good bit of money to redact them and to argue that
9 they weren't -- they couldn't be provided to the Board
10 members. And he can testify to all of that, I can't. But I
11 can see in the bills where they were attempting to prevent
12 producing these bills to Mr. Loveless, but he eventually
13 obtained them and has researched them.

14 They're extremely relevant to the allegation
15 that Mr. Loveless had a conflict under the State Ethics Act,
16 the declaration that he had a conflict under the State
17 Ethics Act made by one of the sitting Board members, the
18 advice provided by the former Chairman of the State Ethics
19 Commission that Mr. Loveless had a conflict under the State
20 Ethics Act, all that's discussed in these bills. And you'll
21 see in the bills how it comes together that Mr. Loveless was
22 attempted to be silenced.

23 MR. CHAIRMAN: Why isn't that not hearsay, all
24 those discussions in the bills?

25 MS. BALLARD: Because they're official documents

1 that were received by Mr. Loveless in his role as a Board
2 member. He requested them, he received them, he had to --
3 he was on the Board that approved the payment of them so
4 he's familiar with them. He's become more familiar with
5 them since these charges were brought against him and we've
6 looked into the conspiracy to bring these charges against
7 Mr. Loveless.

8 But it's spelled out in Mr. Montgomery's bills
9 lock, stock and barrel, and I would urge the introduction of
10 them so that the panel can see exactly what was going on in
11 laying a trap for Mr. Loveless to be claimed to have
12 violated the Ethics Act.

13 MS. LASTER: Mr. Chair, if I could respond?

14 MR. CHAIRMAN: Please respond.

15 MS. LASTER: Thank you. You know, whether or
16 not someone on the Board thought that Mr. Loveless had an
17 Ethics Act violation or, you know -- none of this -- this
18 panel is tasked with deciding that, not anybody on the
19 Board, not Mr. Montgomery, not -- none of this has anything
20 to do with the four charges outlined in the Notice of
21 Hearing.

22 MR. CHAIRMAN: Ms. Ballard, I agree. I just
23 don't think they're relevant so I'm not going to allow them
24 to be admissible.

25 MS. BALLARD: All right. I'll proffer them for

1 the record, please.

2 MR. CHAIRMAN: Okay.

3 MS. BALLARD: This is Exhibit A for a proffer
4 for the Respondent.

5 BY MS. BALLARD:

6 Q. Since the Board meeting on November 14th --
7 excuse me -- September 14th, 2020, were there suggestions
8 made to you that you should seek an opinion of the State
9 Ethics Commission as to whether or not you had an obligation
10 to recuse yourself?

11 MS. LASTER: Objection as to hearsay.

12 MR. CHAIRMAN: Sustained.

13 MS. BALLARD: Well, we can play it again. The
14 Board has seen one of the Board members suggest that
15 Mr. Loveless seek an opinion from the State Ethics
16 Commission. I can try to find it in the video, I can try to
17 find it in the transcripts, but I'd rather just ask him the
18 question.

19 MR. CHAIRMAN: Repeat your question,
20 Ms. Ballard.

21 MS. BALLARD: Thank you.

22 BY MS. BALLARD:

23 Q. After the meeting on, or during the meeting on
24 September 14th, 2020, was the suggestion made or did you
25 learn that it would be in your best interests to seek an

1 opinion from the State Ethics Commission as to whether you
2 were required to recuse yourself?

3 A. I guess what my wife told me was hearsay, too,
4 but I became aware that there must be some Ethics Commission
5 laws that I wasn't aware of. So that's when I -- I
6 contacted the Ethics Commission and I talked with some folks
7 here and then I --

8 Q. What, if anything, did you receive after
9 communicating with the State's Ethics Commission?

10 A. I received a -- after I wrote a letter and
11 submitted it, then I received a informal opinion. I learned
12 that it could only be done on grounds of supposed
13 happenings. It couldn't be based on what exact -- you know,
14 the exact claim because the Ethics Commission won't give you
15 any advice on something that's already happened. I learned
16 that. I learned that I should ask for an informal opinion
17 and I received one.

18 Q. Who signed that informal opinion?

19 A. Courtney Laster.

20 Q. And what, if anything, did you take from reading
21 Ms. Laster's informal opinion as to your obligations as a
22 School Board member?

23 A. Well, I learned at that point in time that I had
24 to recuse myself.

25 Q. From what?

1 A. From participation and basically, you know, from
2 anything there forward.

3 **Q. Did you put the recusal on the record and follow**
4 **what the statute required you to do in the event you did**
5 **have a conflict?**

6 A. Yes, I did. And it -- I was going to do that
7 before the next Board meeting where we discussed anything to
8 do with Piney Woods, but that didn't happen for a long time.
9 And so when that actually -- before that actually happened I
10 did recuse myself and I wrote some information and I put it
11 into the Board minutes.

12 **Q. You attached those as a Board member can do**
13 **pursuant --**

14 A. Yeah. I wrote the letter to -- I actually had
15 two informal opinions from the Ethics Commission. Because I
16 asked questions about the first one and I requested a second
17 one and I got that and then -- and I think it was February
18 of '21, somewhere along there, we didn't have any
19 discussions about Piney Woods between that time so before
20 those discussions I recused myself formally with the letter
21 and Ms. Hammond read it into the record.

22 **Q. Ms. Hammond, being the Chair?**

23 A. The Chair read it into the record. And I gave
24 my -- even though, you know, I did -- reading the Act, I
25 didn't think it -- I didn't think that that was -- that I

1 had to do that, but I did it out of all abundance of caution
2 and I discussed the situation with attorneys who were
3 knowledgeable of the situation.

4 **Q. And you can't tell us what they said, of course.**

5 A. No. But I did do all that and I didn't receive
6 information that matched the information from the Ethics
7 Commission from the South Carolina School Board Association.

8 **Q. After you received Ms. Laster's letter and you**
9 **recused yourself, what did you not do when discussions**
10 **regarding Piney Woods came up?**

11 A. I got up and left the room, all right? I did
12 what I was supposed do. And I didn't -- I was not in
13 earshot and they had to send somebody out to get me and all
14 that, you know. So, I mean, I was not -- I did not do
15 anything from that point forward at all in relation to
16 Contract Construction or Piney Woods.

17 **Q. During the period of time that Loveless**
18 **Commercial Contracting was a subcontractor for SLED, did you**
19 **participate in any actions or votes regarding Contract**
20 **Construction and its construction on Piney Woods Elementary**
21 **School?**

22 A. I mean, I read the law to say decision and I
23 didn't operate -- I didn't participate in any decision. And
24 then when I recused myself I certainly didn't participate in
25 anything. So I've read that law and that law says that you

1 knowingly did something. I didn't knowingly do anything
2 wrong and, you know, I just don't understand. I mean, I
3 don't understand --

4 Q. Listen to my question again. During the period
5 of time that Loveless Commercial Contracting was a
6 subcontractor of Contract Construction as it related to the
7 SLED forensic laboratory, did you, as a Board member, take
8 any action or make any decision relevant to Contract
9 Construction, or to Piney Woods Elementary School and
10 Contract Construction?

11 A. I did not.

12 Q. Did you attend a site visit at Piney Woods
13 Construction -- or, excuse me -- at the location of Piney
14 Woods Elementary School in June of 2020?

15 A. I did not -- the one time I went, I remember --
16 the only time I ever went on there -- I went twice. I went
17 once for the ribbon cutting well after my recusal period was
18 over. And the first time I went, it was cold and there were
19 jackets, everybody had coats on and there was a roof on the
20 building and there was, you know, we discussed, you know --
21 I walked around with Hughes and his superintendent, but it
22 wasn't any time when it -- I mean, it was cold. And it
23 wasn't June because -- and, really, that picture shows you
24 there wasn't anything to look at, so --

25 Q. And that's what I was going to ask you. The

1 picture that we saw earlier that was part of Mr. Hughes'
2 presentation in June of 2020, when you went out whenever it
3 was that you went out to a group meeting that you were
4 invited to attend as a Board member --

5 A. Well, the whole Board -- I'm sorry.

6 Q. No, that's all right. Did the building -- the
7 one time you went to Piney Woods Elementary as a member of
8 the Board, it was based on an invitation to the entire
9 Board; is that correct?

10 A. That's correct.

11 Q. Okay. Was the building in the condition that
12 the photographs showed from June 2020 when you went out
13 there?

14 A. Not in my recollection, no.

15 Q. What did the appearance of the building
16 represent to you when you were out there in your coats, your
17 heavy coats? And I'm referring to the photograph that's
18 attached to Ms. Benson's complaint that was filed with the
19 Board.

20 A. Well, I remember there being -- the roofer was
21 working on the project, the concrete slabs had been poured,
22 the mason was basically through with the concrete unit
23 masonry structure. There were people working in -- the
24 painter had put the prime coat of painting on and the
25 flooring, some of what they -- they had Texas tiles is what

1 they were calling it, they were putting that in. That was
2 well beyond that picture that you showed. I don't think
3 that, you know -- I don't remember anything like that.

4 **Q. Have you gone back to the Board, the District's**
5 **records and found that original photograph and determined**
6 **what date you engaged in a site visit with other Board**
7 **members to Piney Woods Elementary?**

8 A. I think I -- that's been a long time, but I
9 think I did. I mean, I went back and looked at the picture
10 and I know -- I remember that it was cold and coats and all
11 that. I remembered all that. And it was freezing cold,
12 so --

13 **Q. Could I refresh your recollection that the**
14 **District posted a photograph on January 12th of 2021**
15 **documenting the site visit by the members of the Board of**
16 **Trustees to Piney Woods Elementary School? Does that sound**
17 **about right?**

18 A. Yeah. It wasn't in the summer. I mean, I know
19 that.

20 **Q. Okay. So the allegation that you attended a**
21 **site visit in June of 2020 is just straight out false?**

22 A. From my recollection it is. I mean, I don't
23 remember going -- I only went once, I know that. And I went
24 back for the ribbon cutting and that was well -- I mean,
25 that was way later on.

1 Q. The ribbon cutting was after the construction
2 was finished, correct?

3 A. Yeah. Starting the following year.

4 Q. And that was well after your period of service
5 as a subcontractor to Contract Construction on the SLED
6 forensics laboratory, correct?

7 A. Yes. We would have been -- we would have
8 been -- the recusal period under the terms of the Ethics
9 Commission has would have been from, in my way of looking at
10 it, from March the 13th, 2020 until April the 18th, 2021.

11 Q. Okay. So the Board's visit in January of 2021
12 was during the period of time that, if the Ethics Commission
13 is right, you would have been recused?

14 A. Right.

15 Q. Okay. Was that an official meeting of the
16 Board?

17 A. No. None of this was and, you know, we
18 didn't -- we didn't make any -- we didn't have an agenda or
19 anything like that. We didn't make any decisions. We just
20 walked around the site and everybody, you know -- I went
21 because I thought that, you know, that the other Board
22 members might, you know, might want to discuss, you know,
23 things like that. I don't know. I mean, that's what I
24 thought.

25 Q. Okay. Let me look at my notes.

1 A. Yes, ma'am.

2 Q. When you were serving on the Board did the Board
3 enact some new policies that seemed to be necessary in light
4 of what occurred in September of 2020?

5 MS. LASTER: Objection as to relevance.

6 MR. CHAIRMAN: Sustained.

7 BY MS. BALLARD:

8 Q. Did the Board, while you were a member of it,
9 enact new Board policies in 2022?

10 MS. LASTER: Objection as to relevance.

11 MR. CHAIRMAN: Sustained.

12 BY MS. BALLARD:

13 Q. Did you as a Board member attempt to ensure that
14 nobody else fell under the trap that you fell into when
15 someone accused you of having a conflict of interest when,
16 in fact, you did not?

17 MS. LASTER: Objection as to relevance.

18 MR. CHAIRMAN: Sustained.

19 BY MS. BALLARD:

20 Q. Mr. Loveless, did you have a conflict of
21 interest by virtue of the contract that Loveless Commercial
22 Contracting had with Contract Construction for construction
23 of the SLED forensic laboratory which is in a totally
24 different part of town?

25 MS. LASTER: Objection. It calls for a legal

1 conclusion.

2 MS. BALLARD: I want to know his opinion. He's
3 entitled to give his opinion.

4 MR. CHAIRMAN: Overruled. You can answer.

5 BY MS. BALLARD:

6 A. State that again? I was --

7 Q. Sure.

8 A. -- daydreaming and I thought it was going to be
9 overruled. I'm sorry.

10 Q. Did you -- I can't restate it accurately.

11 Apparently she can't play it back either.

12 A. Yeah.

13 Q. So let me just restate it and anticipate the
14 objection, okay?

15 A. Yes.

16 Q. Did you at any time violate any prohibition of a
17 State Ethics Act while you were serving on the Board? Let's
18 just make it simple like that.

19 A. I did not.

20 Q. Did you knowingly violate any provision of the
21 Ethics Act when you were serving on the Board?

22 A. I certainly did not.

23 Q. Okay. Did you ever do anything to gain a
24 financial advantage for yourself, for your company, for your
25 wife, for anybody during your service on the Board?

1 A. No.

2 Q. Was the SLED contract for Contract Construction
3 a small job?

4 A. It was a relatively small job for us in a normal
5 course of business.

6 Q. Have you had occasion since the Board meetings
7 of September 14th, 2020 to go back and determine what the
8 profit margin was for Loveless Commercial Contracting on the
9 SLED project?

10 A. Yes.

11 Q. And what was it?

12 A. It occurred over a two-year period of time and
13 it was -- in percentages it was somewhere near, you know, 3
14 percent of what it would have taken to break even.

15 Q. Is that consistent with the testimony that
16 was -- not testimony. The discussions that were had at the
17 September 14th, 2020 Board meeting?

18 A. No.

19 Q. What was stated at the Board meeting as to what
20 your anticipated margin of profit would be on the SLED job?

21 A. I didn't state it so it would be hearsay, so --

22 Q. No, I know. But what did you hear stated by
23 other Board members or witnesses at the September 14th, 2020
24 meeting as to what they speculated your profit level might
25 be as a result of the contract that you had with Contract

1 **Construction for the SLED forensic laboratory?**

2 A. The other Board members didn't speculate. They
3 asked the question because it was a setup, but --

4 **Q. Who answered (sic) the question?**

5 A. Greg Hughes --

6 **Q. And --**

7 A. -- of Contract Construction.

8 **Q. All right. And not for the truth of the matter**
9 **asserted, but what did he speculate your profit margin would**
10 **be?**

11 A. 10 percent of the contract amount.

12 **Q. And that is inaccurate, is it not?**

13 A. That's right.

14 **Q. I may have asked you this. At any time during**
15 **your service on the Board, is Contract Construction a**
16 **business with which you were associated for any purpose?**

17 A. No.

18 MS. LASTER: Objection. It calls for a legal
19 conclusion.

20 MR. CHAIRMAN: Yes. That was asked and answered
21 and the objection is sustained.

22 MS. BALLARD: I couldn't remember if I had asked
23 it or not. Okay.

24 BY MS. BALLARD:

25 **Q. We are two minutes over the hard stop, so I'm**

1 not going to end now but I'll stop now. That means I can't
2 discuss your testimony with you overnight and when we come
3 back in the morning you're back on direct exam.

4 MS. BALLARD: Thank you, Mr. Chairman.

5 MR. CHAIRMAN: Let me ask you this question,
6 Ms. Ballard. Are you done questioning this witness?

7 MS. BALLARD: I'm not sure.

8 MR. CHAIRMAN: You're not sure?

9 MS. BALLARD: I'm not sure.

10 MR. CHAIRMAN: Okay.

11 MS. BALLARD: That's the beauty of a recess.

12 MR. CHAIRMAN: Okay. All right. And the only
13 reason I was asking, if you were done and the cross is
14 short, we may be able to proceed and get it done today.
15 That's why I was asking the question. Do you need some time
16 to ponder it or do you want the hard stop to stay at four
17 o'clock?

18 MS. BALLARD: I thought it was a hard stop.

19 MR. CHAIRMAN: It was a hard stop, but it's a
20 flexible hard stop. And the only reason I say that is, in
21 all seriousness, if you're done with him and the cross is
22 not long, we could probably go a little longer. But if you
23 think you're going to go some more and we've got a long
24 cross, then we'll have to stop.

25 MS. BALLARD: I think I have disproven the

1 allegations against Mr. Loveless more than sufficiently.
2 I'm perfectly satisfied to stop now and depending on how
3 long Ms. Laster's cross-examination is, we could finish
4 today. I think we've more than proven our case, although we
5 don't have the burden of proof.

6 MR. CHAIRMAN: Thank you. Ms. Laster, the
7 question to you is, how -- and I don't want to, you know,
8 enforce the time too strictly, but how much time do you
9 think you might have on cross?

10 MS. LASTER: Not very much. I would like a
11 small comfort break, like two minutes, maybe.

12 MR. CHAIRMAN: How about four minutes?

13 MS. LASTER: Four minutes? Perfect.

14 MR. CHAIRMAN: All right. We stand in recess.

15 MS. LASTER: Okay.

16 MS. BALLARD: And you can't talk to me.

17 (Recess)

18 MR. CHAIRMAN: All right. We're back on the
19 record. Ms. Laster, cross-examination?

20 MS. LASTER: I actually am not -- I don't have
21 any questions for Mr. Loveless.

22 MR. CHAIRMAN: Good. Commissioner Holloway, do
23 you have any questions for Mr. Loveless?

24 COMMISSIONER HOLLOWAY: No questions from me.
25 Thank you.

1 MR. CHAIRMAN: Commissioner Frick?

2 COMMISSIONER FRICK: Maybe a few. Mr. Loveless,
3 I know you've testified today that your site visit at Piney
4 Woods was in January, I believe, or that's how I understood
5 your testimony. On that site visit did you speak with
6 Mr. Hughes?

7 MR. LOVELESS: I did speak with Mr. Hughes just
8 in -- and he asked me. He had bid -- he was in line to get
9 some, or Contract Construction, to get a large job at the
10 University of South Carolina and he was talking about a
11 Contract Construction package and we, you know -- I didn't
12 know anything about it and he was asking me about that. But
13 other -- there was no -- it was just, you know, in
14 generality in passing. It wasn't any, you know, anything
15 of -- that I remember, of any kind of nature.

16 I did talk to him -- oh, I know what we talked
17 about. We talked about opportunities for students to do
18 internships and so forth in construction and I talked to him
19 and I told him my company, which is a lot smaller than
20 theirs, was offering some in the midlands area and, you
21 know, for our students, and I asked him could he get
22 involved in that. And I did talk to him about that and I
23 told him that the site was generally -- he was doing a good
24 job and, you know, it looked like to me, you know, on the
25 things that -- and there were, I think, three things that I

1 testified to earlier about the masonry that I had given a
2 point or two as a young superintendent, you know.

3 COMMISSIONER FRICK: Did you pose any questions
4 to him about the Piney Woods, the construction of Piney
5 Woods school?

6 MR. LOVELESS: Not that I remember.

7 COMMISSIONER FRICK: Okay. Did you engage in
8 any discussion with other Board members about the
9 construction of the Piney Woods school?

10 MS. BALLARD: You mean at the site visit?

11 COMMISSIONER FRICK: That's right. At the site
12 visit.

13 MR. LOVELESS: I might have. But, I mean, it
14 wasn't anything -- well, first of all, I'll be just totally
15 honest with you, gut honest with you, there's a couple of
16 them that I don't like and I didn't say anything to them.
17 So, I mean, you know -- I mean, I'm sorry, but, you know --

18 MS. BALLARD: They can tell that, Ken.

19 MR. LOVELESS: Well, I'm sorry. They can tell
20 any way, you know, if they can. But that's the truth. And
21 most of the people there were not -- weren't people of, you
22 know -- that I thought a whole lot of, so --

23 COMMISSIONER FRICK: How about the ones that you
24 did like?

25 MR. LOVELESS: I don't remember telling anybody

1 anything, I mean, you know, of Board members. You know, I
2 mostly -- I walked around with Ryan Drafts who is their
3 young superintendent and we -- he's a young man and a very
4 good guy and I talked -- walked around with him. I had -- I
5 think I know some of his family from, you know, from a long
6 time ago and I was just talking to him about
7 construction-related items.

8 I'll tell you one thing that impressed me was
9 that they had handrails up, glass, you know, these livers
10 bronze handrails. And they have glass in them and on the
11 top is a stainless steel rail and they had put Armour Flex,
12 which is an insulation, over the top of that to protect the
13 railings to keep, you know, people from running into them
14 and I complimented him on that. I remember that. And it
15 was a great idea and I had never thought of that before,
16 so -- and I told him that.

17 COMMISSIONER FRICK: Did you discuss any other
18 potential work with Contract Construction with Mr. Hughes?

19 MR. LOVELESS: I just -- he talked to me about
20 that project with the -- about USC. It's called West
21 Campus. But I didn't know anything about it. I mean, I
22 didn't -- that was not -- and I talked -- he was interested
23 in -- and I think he said it in that film. He was
24 interested in us doing other work with him because we did
25 good work. I mean, he said that. But, of course, that's

1 hearsay, but --

2 COMMISSIONER FRICK: Yeah. I'm just curious if
3 you expressed any interest to him in doing any work on that
4 particular project.

5 MR. LOVELESS: On that project?

6 COMMISSIONER FRICK: On the project that, the
7 USC project that you just mentioned.

8 MR. LOVELESS: I said to him, I told him, I
9 said, well, we, you know -- in, you know, just a general
10 course of business, if you want to -- want to invite us, you
11 know, I mean, you know, invite us, you know. I mean, that's
12 all I said.

13 COMMISSIONER FRICK: Okay. No further
14 questions. Thank you, sir.

15 MR. LOVELESS: Okay.

16 MR. CHAIRMAN: Mr. Loveless, what is the
17 corporate structure of Loveless Commercial Contracting?

18 MR. LOVELESS: We are incorporated. We're not
19 an LLC. That was, you know -- I mean, Ms. Ballard doesn't
20 remember --

21 MS. BALLARD: That was an error on my part.

22 MR. CHAIRMAN: Okay. And what's your title?

23 MR. LOVELESS: I'm the president.

24 MR. CHAIRMAN: You're the president. Is there
25 ever a situation where your company is making a bid on a

1 project and you know about the bid prior to in advance?

2 MR. LOVELESS: Well, I mean, what they're not
3 telling -- what he didn't say was that a lot of times -- I
4 mean, I've been in this stuff for 36 years or 37. I don't
5 know what my shirt says. But, anyway, so, you know, a lot
6 of these things that I will have a contact and people will
7 call me, okay? And I will just pass it along to one of the
8 guys that's, you know, that's got a hole in his schedule to
9 be able to estimate, you know.

10 MR. CHAIRMAN: All right. So let me ask you
11 this way. So in this particular incident with the --

12 MS. BALLARD: SLED?

13 MR. CHAIRMAN: No, not -- on the SLED project,
14 right. On the SLED project you didn't know about the bid at
15 all until you signed the contract?

16 MR. LOVELESS: I didn't know about what, you
17 know, I --

18 MR. CHAIRMAN: You didn't know about the bid at
19 all until you signed the contract?

20 MR. LOVELESS: No, sir. I'm going to tell you
21 this. I vaguely remember there's something about a notice,
22 a Letter of Intent to Award, and I was told it wasn't valid
23 and that's all I remember.

24 MR. CHAIRMAN: Is that the case with every bid?
25 You don't know it until you either see a Letter of Intent or

1 you sign the contract?

2 MR. LOVELESS: Well, to be totally honest with
3 you, I mean, in this stuff -- and I think I alluded to you
4 earlier, in this business people will tell you anything,
5 okay? And so you don't worry about, you know, getting down
6 to closing a deal until that contract hits the door.

7 MR. CHAIRMAN: No. But my question is, would
8 you know about a bid. If Mr. McDaniel went out to do a bid,
9 does he never tell you until it's time to sign the contract
10 or do you know in advance sometimes?

11 MR. LOVELESS: He does a lot of work for QT, for
12 example, which is these truck stops. He does, you know --
13 he pours all the concrete for that. He bids those things
14 all over the place. I don't have any idea --

15 MR. CHAIRMAN: So the answer to my question is,
16 sometimes you know and sometimes you don't?

17 MR. LOVELESS: Well, I mean, if I happen to bump
18 into it. I mean, I'm not going to lie to you. I mean, if I
19 happen to run into it I'd know about it. But, I mean, it's
20 not like I go back there and say, okay, what's this set of
21 drawings and what's that, you know. I mean, these guys bid
22 hundreds of these things and, you know -- so it's not like,
23 you know -- it's not like that they're -- that I'm back
24 there telling them, you know -- if I have somebody come to
25 me, an architect or somebody says, you know, I'd like for

1 you to look at this, I'll go back there and throw it to
2 them.

3 MR. CHAIRMAN: Okay. Well, tell me your duties
4 as president. What is your job description?

5 MR. LOVELESS: Well, my job description is that
6 I review all of the accounts receivable, accounts payable.
7 I make sure that the relationship with the bank is there. I
8 mean, I am the one that carries the line of credit for the
9 whole corporation. It's on my name, not anybody else's. I
10 have all the financial duties, I have all the bookkeeping
11 duties, you know, and I hire somebody to do that.

12 I have all of the, you know, the things that --
13 I'll put it to you this way if I may, sir. Maybe this is
14 wrong, but here is them and this is me, okay? I mean, you
15 know, something to make it whole, you know. It's
16 whatever -- whatever they're not doing, I do. Okay. And
17 having done that for all these years, I do have a regimen of
18 things I do, but that doesn't mean that something new, a new
19 hat is not added sometimes.

20 MR. CHAIRMAN: Okay.

21 MR. LOVELESS: So I hope that -- that's the best
22 way I can explain it to you.

23 MR. CHAIRMAN: And you are compensated by your
24 company?

25 MR. LOVELESS: Oh, yes.

1 MR. CHAIRMAN: Okay.

2 MR. LOVELESS: I have -- I collect a salary
3 which is not near the salary that they get.

4 MR. CHAIRMAN: Well, we don't need to know what
5 the amount is. You are compensated.

6 MR. LOVELESS: Well, I'm just saying that I am
7 compensated.

8 MR. CHAIRMAN: Thank you. Can you testify that
9 you did not take a salary as a Board member, correct?

10 MR. LOVELESS: No, sir. I did not.

11 MR. CHAIRMAN: Okay. Did your wife take a
12 salary when she was on the Board?

13 MR. LOVELESS: She did for the first while and
14 then she quit after about a -- with about a year and a half
15 left, she didn't take a salary.

16 MR. CHAIRMAN: Okay. Give me one second, I may
17 be done. Hold on.

18 MR. LOVELESS: Okay.

19 MR. CHAIRMAN: I think that's all I have.

20 MS. BALLARD: Mr. Chairman, if I could, I have
21 no redirect, may I suggest that --

22 MR. CHAIRMAN: Hold on one second. Commissioner
23 Holloway, do you have any questions?

24 COMMISSIONER HOLLOWAY: No, sir. Thank you.

25 MR. CHAIRMAN: Okay. Go ahead.

1 MS. BALLARD: If I may, Mr. Chairman, in lieu of
2 closing statements I indicated to you this morning that I
3 would like to do proposed findings of fact and conclusions
4 of law. This Board has 60 days to issue its ruling. I'll
5 have a proposed order to you within two weeks if you'll
6 permit me to do that.

7 COMMISSIONER HOLLOWAY: I can't hear you,
8 Ms. Ballard.

9 MS. BALLARD: Oh, Jesus Christ. Sorry. Yes.
10 In lieu of closing statements, what I suggested when we were
11 on the break is that I would do proposed findings of fact
12 and conclusions of law, which I typically do in these
13 situations, which I think saves you guys a lot of time, and
14 I'll have it to you in two weeks. You all have 60 days
15 under the statute to issue a ruling based on the evidence
16 that you've heard today.

17 MR. CHAIRMAN: Ms. Laster, is that good with
18 you?

19 MS. LASTER: Yes. I'm amenable to that.

20 MR. CHAIRMAN: You'll have a proposed order
21 within two weeks also?

22 MS. LASTER: Two weeks from today's date being
23 March 2nd.

24 MR. CHAIRMAN: By March 2nd?

25 MS. BALLARD: Fine with me.

1 MR. CHAIRMAN: You'll have it?

2 MS. LASTER: Yes, sir. That works for me.

3 MR. CHAIRMAN: You're excused, Mr. Loveless.

4 Anything further?

5 MS. LASTER: Nothing from me.

6 MR. CHAIRMAN: Hold on one second.

7 MS. BALLARD: Nothing from the respondent.

8 MR. CHAIRMAN: Hold on one second. Hold on one
9 second. Thank you for appearing today. We will take this
10 matter under advisement and we'll consider all testimony and
11 evidence presented and we'll use a -- and we'll issue a
12 written decision within the next few weeks, 60 --

13 (End of Recording)

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1 CERTIFICATE OF REPORTER

2
3 I, Laura S. Kelly, Certified Court Reporter and
4 Notary Public in and for the State of South Carolina at
5 Large, do hereby certify:

6
7 That the foregoing recording of hearing as typed
8 is a true, accurate and complete record of said recording to
9 the best of my ability.

10
11 I further certify that I am neither related to nor
12 counsel for any party to the cause pending or interested in
13 the events thereof.

14
15 I further certify that the original of said
16 transcript shall be hereafter sealed and delivered to DESA
17 BALLARD, ESQUIRE, Ballard & Watson, Attorneys at Law, 226
18 State Street, West Columbia, South Carolina, 29169.

19
20 Witness my hand, I have hereunto affixed my
21 official seal this 28th day of April 2023, at Columbia,
22 Richland County, South Carolina.

23
24 *Laura S. Kelly*

25

Laura S. Kelly, CCR, CVR, CCRI
State of South Carolina at Large
My Commission expires
August 4, 2026

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HEARING TRANSCRIPTION

March 21, 2024

Kenneth Loveless & Kim Benson

Complaint C2021-016

REPORTER: Laura Kelly

ROA 0685

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF RICHLAND) BEFORE THE STATE ETHICS COMMISSION

3 IN THE MATTER OF:)
4 Complaint C2021-016)
5 Kenneth Loveless,)
6 Respondent,)
7 Kim Benson,)
8 Complainant.)
9 _____)

10 Ethics Appellate Hearing
11 Thursday, March 21, 2024

12
13 Commissioners in Attendance:

14 Neal D. Truslow (Acting Chairman)

15 Matthew N. Tyler

16 Mary Hunter Tomlinson

17 Brandolyn Thomas Pinkston

18 (Appearing via Zoom)

19 Bryant S. Caldwell

20 (Appearing via Zoom)

21 Representing the Respondent:
22 Desa Ballard, Esquire

23 Representing the Commission:
24 Courtney M. Laster, Esquire

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EXHIBITS

(None were proffered)

1 PROCEEDINGS

2 MR. CHAIRMAN: I am Chairman Scott Frick. It is
3 9:34 on March 21st, 2024. We have a quorum present. The
4 March State Ethics Commission meeting is called to order.
5 Director Dayson, has the media been notified of today's
6 meeting?

7 DIRECTOR DAYSON: Yes, sir. Excuse my voice,
8 but, yes, Commissioner Frick, the media has been notified of
9 today's meeting.

10 MR. CHAIRMAN: Thank you, Director. How will we
11 be proceeding today? What's the first matter we'll take up?

12 DIRECTOR DAYSON: We can go in the order on the
13 agenda.

14 MR. CHAIRMAN: Okay. The first matter on
15 today's agenda, Commissioners, are the minutes from the
16 January 18th, 2024 meeting. Is there any discussion on the
17 minutes from the January meeting?

18 (No response)

19 MR. CHAIRMAN: Hearing none, is there a motion
20 to accept the minutes from the January 18th, 2024 meeting?

21 COMMISSIONER STARKES: I so move.

22 COMMISSIONER TYLER: Second.

23 MR. CHAIRMAN: There is a motion by Commissioner
24 Starkes and seconded by Commissioner Tyler to accept the
25 January 18th, 2024 minutes. All in favor raise your hand.

1 (Complies)

2 MR. CHAIRMAN: And that motion carries
3 unanimously. The next matter on the agenda, it appears, is
4 office operations. Director Dayson, do we have anything on
5 office operations today?

6 DIRECTOR DAYSON: No. You should all have the
7 materials regarding the budget, the compliance report and
8 the pending-to-pay orders. If there are no questions for
9 that we can continue on through the agenda.

10 MR. CHAIRMAN: Any questions or discussions?

11 (No response)

12 MR. CHAIRMAN: Hearing none, I believe we can
13 now move on to the first item that we'll hear today. I
14 believe that is the Kim Benson versus Ken Loveless matter.
15 That motion, there are three Commissioners here, if you sat
16 on the original panel I believe we are recused. That would
17 be Commissioners Holloway, Starkes and I. Is that correct,
18 Director Dayson?

19 DIRECTOR DAYSON: Yes, that's correct.

20 MR. CHAIRMAN: Okay.

21 COMMISSIONER HOLLOWAY: And how will you notify
22 me to come back?

23 DIRECTOR DAYSON: You don't have to leave the
24 meeting. You just --

25 COMMISSIONER: Oh.

1 DIRECTOR DAYSON: Yeah. You're just not one of
2 the panelists. You can sit in the back of the hearing room
3 if you would like.

4 MS. BALLARD: Could I ask the record reflect who
5 is hearing this motion? It's unclear to me because we have
6 some members of the Commission on Zoom and we have some
7 present in the room here.

8 MR. CHAIRMAN: Right. So the recused --

9 DIRECTOR DAYSON: Yes, if --

10 MR. CHAIRMAN: Go ahead, Director.

11 DIRECTOR DAYSON: I'm sorry. The recused
12 Commissioners are Commissioner Holloway, Commissioner
13 Starkes and Commissioner Frick. The panelists will be
14 Commissioner Caldwell, Commissioner Pinkston, Commissioner
15 Tyler, Commissioner Truslow and Commissioner Tomlinson.

16 MS. BALLARD: Are all of those Commissioners
17 present today?

18 DIRECTOR DRAYSON: Yes.

19 MS. BALLARD: And the reason I ask is, we have
20 four here and three there and I don't count well but that
21 sounded like more than nine.

22 DIRECTOR DRAYSON: Well, we only have eight
23 Commissioners.

24 MS. BALLARD: Okay.

25 DIRECTOR DRAYSON: And so that might be the math

1 you use.

2 MS. BALLARD: Okay.

3 MR. CHAIRMAN: I would think that one of the
4 Commissioners would need to fill in and --

5 DIRECTOR DRAYSON: And that would be
6 Commissioner Truslow. Commissioner Truslow will be Chairing
7 the appellate panel.

8 MR. CHAIRMAN: Okay.

9 MS. BALLARD: But he is not here.

10 COMMISSIONER TRUSLOW: I'm right here.

11 MS. BALLARD: Oh.

12 DIRECTOR DRAYSON: He is sitting right there.

13 MS. BALLARD: You got old, Neal.

14 COMMISSIONER TRUSLOW: Four kids will do that to
15 you.

16 MS. BALLARD: I'm sorry.

17 DIRECTOR DRAYSON: Thank you. And Commissioners
18 Starkes and Frick can have a seat in the back of the hearing
19 room if they would like to.

20 COMMISSIONER PINKSTON: This is Commissioner
21 Pinkston. Who was speaking?

22 MS. BALLARD: This is Desa Ballard. I'm one of
23 the counsel for Ken Loveless. I was just asking some
24 preliminary questions because it's not clear from the record
25 who's hearing this motion and who was not.

1 COMMISSIONER PINKSTON: Thank you.

2 COMMISSIONER TRUSLOW: Would it help clarify
3 things if I moved to the Chairman's spot?

4 MS. BALLARD: I don't think you need to do that,
5 Mr. Commissioner. We've had two hearings in this matter
6 and -- we've had two hearings in this matter and had trouble
7 both times getting accurate transcripts of who was involved
8 and what occurred, so I'm trying to avoid that in this
9 situation so we know who is hearing this motion and who is
10 not. I'm trying to make it less complicated than it was
11 before, but I don't think it really matters where you sit.
12 Maybe I can see you better if you sit there.

13 COMMISSIONER TRUSLOW: All right. Director
14 Dayson, we have -- we've relocated seats just for, I guess
15 to make it easier for everybody to see who's in what
16 position. So I understand that this panel will consist of
17 Commissioner Caldwell, Commissioner Pinkston, who are both
18 on the Zoom, and then present in the room with me are
19 Commissioners Tyler and Tomlinson. I'm Neal Truslow. I'll
20 be serving, I guess, as the Chair of today's hearing.

21 Ms. Laster, are there any matters that need to
22 be taken up preliminarily?

23 MS. LASTER: Not to my knowledge, Commissioner
24 Truslow.

25 COMMISSIONER TRUSLOW: Well, I do have one that

1 I think needs to at least be addressed. It's not
2 necessarily a conflict matter but I do think it needs to be
3 clear that in case anyone wants to ask for my recusal, I
4 think that -- I think that it should be clear, my firm has
5 worked with Ms. Ballard's firm on many, many occasions. And
6 I think Ms. Ballard and my father clerked in some capacity
7 together. My family firm -- my firm has done and my private
8 practice has done work for the Loveless family and, you
9 know, being born and raised in this area, I certainly know
10 who those folks are.

11 I think it was asked if, you know, at some point
12 does that relationship rise to a level of a conflict. I
13 said that I believed that I could be fair and impartial so I
14 didn't -- I didn't believe it was something, a relationship
15 that would cause me not to -- not to hear out one side or
16 another or have any bias. But if anyone felt any concern
17 about that, I thought that those prior relationships should
18 certainly be disclosed and if anybody has an issue with
19 that, then I think this is probably the appropriate time to
20 address it.

21 So I don't know if, Ms. Laster, if you've got --
22 if the Commission has a concern about that or if
23 Mr. Loveless or his counsel does.

24 MS. LASTER: The Commission staff has no
25 objection to you serving as Chair, Commissioner Truslow.

1 COMMISSIONER TRUSLOW: Okay.

2 MS. BALLARD: Desa Ballard on behalf of
3 Mr. Loveless. As we said the last time this question was
4 raised, we don't believe you can be fair, we know you can be
5 fair. So we have absolutely no objection whatsoever to you
6 serving.

7 COMMISSIONER TRUSLOW: Okay. Very good. Well,
8 I think, unless anyone else has any other conflict or other
9 preliminary matter to raise, Ms. Laster, I think we can go
10 ahead and begin this matter.

11 MS. LASTER: Sure. This is C2021-016, Kim
12 Benson versus Ken Loveless and this is Respondent's motion.

13 COMMISSIONER TRUSLOW: Ms. Ballard?

14 MS. BALLARD: Thank you, Mr. Chairman and
15 members of the Commission. We filed a request for subpoenas
16 with the Commission on February 13th, 2024. Just so you
17 know where this matter is, there's been a subpanel hearing
18 and a subpanel report. We filed a request to review with
19 the full Commission and after we filed our request with the
20 full Commission for a review, we became aware of some
21 disturbing events that we think bear on the eventual outcome
22 of this matter. As you know, this matter, if Mr. Loveless
23 is dissatisfied with the outcome of this matter, we're going
24 to end up in the court system and the question of whether
25 we've preserved certain issues will be raised.

1 In August of 2023, the State Office of Inspector
2 General filed a report which is attached to our motion, it's
3 dated August 2023, and he was addressing a -- I've attached
4 it to your motion so you have it -- he was addressing a
5 question that had been forwarded to him by Governor McMaster
6 asking about whether Lexington-Richland District Five had
7 properly complied with the procurement code with respect to
8 certain transactions that it had taken in the past.

9 Mr. Loveless has not been on the Board since November of
10 2022 and this was in a report that was issued in October of
11 2023.

12 When we read the report we were shocked,
13 frankly, to see that the OIG reported that his investigation
14 included -- and I quote, "interviews of current and former
15 District leadership, blah, blah, blah, the State Ethics
16 Commission and others". I thought maybe that was an error
17 and then I looked full through the report, and on page 17 of
18 the report the OIG again thanks the State Ethics Commission
19 for their assistance in preparing the report that the
20 Governor requested about the procurement code violations at
21 District Five.

22 We communicated with the Executive Director and
23 we sent a FOIA request and said, we'd like to have copies of
24 your communications with the OIG, and we got, I think, two
25 letters basically saying, we're sending you an audio of the

1 hearing that was held last year before the subpanel. But
2 when we did a FOIA request for the documents that the OIG
3 had, we were told that the price would be about \$4,000 for
4 us to obtain copies.

5 So there are copies of something in the OIG's
6 possession and we don't know if they came from the
7 Commission, we don't know if the OIG provided information to
8 the Commission -- and when I say the Commission, I mean the
9 State Ethics Commission. But what bothers us is, several of
10 the motions to quash that were filed in this matter early on
11 were filed by Attorneys Billy McGee and Tucker Player.
12 They're of record. You have them so I didn't make them
13 exhibits. They tell wild and fantastical stories about
14 Mr. Loveless, none of which are true, and they reference
15 documents that are not attached so you can't question, you
16 can't check on the authenticity of these wild and crazy
17 allegations that are made. But if the State Inspector
18 General has communicated with the State Ethics Commission,
19 we think we have a right to know who those communications
20 were with and we have a right to make that as part of the
21 record before this matter goes up to the full Commission for
22 a hearing.

23 This matter has had, unfortunately -- and I say
24 this with full respect -- there have been some procedural
25 irregularities throughout these proceedings. We've

1 attempted to preserve our objections to those as this matter
2 has proceeded. There was a motion to dismiss that was heard
3 early on and that was preserved and we've appealed that as
4 well to the full Commission. But if, in fact, between the
5 time of the initial panel report, the Inspector General has
6 been whispering in somebody's ear over here, or vice versa,
7 about Ken Loveless, we think we have a right to know that.
8 We think we have a right to know what documents he's been
9 given.

10 The Executive Director tells us that the only
11 thing he's been given is the audio of the hearing we had
12 before the subpanel, but she said that only after we
13 corrected her and showed her that the statute said she
14 couldn't send the exhibits over. And she said, oh, well, I
15 didn't send the exhibits. I see, you're right, I couldn't
16 have done that. And she says -- again, these are just email
17 communications -- she says, nobody from the OIG has talked
18 with anybody at the SEC. I don't know how she would know
19 that but that's what she tells us.

20 So we've got the OIG on the one hand telling us
21 that he's been in communication with the State Ethics
22 Commission about Mr. Loveless and it's unclear who's passing
23 information to who, who's received information from who, or
24 even what that information is. But because of the
25 procedural irregularities that have surrounded these

1 proceedings, we wanted to do a few depositions. The ones we
2 suggested would be the OIG and the Executive Director which
3 probably will tell us what we need to know about who has
4 provided information to whom and from whom that has become a
5 part of this record.

6 The interesting thing about it is, the report of
7 the OIG has nothing to do with Mr. Loveless. It's
8 recommendations as to what District Five should do with its
9 procurement code going forward. So why on earth would the
10 Office of the Inspector General snuggle up to the State
11 Ethics Commission and ask to share information or share
12 information with the State Ethics Commission? It's gotten
13 very, very hard since email has become our primary source of
14 communication to know what is part of the record and what is
15 not part of the record. Texting is even worse.

16 I grew up in an appellate world where it's very
17 important to know what is and is not in the record. So we
18 filed a motion to take depositions so we can ensure that
19 this record is complete before it goes up to the Appellate
20 Courts to be examined. Because it's already got some
21 procedural irregularities in it, we want to make sure that
22 we have all the procedural irregularities. We have not yet
23 moved to supplement the record. We have simply asked for
24 the subpoenas so that we can take the depositions and see if
25 there is any information that warrants supplementing the

1 record.

2 Ms. Laster has pointed out that we didn't do an
3 affidavit. Well, that's because we don't know what we're
4 missing and, of course, the regulation can't overrule the
5 statute. The statute does not require an affidavit so
6 that's merely a form over substance. When we do file a
7 motion to supplement the record, if we do file a motion to
8 supplement the record, it will be supported by an affidavit
9 and it will be supported by the materials that we intend to
10 supplement the record with. But I think due process for
11 Mr. Loveless, which has been sorely lacking through, not
12 just these, but other proceedings, requires that he be
13 allowed to know what did the State Inspector General and the
14 State Ethics Commission talk about when they consulted with
15 one another about Mr. Loveless, and why did they do that and
16 what does that have to do with the charges in this case.

17 I didn't put it in there. I read it with great
18 shock and attempted to obtain the documents from the OIG and
19 was unable to; oh, he's got two documents. The State Ethics
20 Commission Executive Director had two documents that were
21 the same, but when we requested them from the OIG there were
22 so many documents that it was \$4,385, I think, to get the
23 documents. So something doesn't add up. And, as I said
24 earlier, I don't do numbers very well, but even I can figure
25 out that something doesn't match up.

1 I think we have a duty to Mr. Loveless and to
2 this system to ensure that the record before this Committee,
3 this Commission, is full and complete and the only way I can
4 do that is to engage in discovery and try to figure out what
5 these conflicts are. We've got the Executive Director
6 telling us one thing and the OIG telling us the total
7 opposite. Yet, the OIG goes out of his way twice to thank
8 the State Ethics Commission for their assistance in his
9 investigation and report to the Governor that was issued in
10 August of 2023.

11 The rules and regulations, not the statutes but
12 the rules and regulations for the proceedings before this
13 Commission allow the Commission to admit additional
14 testimony prior to the final hearing in this matter. It
15 could be there's none to admit, but I don't know that until
16 I engage in a discovery. I wish I could just call up the
17 Inspector General and say, who were you talking to at the
18 State Ethics Commission? But I don't think that's a proper
19 procedure. I think there might have been some of that going
20 on. I think I need to have depositions under oath to find
21 out who was talking to who and what was said and what
22 documents were shared, and particularly whether some of
23 these incredibly defamatory motions that were filed at the
24 beginning of these proceedings were provided to the
25 Inspector General and, if so, why.

1 These motions that -- these were motions to
2 quash early on when we attempted to take some depositions
3 and the lawyers that were opposing the depositions, one of
4 them dug up every piece of dirt he could about Mr. Loveless.
5 In fact, he's got a section -- this is the motion to quash
6 Respondent's deposition subpoena of Michael Cates and Kim
7 Benson and it has a whole section in it where it actually
8 says: Other derogatory information regarding Loveless. Not
9 that you needed to know that, but for some reason they found
10 it appropriate to submit that information to you just so you
11 could decide he was a bad guy. Did that information get
12 shared with the Inspector General? We don't know. We'd
13 like to find out.

14 I'm trying to make a clean, pure record. I
15 don't have one right now. I'm asking for the opportunity to
16 take depositions to find out. Maybe he's mistaken. Maybe
17 he didn't communicate with the State Ethics Commission. But
18 he said twice in his report that he did and I think
19 Mr. Loveless has a right to know who, what, when, why and
20 how. And that's why I'm asking for a subpoena both for the
21 OIG and for the Executive Director so we can look into that
22 and see what is exactly in this record. Because we don't
23 know.

24 We've also tried to determine whether the
25 exhibits that we introduced before the subpanel have been

1 transmitted to the full panel as part of our appeal and I
2 don't think we've pinned that down yet. I think we're still
3 trying to pin that down. And as you may have heard at the
4 beginning, we've had trouble getting a transcript of the
5 proceedings before the subpanel. We ended up having to
6 produce the transcript ourselves, but then the Commission's
7 offices produced a transcript for us. But when we have to
8 send it out to a court reporter to have it transcribed, they
9 unfortunately don't know who's speaking when the Commission
10 members are speaking and it just says Commissioner. It
11 doesn't know who's asking the question, it doesn't know
12 who's saying what. That would have been done by a court
13 reporter had there been one at the time. And we didn't know
14 that there wasn't one. So we'll do it again. We don't have
15 a court reporter here today so we'll do the same thing with
16 this transcript after this hearing.

17 We simply want what the regulations permit,
18 which is the opportunity to see what Tom foolery has been
19 going on between the State Ethics Commission, if any, and
20 the Office of the Inspector General. And you can blame the
21 Office of the Inspector General for this, not me. He's the
22 one who put it in his report, I just read it, and was
23 alarmed, highly alarmed. And why he put it in there, I
24 don't know but I intend to ask him. Thank you very much.

25 COMMISSIONER TRUSLOW: Thank you, Ms. Ballard.

1 Ms. Laster, your response please?

2 MS. LASTER: Thank you Commissioners. Just as a
3 kind of background recap, the Respondent is a former School
4 Board member of Lexington-Richland School District Five and
5 we had a hearing in this matter on February 16th, 2023 and
6 at the conclusion of that, there were four counts pending
7 against Respondent and the Commission panel found Respondent
8 had violated the Ethics Act in three of those instances and
9 dismissed, I believe, the fourth count.

10 So in three instances they found that he had
11 participated improperly with regards to a business with
12 which he was associated. And all of this dealt with the
13 construction of an elementary school. Respondent timely
14 appealed and the hearing was ultimately scheduled for today,
15 but then now the Respondent seeks to admit additional
16 evidence. And there's also a motion to stay proceedings
17 which is kind of rendered moot given the fact that we're
18 here today with the motion.

19 A lot of Respondent's arguments, in my opinion,
20 appears to be premised on this mistaken belief that there's
21 been some communication between the OIG and the State Ethics
22 Commission. As Ms. Ballard said, the State Inspector
23 General offered this report some months after the hearing
24 was held and it appears to relate to procurement-related
25 issues. It doesn't discuss Mr. Loveless' conduct, it

1 doesn't discuss, so far as my memory goes, the meetings in
2 which his conduct occurred or anything like that and, you
3 know, Respondent is using this mistaken belief for the
4 premise that they should somehow be allowed to engage in
5 another round of discovery, potentially more hearings and
6 this is after we've already had the panel hearing and a
7 decision and order has been rendered.

8 As an initial matter I'd like to address,
9 there's some mention in the briefing that the Commission
10 violated section 8-13-320G2. That section provides that
11 after a finding of probable cause, the following documents
12 become public record; the complaint, the response by
13 Respondent and the Notice of Hearing. It appears that
14 Respondent believes that because an audio file was
15 transmitted via a public records request to someone who
16 worked at the Office of the Inspector General, that this
17 means that this statute was violated.

18 However, on down in that same subsection, it
19 does note that the Respondent can waive confidentiality,
20 which is precisely what Mr. Loveless did in his February
21 28th, 2022 response to the complaint that he submitted to
22 this Commission. This waiver of confidentiality means that
23 all the documents in Respondent's file are, in essence, a
24 public record and I'm unaware of any legal authority that
25 requires us to notify anyone when the Agency receives a

1 public records request, even during the pendency of a
2 complaint.

3 On to the merits of Respondent's request,
4 regulation 52-807 permits additional evidence to be added to
5 the record only when it is necessary for the completion of
6 the record in a case on review. And, here, there's been no
7 argument made that anything Respondent seeks to add would
8 complete the record that has already been established.
9 Rather, it appears to me that there are just general
10 arguments that because this might have to do with the
11 construction of this elementary school, that somehow that
12 means it can come into the record and it's staff's
13 interpretation that that simply isn't sufficient to meet the
14 language of 807.

15 Secondly, in order to submit additional
16 evidence, Respondent needs to show that the proposed
17 evidence is material, meaning that it would make a
18 difference to the outcome of the case. And then, two, that
19 there's a good reason for failing to introduce it. And to
20 the first point, Respondent hasn't pointed to any evidence
21 that would change the outcome. Nothing in the OIG report
22 mentions the Respondent. Everything covers a time period
23 well before the hearing. So as to the second point, there's
24 also no good reason for failing to interview anyone or to
25 depose anyone. All of the facts that existed that the OIG

1 apparently found and incorporated into his report existed at
2 the time of the hearing and during the discovery for this
3 matter.

4 Finally, staff believes that granting
5 Respondent's motion would likely set a precedent that would
6 allow all respondents essentially two bites at the apple.
7 We have two rounds of discovery, possibly more hearings when
8 they're dissatisfied of the outcome at the hearing panel,
9 and staff does not believe that this is contemplated by
10 statute or regulation. And so for these reasons, staff is
11 asking that you deny Respondent's motion and order that the
12 appeal be heard at the next full Commission meeting.

13 MS. BALLARD: May I briefly reply?

14 COMMISSIONER TRUSLOW: Thank you, Ms. Laster.
15 Ms. Ballard, we've got, I think through the procedural
16 letter that was sent out, there's an opportunity for you to
17 respond and for Ms. Laster to respond to anything you may
18 have to say should she choose so if you'd like a response.

19 MS. BALLARD: Very briefly.

20 COMMISSIONER TRUSLOW: Yes, ma'am.

21 MS. BALLARD: Ms. Laster referred to 52-807,
22 which are the regulations for the State Ethics Commission,
23 and I'm quoting from them because you don't want to
24 generalize what they say. It's very specific. It says:
25 When additional evidence is necessary for the completion of

1 the record in a case on review. This regulation is
2 specifically intended to address these specific
3 circumstances. We've had our initial hearing, intervening
4 circumstances occurred, the OIG's report was issued, we
5 don't know what it means, but it'll obviously mean something
6 relevant to these proceedings or the OIG would not have been
7 in touch with you.

8 I have to prepare a complete record in order to
9 have issues heard in an appellate setting and the only way I
10 can have a complete record is to attempt to get depositions
11 of the people who were involved. And we have verification
12 from the Executive Director that she communicated with the
13 OIG but nobody else did, but that's contradicted by what the
14 OIG's report says. This Commission, Mr. Loveless and the
15 appellate courts have a right to know who's talking behind
16 closed doors and we've raised, as I said, several procedural
17 irregularities. No legislation is the beacon of clarity.
18 These are no exceptions. Nothing that you do by committee
19 turns out to be done with the precision that you would like
20 it to be done.

21 But these regulations were enacted in 1997 and
22 specifically anticipate this specific scenario where
23 something happens after the first hearing, it is relevant
24 prior to the full Commission hearing the matter on review.
25 And there are several matters we have to be heard on review,

1 this relates to only one of them. This relates to the
2 substantive charges against Mr. Loveless. Although, when I
3 depose the OIG, who knows, I may find out more.

4 All I know is the OIG went out of his way to
5 thank the State Ethics Commission for providing him with
6 information, or maybe he provided them with information,
7 maybe he provided you with information. We don't know and
8 we have to make a showing. The only way we can do that is
9 to have the depositions. Thank you.

10 COMMISSIONER TRUSLOW: Thank you, Ms. Ballard.
11 Ms. Laster, any response?

12 MS. LASTER: Just to state the obvious. This
13 Commission doesn't have any control over what the State
14 Inspector General does. We're two distinct bodies. They
15 have one mission, we have another, you know. Why they say
16 what they say and do what they do is, this staff has no
17 control over that.

18 COMMISSIONER TRUSLOW: Thank you, Ms. Laster.
19 Is this a -- in this proceeding is it appropriate for panel
20 members, Commission members to ask questions of counsel?
21 I'd like at this time, deeming that that's appropriate, to
22 ask if any of the five Commissioners -- or four other
23 Commissioners hearing this case with me, Commissioners
24 Caldwell and Pinkston, Tyler and Tomlinson, if anyone has
25 any questions for Commission counsel, Ms. Laster, or for

1 Mr. Loveless' counsel, Ms. Ballard.

2 MS. BALLARD: I'll be happy to answer questions
3 if I can.

4 COMMISSIONER TRUSLOW: Yes, ma'am, I understand.
5 I guess I'll go -- well, it's easy to go alphabetically with
6 three T's. Commissioner Caldwell, do you have any questions
7 you'd like to ask Commission counsel or Mr. Loveless'
8 counsel, Ms. Ballard?

9 COMMISSIONER CALDWELL: Yes. I have one
10 question. Ms. Ballard, help me figure out, how does this
11 OIG report relate to the meetings where Loveless' conduct
12 occurred?

13 MS. BALLARD: You're talking about the three
14 charges -- the four charges, the three of which were found
15 by the subpanel to have been violated; is that correct?

16 COMMISSIONER CALDWELL: Yes, that's correct.

17 MS. BALLARD: I don't know. Because I don't
18 know what was discussed and who was discussed -- who it was
19 discussed with. I do know from conversations with the
20 Executive Director that after the subpanel's report came
21 out, she received information from third-parties saying, oh,
22 well, the subpanel got it wrong. Here's proof of this and
23 here's proof of that. And I objected to that information
24 being put in the record.

25 So how the OIG managed to get information to the

1 Commission or to staff of the Commission is not known to me
2 and I don't know what information there is. And it may be
3 that there is nothing that is relevant. We have fully
4 preserved all of our issues regarding the lack of legal
5 sufficiency of the charges against Mr. Loveless. That is
6 already preserved. I don't know that there's anything that
7 the Inspector General knows that's relevant to those issues,
8 but he obviously reached out to the State Ethics Commission
9 for some reason and we need to know why.

10 COMMISSIONER CALDWELL: Well, I guess my
11 question is more so, so his conduct occurred in these
12 meetings. Is there anything in the report as it stands that
13 would negate his conduct or, you know, absolve him of what
14 happened during these meetings?

15 MS. BALLARD: Not all of the charges that were
16 brought against Mr. Loveless had to do with conduct at
17 meetings, so I don't know. The charges against Mr. Loveless
18 which the subpanel has determined are supported by the
19 evidence include him having a business transaction with a
20 vendor who also had a business relationship with the School
21 District and that's not the subject of a meeting. And there
22 were two other charges that were not subject of a meeting.
23 In fact, the one charge that was the subject of a meeting,
24 there was a charge that Mr. Loveless attended a site view at
25 the construction site for Piney Woods Elementary School in

1 June of 2022, I believe, and the Commission subpanel did not
2 find that that occurred.

3 So I don't know what the Office of Inspector
4 General wanted to know or shared with the Commission.
5 That's what I'm trying to find out.

6 COMMISSIONER CALDWELL: No further questions at
7 this time.

8 MS. BALLARD: Thank you.

9 COMMISSIONER TRUSLOW: Thank you Commissioner
10 Caldwell. Commissioner Pinkston, do you have any questions
11 of either the Commission's counsel, Ms. Laster, or
12 Mr. Loveless' counsel, Ms. Ballard?

13 COMMISSIONER PINKSTON: My questions follow the
14 same line as Commissioner Caldwell's. There are many
15 uncertainties and unknowns in this case so I think -- and if
16 counsel for Mr. Loveless, you know, is unclear and our
17 counsel has made some conclusions, I'm just -- I mean, I'm
18 just not sure.

19 MS. BALLARD: I'd like to clarify the record so
20 we all are sure.

21 COMMISSIONER TRUSLOW: Thank you Commissioner
22 Pinkston. Commissioner Tomlinson, do you have any questions
23 of Ms. Laster or Ms. Ballard?

24 COMMISSIONER TOMLINSON: I don't have any
25 questions. Commissioner Caldwell addressed the issues that

1 I was concerned about. Thank you.

2 COMMISSIONER TRUSLOW: Commissioner Tyler, do
3 you have any questions of Ms. Laster or Ms. Ballard?

4 COMMISSIONER TYLER: I do not. Thank you very
5 much.

6 MS. BALLARD: Thank you very much.

7 COMMISSIONER TRUSLOW: Ms. Ballard, I have a
8 couple of questions. So what I understood, I guess, first
9 alarmed you or that you said you were shocked or very
10 concerned about was this State Inspector General report
11 specifically on two different pages, page 3 and page 17.

12 MS. BALLARD: Correct.

13 COMMISSIONER TRUSLOW: The methodology listed on
14 page 3 says that the State Inspector General conducted
15 interviews of -- and it lists a number of entities and it
16 says, the State Ethics Commission. Is that what we're
17 referring to that you said you were alarmed about?

18 MS. BALLARD: That's the first one.

19 COMMISSIONER TRUSLOW: Okay. And then on page
20 17, if I've got this right, you're worried that on page 17
21 it says: The State Inspector General extends its
22 appreciation to a number of entities. In addition, the
23 State Inspector General is appreciative of the collaboration
24 with -- and it goes and lists a number of entities and then
25 it says, the State Ethics Commission, okay?

1 So collaboration or consultation, is that what
2 we're talking about here? Are we talking about specific
3 interviews or is your position that you just don't know what
4 collaboration with means?

5 MS. BALLARD: On page 1, the State Inspector
6 General suggests there were interviews. But on page 17, he
7 suggests it was a collaboration, and I don't know that any
8 of us know what that is.

9 COMMISSIONER TRUSLOW: Okay. So if I'm
10 understanding this right, your client's desire is to
11 preserve a record for the seemingly inevitable and then
12 there's an appeal, right?

13 MS. BALLARD: Yes.

14 COMMISSIONER TRUSLOW: And so what do you have
15 in mind? Is it just that you need to take a deposition of
16 the Executive Director at the State Ethics Commission and
17 the officer at the Inspector General's Office that
18 conducted -- or completed this report? Is that the two
19 things that you need to do?

20 MS. BALLARD: Our motion for a request for
21 subpoena, it's dated February 13th, 2024, requested four
22 subpoenas to the records custodian for the Office of the
23 Inspector General, one to the Office of the Inspector
24 General commanding the deposition of the State Inspector
25 General, Brian Lampkin, so we can ask specific questions.

1 COMMISSIONER TRUSLOW: All right. That's one.

2 MS. BALLARD: And for a deposition of Meagan
3 Walker. I realize her name has changed. I apologize, I
4 don't know her new name.

5 COMMISSIONER TRUSLOW: That's two.

6 MS. BALLARD: And we also asked for depositions
7 -- I'm sorry. For documents provided by Greg Hughes of
8 Contract Construction as described in the letter dated, from
9 the OID, dated September 13th, 2023. That was attached to
10 our motion as well. It was an exchange of documents from
11 Contract Construction to the Inspector General and we
12 attempted to obtain those documents. Come to find out from
13 the Office of Inspector General, that he entered into a
14 confidentiality agreement with Contract Construction and did
15 not retain any of the records that Contract Construction had
16 provided to him which violates the Public Records Act and
17 all sorts of things.

18 So we're not sure a public entity can enter into
19 a confidentiality agreement so we wanted to look into that
20 as well. But, yes, it's spelled out in our motion.

21 COMMISSIONER TRUSLOW: All right. So you will
22 need to take two depositions and you need documents from
23 Contract Construction. Is that -- I mean, is there a way to
24 agree to limit the scope of your discovery or are you
25 saying, based on those things you may find a treasure trove

1 of more things that you need to look into?

2 MS. BALLARD: I've set out with specificity as
3 best I could --

4 COMMISSIONER TRUSLOW: Okay.

5 MS. BALLARD: -- in my motion what I want to do.
6 I can't envision there being more unless I do, in fact,
7 stumble onto a treasure trove, in which case I'll move to
8 supplement the record with what I have and we'll let the
9 appellate courts do whatever the appellate courts do.

10 COMMISSIONER TRUSLOW: Ms. Ballard, Commission's
11 counsel indicated there was a motion to stay that is mooted
12 basically by the passage of time. Is that your position as
13 well, that that motion is moot?

14 MS. BALLARD: Yes. I think what happened was,
15 this hearing date was scheduled for the hearing of our
16 appeal to the full Commission, both of the denial of our
17 motion to dismiss and our exceptions to the subpanel's
18 report and findings. That was scheduled for today. Then
19 when we requested subpoenas and our request for subpoenas
20 was denied by Ms. Laster, that's when we filed the motion to
21 hold these proceedings in abeyance so that we could hear
22 this motion and ensure that the record is complete.

23 COMMISSIONER TRUSLOW: Okay. So there's no need
24 to stay these proceedings any further?

25 MS. BALLARD: Not that I can think of.

1 COMMISSIONER TRUSLOW: Okay. And then --

2 MS. BALLARD: Grant my motion and I'll be on my
3 way.

4 COMMISSIONER TRUSLOW: Commission's counsel
5 indicated that in a letter from Mr. Loveless, a February 28
6 '22 letter, that he waived confidentiality of -- I guess
7 that's related to the State Ethics Commission providing a
8 audio -- having a transcript, I guess, necessarily means
9 written down. But an audio recording of prior proceedings.

10 MS. BALLARD: Correct.

11 COMMISSIONER TRUSLOW: What's your position on a
12 waiver of confidentiality by Mr. Loveless from that February
13 28th, 2022 letter?

14 MS. BALLARD: Mr. Loveless has waived
15 confidentiality of these proceedings from day one and we're
16 not suggesting otherwise.

17 COMMISSIONER TRUSLOW: Okay.

18 MS. BALLARD: Since we've gotten inconsistent
19 responses from the Executive Director as to what exactly was
20 provided to the Office of the Inspector General, we'd like
21 to know for sure what was provided. First, she said the
22 audio and exhibits and we said, well, what about this
23 statute? And she said, oh, no, we didn't provide the
24 exhibits, we didn't provide the exhibits. And I can
25 understand that because they haven't provided them to me

1 either.

2 So I just want to know what was provided. And
3 whether it's a violation of statute or not, it needs to be
4 clear in the record, you know. What's coming next? What
5 train is coming next? And I need to -- I need to preserve
6 the record and make sure I have a complete record. I can't
7 tell you the number of appeals that get dismissed because of
8 insufficiency of record. And if I have not attempted to
9 include everything in the record that I could possibly
10 include, any appellate review that I seek will be tossed out
11 on its ear.

12 COMMISSIONER TRUSLOW: No, I understand that.

13 And so --

14 COMMISSIONER CALDWELL: Commissioner Truslow, I
15 have a question --

16 COMMISSIONER TRUSLOW: -- I think I understand
17 better your statement about getting inconsistent
18 communications now with that --

19 MS. BALLARD: Thank you.

20 COMMISSIONER TRUSLOW: -- description I did in
21 the original presentation.

22 MS. BALLARD: Thank you.

23 COMMISSIONER TRUSLOW: Does anyone have any --
24 Commissioner Caldwell, do you have a question based on --

25 COMMISSIONER CALDWELL: Yeah.

1 COMMISSIONER TRUSLOW: -- my line of questioning
2 or anything else that --

3 COMMISSIONER CALDWELL: Yeah. And, Ms. Ballard,
4 I hear you with the supplementing the record. What I am
5 focusing on is, I haven't heard anything about how any of
6 this information will bear on or could bear on or
7 potentially bear on his failure to recuse. Because if I'm
8 correct, all the counts had to deal with the failure to
9 recuse and I'm trying -- I have yet to hear how any of this
10 information could bear on his failure to recuse.

11 MS. BALLARD: Well, I understand the reason for
12 your confusion. Our motion to dismiss -- which you were not
13 on the panel for that -- our motion to dismiss challenged
14 the legal sufficiency of the charges against Mr. Loveless,
15 that they did not cite an allegation of a violation of the
16 State Ethics Act and that motion to dismiss was denied. So
17 that is part of the appeal that is going to the full
18 Commission.

19 So the procedural issue that we raised in the
20 motion to dismiss was essentially a 12(b)(6) motion. You've
21 issued this notice of hearing alleging Mr. Loveless did
22 these things, but none of these things violate the State
23 Ethics Act and that motion to dismiss was denied. So then
24 when we had the hearing, we talked about the incidents, the
25 four incidents that the Commission had charged against

1 Mr. Loveless. These issues don't have to do with the
2 charges. They have to do with the insufficiency of the
3 record, the misleading and inconsistent procedures of the
4 State Ethics Commission -- and I don't mean you guys. I
5 mean the staff handling this thing. Such things as, you
6 know, we have one letter saying that the State Ethics
7 Commission determined probable cause and we have another
8 letter saying that Meagan Walker determined probable cause.
9 It can't be both. We don't know.

10 Those are things that are unexplained in this
11 record and things that show violations of the procedure set
12 forth in the statute and other things that are set forth in
13 the statute that just shows this was sloppily handled from
14 day one. And if Mr. Loveless' documents have been willy
15 nilly shared with whoever -- I mean, we know that The State
16 Newspaper got the report of the subpanel two weeks before we
17 did.

18 We'd like to know what else is happening out
19 there. If there's something wrong with the procedures of
20 the State Ethics Commission, well, the Legislature needs to
21 clean up. But Mr. Loveless, in the meantime, has to answer
22 the question about whether his due process rights have been
23 violated by lack of clarity in this record which exists in
24 multiple circumstances long before you ever get to a
25 question of whether he did or did not have a conflict of

1 interest. I hope that answers your question.

2 COMMISSIONER TRUSLOW: Okay. So I want to get
3 back to this because I think you said earlier that
4 Mr. Loveless has waived confidentiality on these proceedings
5 and others from its inception, but then I thought you just
6 stated that there was concern about with whom this
7 information was shared. How do you reconcile those two?

8 MS. BALLARD: Well, we'd like to know with whom
9 it was shared. Since the OIG says it was shared with him,
10 we'd like to know what exactly was shared.

11 COMMISSIONER TRUSLOW: Okay. Substantively what
12 was shared.

13 MS. BALLARD: Yes. What was shared, yes. And I
14 know this --

15 COMMISSIONER TRUSLOW: Not the fact that it was
16 shared?

17 MS. BALLARD: No. We don't fault the OIG's
18 staff for sharing information. But first we were told the
19 audio was shared and exhibits were shared, and then when we
20 inquired further, they said, oh, no, it was only the audio.
21 And so we want to know. Could we see the emails and could
22 we see the attachments, could we see what was submitted and
23 did it have anything to do with anything that the OIG was
24 investigating or is this something else.

25 Mr. Loveless has been broadsided by several wild

1 and crazy allegations against him for the past couple of
2 years and I can only assure you that finding out the OIG had
3 been in communications with the State Ethics Commission was
4 not lost on him and I think he deserves to find out what
5 that communication consisted of and what information was
6 shared.

7 COMMISSIONER TRUSLOW: Thank you, Ms. Ballard.

8 MS. BALLARD: Thank you.

9 COMMISSIONER TRUSLOW: Do any other
10 Commissioners have any other questions on -- on some of us,
11 I apologize for spending so much time on this issue but it's
12 important and I think it deserves everybody being able to
13 say what they want to say if I went for preserving a record
14 on that matter. So I'll ask one last time, if anybody has
15 any question please raise your hand. Otherwise, I think
16 that will close out our proceedings.

17 I think there is an opportunity, if necessary,
18 for any sort of closing statement. I don't know that it's
19 necessary at this point.

20 MS. LASTER: Commissioner Truslow, Ms. Hubbard
21 and I discussed earlier the possibility of doing competing
22 orders and Ms. Ballard has agreed to that in the past so if
23 that's amenable to them, that's amenable to me.

24 COMMISSIONER TRUSLOW: I think that would
25 save -- maybe would make up the time that we spent on the

1 questions with that procedurally.

2 MS. LASTER: Sure.

3 MS. BALLARD: We'd just like a time table,
4 please.

5 MS. LASTER: Yes.

6 COMMISSIONER TRUSLOW: Do you have an ideal time
7 frame that would work? Are we looking for, get this done
8 shorter or we looking for get this done longer? Are there
9 any other deadlines that would need to be met by Commission,
10 counsel or, Ms. Ballard, by your office?

11 MS. BALLARD: Mr. Chairman -- sorry to call you
12 your Honor --

13 COMMISSIONER TRUSLOW: It's not the worst thing
14 I've been called even today.

15 MS. BALLARD: Somebody called me your Honor and
16 I said, oh, no, I've aged out. We think 30 days will be
17 sufficient. I unfortunately lost the month of January with
18 some illness and was out of my office for the entire month
19 of January so I'm still playing catch-up, and so I would ask
20 for 30 days.

21 COMMISSIONER TRUSLOW: I'm going to do 60 days.

22 MS. BALLARD: That's even better.

23 COMMISSIONER TRUSLOW: I think that would
24 provide -- this is a complex matter.

25 MS. BALLARD: It is.

1 COMMISSIONER TRUSLOW: Just the files that, you
2 know -- this is my first time on it -- just the files that
3 I've had to review were extensive and detailed and this
4 matter is important and so I'd rather do it right than right
5 now and so I'd like to give you 60 days, please.

6 MS. BALLARD: We appreciate that. We'll be
7 happy to submit them to the Executive Director and send a
8 copy to Ms. Laster.

9 COMMISSIONER TRUSLOW: Thank you.

10 MS. LASTER: Thank you.

11 COMMISSIONER TRUSLOW: Thank y'all for
12 appearing. Mr. Loveless, I see you back here and thank you
13 for appearing as well. This is an important matter and we
14 appreciate y'all being very well prepared, everyone, and
15 making your cases. Thank you.

16 MS. LASTER: Thank you.

17 (Hearing adjourned)

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CERTIFICATE OF REPORTER

I, Laura S. Kelly, Certified Court Reporter and Notary Public in and for the State of South Carolina at Large, do hereby certify:

That the foregoing recording of hearing as typed is a true, accurate and complete record of said recording to the best of my ability.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

I further certify that the original of said transcript shall be hereafter sealed and delivered to DESA BALLARD, ESQUIRE, Ballard & Watson, Attorneys at Law, 226 State Street, West Columbia, South Carolina, 29169.

Witness my hand, I have hereunto affixed my official seal this 13th day of May 2024, at Columbia, Richland County, South Carolina.

Laura S. Kelly

Laura S. Kelly, CCR, CVR, CCRI
State of South Carolina at Large
My Commission expires
August 4, 2026

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APPELLATE HEARING

January 16, 2025

Kenneth Loveless & Kim Benson

REPORTER: Kathryn Bostrom

1 STATE OF SOUTH CAROLINA) BEFORE THE SC ETHICS COMMISSION
2 COUNTY OF RICHLAND)
3
4 Complaint C2021-16)
5 Kim Benson,)
6 Appellate)
7 Kenneth Loveless,)
8 Appellant)
9 _____)

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11 The within hearing was reported by Kathryn B Bostrom,
12 Court Reporter and Notary Public in and for the State of
13 South Carolina; pursuant to Rule 30 of the South Carolina
14 Rules of Civil Procedure; said hearing was taken at the
15 offices of the State Ethics Commission, 201 Executive
16 Center Drive, in Columbia, South Carolina, on Thursday, the
17 16th day of January, 2025, commencing at the hour of 9:38
18 a.m.

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APPEARANCES:

State Ethics Commission:

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Matthew N. Tyler

Mary Hunter B. Tomlinson

Brandolyn Thomas Pinkston (via Zoom)

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EXHIBITS

There were no exhibits marked during this hearing.

Court Reporter's Legend:

dashes [--] Intentional or purposeful]
 interruption
 [ph] Denotes phonetically written
 [sic] Written as said

P-R-O-C-E-E-D-I-N-G-S

THE CHAIR: Good morning again. I'm Commissioner Neal Truslow, and I will be acting as Chair for Mr. Loveless' appeal. The length of time for the appellate hearing is limited to 30 minutes to include opening statements. Respondent's counsel will have ten minutes. The Commission's counsel will have ten minutes, and then the respondent's counsel will have five minutes for any rebuttal. At the end of the hearing, the panel will take arguments under advisement and issue an order in accordance with Sections 52-805 and 52-806 of the South Carolina Code of Regulations. The timing aspect of this we're going to really try to stick to. I understand -- I mean, I've got two incredibly competent advocates here, so I'll try to keep an eye on the time. I also recognize the complexity of this matter as to the other Commissioners. And so if there's a need for some leeway, we can address that then. And I would ask that the Commission's counsel and Ms. Ballard, if we're able to stick as close to those time periods as we can, that would be appreciated.

MS. BALLARD: My only question is in various courts

1 there are different symbols. Sometimes I have a
2 light. It's green, then turns yellow then turns
3 red. Sometimes I have someone who just waves at
4 me and holds up a sign and says how much time I
5 have left. What's the protocol here if I may
6 ask?

7 THE CHAIR: That's a perfectly good question. We
8 don't have anything that is lined up for that,
9 but in the infinite wisdom of Steve Jobs he put a
10 stopwatch on everybody's cell phone. I was just
11 going to run a clock up here. Would it be okay
12 if I gave you like just a two minute?

13 MS. BALLARD: Give me a two minute warning, and I'll
14 be great.

15 THE CHAIR: Well, I know you said you had the signal.
16 I need to do like this?

17 MS. BALLARD: That would help, too.

18 THE CHAIR: Okay. Well, I don't want to distract you
19 either now.

20 MS. BALLARD: Well, you can't distract me. I can put
21 my glasses on for that purpose. I just can't
22 read my notes with my glasses on.

23 THE CHAIR: Well, whatever is easiest. I'll give you
24 some kind of sign, and it'll be relatively
25 obvious because I don't think I'm going to move

1 other than that, okay?

2 MS. BALLARD: Thank you very much.

3 THE CHAIR: All right. Let's go ahead and begin.

4 MS. BALLARD: We're the respondent. Did you want us
5 to proceed first?

6 THE CHAIR: Yes, ma'am.

7 MS. BALLARD: All right. I'm Desa Ballard. I
8 represent Ken Loveless who is seated to my
9 immediate right. I would like to ensure first of
10 all that y'all have a complete record. That
11 complete record will necessarily include the
12 Petition that we filed with the South Carolina
13 Supreme Court and Complaint in August of 2024.
14 It was served on the Commission with a proposed
15 Complaint. I just wanted to ensure that y'all
16 have that as a part of your record because a
17 great deal of the argument that I'm going to
18 cover is covering that as well.

19 THE CHAIR: Yes, ma'am.

20 MS. BALLARD: Okay, thank you. As you know, this case
21 was initiated by a Notice of Hearing on July
22 11th, 2022, which asserted four counts against my
23 client. He was charged with violating 8-13-
24 700(b) in four instances. Count one involved him
25 writing a letter, which he did do. Count two

1 involved him attending a meeting, which he did
2 do. Count three involved him attending a
3 meeting, which he did do and count four involved
4 him attending a site visit, which the subpanel
5 did not find as misconduct. The subpanel found
6 only the first three counts constituted
7 misconduct. We filed a Motion to Dismiss
8 immediately after the Notice of Hearing was
9 filed, and Commissioner Starkes -- I guess I
10 should say Chairman Starkes -- heard that motion
11 to dismiss at that time and denied our motion to
12 dismiss. The motion to dismiss was based in fact
13 on this Commission's unfortunate inaccurate
14 reading of 8-13-700(b). When Commission Starkes
15 ruled against us on the motion to dismiss he
16 cited an advisory opinion from this Commission,
17 2000-11, which interestingly enough had been
18 repealed two years before he cited to it. It's
19 attached to the petition in the original
20 jurisdiction. That section that was cited by
21 Commissioner Starkes in his denial of our motion
22 to dismiss was repealed by Advisory Opinion 2020-
23 002 issued on December 3rd, 2020. I don't fault
24 Commissioner Starkes because the prosecuting
25 attorney has continued to cite that despite the

1 fact that this Commission has withdrawn that
2 opinion. And I just want to make sure that you
3 don't think that I am making up or embellishing
4 the language of that opinion, but the last
5 sentence of it says, and I quote: "SECA0-2000-11
6 is hereby withdrawn." Yet in denying our motion
7 to dismiss, among other authorities, Commissioner
8 Starkes -- Chairman Starkes -- relied upon the
9 ethics of that advisory opinion that was issued
10 by this Commission. It concerned me because the
11 reading of the opinions clearly do not track the
12 statute. If I may approach, I have a copy of the
13 statute that I would like to provide to at least
14 those members of the Commission who are present
15 in the room today. Would that be suitable?

16 THE CHAIR: That is fine. We've got somebody that can
17 take it up for you.

18 MS. BALLARD: All right. It looks like we've got
19 three. And you noted it's from me because it
20 uses pink highlighting. And what I'd like to
21 focus on first and foremost is this Commission
22 has -- since it was created in 1991 -- has
23 inaccurately construed 8-13-700(b), and if you
24 look at 8-13-700(b), it says that recusal is
25 required only when a public official, which my

1 client is, is required to take an action or make
2 a decision. I've highlighted that for you in
3 yellow so that you can see it. I drew the pink
4 line underneath where his obligation stopped.
5 All the ethics advisory opinions issued by this
6 Commission since 1991 -- and the first one was in
7 1992. I'll tell you about that one in just a
8 second. The subsections two, three and four talk
9 about what happens if he is required to take an
10 action or make a decision. He has not been
11 charged with taking an action or making a
12 decision. So the remaining portion of (b), which
13 begins with sub two, sub three and sub four, do
14 not apply. And I'm sorry that if it sounds like
15 I'm taking you through statutory construction
16 101, but that's what I had to do to try to figure
17 out why the advisory opinions of this Commission
18 do not track the statute, and I figured out why.
19 In 1992, one of the first advisory opinions
20 issued by this Commission -- I believe it was
21 under Commissioner Hayden's tenure as Chairman or
22 Executive Director. I can't recall which. He
23 said that however the inquirer was was not
24 prohibited by 8-13-700(b) from engaging in
25 whatever action was being asked about, but he

1 added: however, we think you probably shouldn't
2 ought to do that because of the appearance of
3 impropriety, which of course is nowhere in the
4 statute. And from there, we have 35 years of
5 advisory opinions which misconstrue the statute.
6 Now, in 1998 this Commission held that 8-13-
7 700(b) is unambiguous. That was in a published
8 decision of a case, all right. We all know
9 statutory construction 101. If it's unambiguous,
10 you cannot use rules of statutory construction
11 because the language of the statute is plain.
12 You don't need to see what it says. What has
13 happened all these years is that subsections
14 four, which talks about what has to happen if he
15 is required to take a vote or make a decision and
16 take an action, he is not allowed to participate
17 in any deliberations, okay. And from that
18 misreading of the statute, part two, under the
19 pink line where I have drawn a pink line, none of
20 that is part of the prohibition. That's what
21 happens if he's required to take an action or
22 make a decision under the statute. And so I went
23 back, and I tracked the advisory opinions and the
24 opinions that I could find published of people
25 who were charged with violations of this statute

1 to try to figure out where we went wrong. Where
2 did this Commission go wrong? It went wrong from
3 day one. When you added the appearance of
4 impropriety, and when you added subparagraph
5 four, which is not part of the prohibition, is
6 what has to happen if he's required to take an
7 action or make a decision. I found on the desk
8 today when I came in this cute little book, which
9 I'd never seen before, but the same statute that
10 I'm talking about is on page 111. And naturally
11 the words are the same as I printed out from the
12 General Assembly, so you can use my copy. I also
13 found it interesting that the prohibition on not
14 allowing him to participate in deliberations is
15 not an obligation on him. It is an obligation on
16 the presiding officer of the political
17 subdivision, of which he is a member. It's not
18 his obligation. So when he was charged with
19 writing a letter, which he did, attending a
20 meeting, which he did, attending a meeting, which
21 he did -- the Notice of Hearing in the case,
22 which is dated July 11th, 2022, does not allege a
23 violation of 8-11-700(b) because there is no
24 allegation that he was required to take an action
25 or make a decision, all right. Now, when

1 Commissioner Starkes -- Chairman Starkes denied
2 our motion to dismiss, he said well, it's clear
3 that we have to read subparagraph four of 8-13-
4 700(b) because of -- and I'm quoting him --
5 decades of advisory opinions and enforcement
6 actions. Really, all right. My motion to
7 dismiss should have been granted because my
8 client has not been charged with a violation of
9 8-13-700(b) because there is no allegation, nor
10 is there any evidence moving down to the record
11 before the Commission, nor is there any evidence
12 that he ever participated in taking an action or
13 making a decision. The reason we petitioned the
14 South Carolina Supreme Court in August of 2024 is
15 because there were significant actions, two
16 significant cases that came out. One was from
17 the United States Supreme Court, which is the
18 case I emailed yesterday, and I believe you all
19 have a copy of it. It's called the Loper Bright
20 decision from the U.S. Supreme Court.

21 THE CHAIR: Yeah, we have that.

22 MS. BALLARD: All right. The Loper Bright decision in
23 a 5/4 majority opinion written by Chief Justice
24 Roberts said you know what, we've been doing this
25 wrong for decades. We've been doing this wrong

1 for decades. And what they were talking about is
2 courts cannot defer to administrative agencies on
3 issues of law. They can defer to agencies on
4 issues that fall within their area of expertise,
5 but it's not law. And they cited --
6 interestingly enough, they cited the Federalist
7 Papers. It's the first time I'd seen a case
8 which cited the Federalist Papers, and it says
9 that the reason decisions of law are reserved to
10 the courts is because the constitution is framed
11 -- And again, I'm quoting from the U.S. Supreme
12 Court majority decision. The constitution is
13 framed to ensure judges could exercise judgment
14 free from the influence of the political
15 branches. That's the executive branch where we
16 are now and the legislative branch. So the U.S.
17 Supreme Court said this body gets no deference in
18 determining whether a violation of a statute has
19 occurred, okay. The South Carolina Supreme Court
20 in the same month issued the school voucher
21 decision, August 2024. And in the school voucher
22 decision the court went through the historic
23 efforts of the legislative and executive branches
24 to not comply with the judicial decision from
25 Brown v. Board of Education from 1954, the year I

1 was born, which South Carolina successfully
2 succeeded in not implementing until I was a
3 senior in high school and had the first African
4 American classmates I'd ever had. And the
5 decision in the school voucher case said we've
6 got to call it like we see it. We've been wrong
7 all this time. So I've got two decisions, both
8 issued -- one the U.S. Supreme Court, one the
9 South Carolina Supreme Court in August of 2024
10 that said you, Commission, have no authority to
11 construe what the law is. Sorry, you can't do
12 it. And having found in 1998 that the statute
13 was unambiguous, nor can you do it. So you have
14 no authority whatsoever to determine whether or
15 not my client violated 8-13-700(b). And in fact,
16 I assert to you that the Notice of Hearing
17 doesn't even allege that he has. It alleges that
18 he wrote a letter, which he did. He attended a
19 meeting, which he did, and he attended another
20 meeting, which he did, none of which is
21 prohibited by 8-13-700(b). When we petitioned
22 the Supreme Court in the original jurisdiction,
23 we thought it was urgent that the Supreme Court,
24 the State Supreme Court, address this issue
25 because we're faced with now more than 30 years

1 or precedent from this Commission that is wrong.
2 It is dead wrong. And what the court said in the
3 school voucher case and what the United States
4 Supreme Court said in the Loper --

5 THE CHAIR: Bright.

6 MS. BALLARD: -- Bright -- the Loper Bright case is it
7 doesn't matter how long we've gotten it wrong.
8 When we figure out we've gotten it wrong, we have
9 an obligation to say so. I'm telling you you've
10 had it wrong for more than 30 years, and with all
11 due deference to Chairman Starkes, his reference
12 to decades of advisory and enforcement actions
13 that say you have to read subparagraph four as
14 part of the prohibition, is just wrong. Mr.
15 Loveless has not been charged with taking any
16 action or making any decision in violation of the
17 State Ethics Act. I have briefed all of the
18 issues on the merits. I have briefed all of the
19 issues in the petition to the South Carolina
20 Supreme Court and the proposed Complaint that's
21 set forth therein. I did not provide with a
22 citation for the school voucher case. I can do
23 that subsequently, although I think we all know
24 which case I'm talking about.

25 THE CHAIR: Yes, ma'am.

1 MS. BALLARD: And the citation to the Loper Bright
2 case is in my proposed Complaint that was
3 submitted to the Supreme Court in August of 2024.
4 I don't mean to sound like I'm educating you on
5 Statutory Construction 101, but that's what I had
6 to do to figure out why the motion to dismiss
7 that clearly addresses a notice of hearing that
8 alleges no wrongdoing on my client's part was
9 dismissed -- was denied. There are several other
10 procedural problems, and we've attempted to
11 supplement the record because there's been some
12 activities that we pointed out in our prior
13 briefing that were inappropriate, communications
14 between the Inspector General's Office and
15 employees of the State Ethics Commission as is
16 clear from the record in our prior filings in
17 this case. Our request to supplement the record
18 with that was denied. So you have before you
19 essentially in our proposed Complaint that we
20 submitted to the Supreme Court what our appellate
21 brief is going to say if this Commission upholds
22 the finding that my client violated the three
23 counts that are set forth in the Notice of
24 Hearing. Thank you so much.

25 THE CHAIR: Thank you, Ms. Ballard. I'm going to give

1 equal time to Commission's counsel to the extent
2 that it's necessary. We went over by about five
3 minutes, but as I said in the beginning, this is
4 a complicated matter. I don't think we're making
5 some sort of right line rule here that everyone
6 will get extra time when they come in. I like to
7 stick to a pretty regimented schedule, but for
8 fairness sake, I would like to extend the
9 courtesy of the same amount of time to
10 Commission's counsel. So Ms. Laster, please go
11 ahead.

12 MS. LASTER: Thank you, Commissioner Truslow. At the
13 outset, Ms. Ballard has often asked at the
14 beginning of all of these proceedings if the
15 sides would be allowed to submit competing
16 orders. I think that's a great practice to have,
17 and so I would ask that you allow us to do that
18 within whatever time frame we all agree is okay.

19 THE CHAIR: You know I will, absolutely.

20 MS. LASTER: Okay, thank you. Just to back up a
21 little bit and kind of do a brief run through of
22 the facts. Respondent was on the LR-5 Board of
23 Trustees from 2018 to 2022. In 2018 the district
24 entered into a construction contract with a
25 company called Contract Construction. They were

1 building an elementary school, Piney Woods in
2 Chapin. On or about March 12th, 2020 Mr.
3 Loveless received a subcontract from Contract
4 Construction, on a separate project. It was to
5 be construction of a SLED laboratory, not
6 anything to do with the Piney Woods Elementary
7 School. Because of that business relationship
8 that existed between he and Contract
9 Construction, all of Contract Construction's
10 interests are imputed to him in the service on
11 the board, and so that is why recusal was
12 required when the performance under these
13 contracts and all the interworking of these
14 contracts came before the board. I just wanted
15 to clarify one thing that Ms. Ballard said that
16 she said he was charged with attending the
17 meeting, and it wasn't for attending the meeting.
18 It was for participating in the discussion about
19 the contract performance. Another note, 2000-011
20 was repealed by 2020-002. 2020-002 had the exact
21 same language in it as 2000-011. It says that
22 the Commission has repeatedly advised public
23 servants to recuse themselves from matters in
24 which they have family members businesses, et
25 cetera -- have an interest. And so here, the

1 matter is the contract between Contract
2 Construction and the district. So I just wanted
3 to clarify that. Okay. So as far as statutory
4 construction goes, I think what the respondent's
5 argument is is that we should be splitting up the
6 sentences in the same paragraph and reading them
7 in isolation from one another. And I don't think
8 that's required. I think you have -- you have to
9 read the whole statute. You have to read all of
10 700 in its entirety. You can't just take one
11 sentence in isolation and just say none of the
12 rest of it matters. But even if we did that,
13 she's saying there's no decision, there's no
14 action, there's no votes taking place. There is
15 an action. The action is the discussion. The
16 action is the writing of the letter. An action
17 is literally doing a thing. In many of the
18 written submissions to this Commission and also
19 in respondent's own testimony, he said that he
20 was compelled to do these things by Title 59,
21 which is the code of laws that governs board of
22 trustee behavior and such, that he was compelled
23 to do that because that statute requires boards
24 of trustees to manage school houses, provide
25 school houses, oversee supervision of school

1 houses. All those things are actions, managing,
2 supervising, controlling. And so in my mind it
3 is a contradiction to say I was taking no action,
4 but also I was compelled to take these actions
5 because Title 59 required it. I would also point
6 out I think that the definition of deliberations
7 is literally discussing something, which is an
8 action. The second point I would like to raise
9 is that using the respondent's interpretation
10 here would lead to an observer's home. It would
11 mean that a public servant could literally take
12 part in anything and could do anything, and as
13 long as they didn't actually vote on the matter,
14 that would be fine. And I believe that that
15 flies in the face of the purpose of the Ethics
16 Act, which is evidenced in the preamble. It is
17 cited in the order denying the motion to dismiss.
18 There is jurisprudence that courts have relied on
19 preambles for legislation to ascertain intent. I
20 think that's appropriate here. There's also
21 jurisprudence that the statute should be
22 interpreted in a way that avoids absurdity, and I
23 think that the respondent's interpretation would
24 lead to an absurd result. You know, if that is
25 the accepted view of 8-13-700. we may as well

1 just throw the Ethics Act out the window. Public
2 officials could do almost anything as long as
3 they didn't vote on something. And then finally,
4 I'd like to note that every authority that has
5 been in a position to interpret this provision
6 agrees that the restrictions of 8-13-700 are
7 broader than merely prohibiting a vote or an
8 action. Every iteration of this Commission has
9 held such in advisory opinions even dating back
10 to the '70s. The Senate Ethics Committee has so
11 held. The House Ethics Committee has so held.
12 The Attorney General has so opined, and I believe
13 I've cited all those in the Response to the
14 Appellate Brief. So what I would suggest is that
15 regardless of how you slice and dice this
16 statute, the interpretation of the hearing panel
17 is correct. Contract Construction's interests
18 were imputed to Mr. Loveless. He had the SLED
19 contract, and therefore he could not participate
20 in anything involving the Piney Woods contract
21 between the district and Contract Construction,
22 which would include inserting himself into the
23 interworkings of the contract, which is exactly
24 what he did. In, I guess, conclusion to this
25 statutory construction argument, I would refer

1 you to a 2000-004 Commission advisory opinion,
2 which stated what the Commission finds
3 troublesome is when there is an ongoing
4 relationship between a public member and a party
5 before the board. And it then asks how can the
6 public member be associated with a business on
7 some projects but not on other projects, and that
8 is the concern here obviously. I think all of
9 the other arguments addressed in the respondent's
10 appellate brief have been rebutted in mine, so I
11 will just rely on the briefing for that unless
12 there are specific questions about it. And I
13 think with that, I do not have anything else to
14 offer unless there are questions.

15 THE CHAIR: You're well short of ten minutes, Ms.
16 Laster. Is there anything else you think you
17 need to cover further.

18 MS. LASTER: I could address some of the other
19 arguments in the brief that were not raised in
20 the oral argument. There is mention in the
21 motion to dismiss and in the appellate brief that
22 there are some procedural irregularities
23 happening here, that the Commission failed to
24 follow the statute as it relates to how it
25 perceived the complaint and sent it out to the

1 respondent. The respondent argues that the
2 Commission can only commence an investigation if
3 a majority of the commissioners investigate it.
4 In fact, it is true that under 320-9(a) a
5 majority of the vote on the Commission to
6 commence the investigation is required, but that
7 is only for complaints that the Commission itself
8 generates. The Commission also has elsewhere in
9 the statute, 320-10(b), the ability to accept
10 verified complaints or complaints that are
11 already verified and notarized. We have the
12 ability to accept those. The executive director
13 has the ability to open the investigation, and we
14 are required to notify the respondent within ten
15 days of the receipt of that verified complaint
16 that a complaint has been filed, which happened
17 here. And you will find in the record the
18 complaint, which I believe is dated February 17th
19 and then the certified letter mailing the
20 complaint to the respondent on February 23rd.
21 There are multiple references in the written
22 submissions that refer to 8-13-775. 8-13-775
23 would apply where an individual has a direct
24 contract or subcontract with their own
25 governmental entity, and that is not what we have

1 here. We have a business interest created by a
2 contract that doesn't involve the district at
3 issue here. So 775 in my opinion does not apply
4 at all. There's also some mention of a large
5 class exception possibly applying. I believe, if
6 I understand the argument correctly, the
7 respondent is saying that he was permitted to do
8 what he did because he didn't have any interest
9 in the contract between Contract Construction and
10 LR-5 anymore than any other subcontractor would,
11 but that is not the focus of the inquiry. The
12 focus is not on whether he personally had an
13 interest. The focus is on whether Contract
14 Construction had an interest because that is the
15 interest that's being imputed to him, and I don't
16 think under any reading of the facts or the law
17 you can say that Contract Construction did not
18 have an interest in its contract with the
19 district. I mean, it was a multi million dollar
20 contract. And I would cite you 292-14 on matters
21 affecting the economic interest of business or
22 individuals where there is an association,
23 recusal is required. There is also a reference,
24 I think, in a couple of spots that respondent
25 can't be held in violation because he had no

1 ability to act on his own. He had to act within
2 the confines of what the board is doing. Again,
3 I think this leads to an absurd result. Very few
4 public officials have the ability to act on their
5 own. Most of them are members of commissions,
6 councils, boards, et cetera. And so if it were
7 the case that you could only be in violation of
8 the Ethics Act when you were doing something as a
9 group, that to me is nonsensical because the
10 statute clearly doesn't require that. There is
11 also a reference that he can't be prosecuted any
12 longer because he is no longer a public official
13 and that only public officials can be sanctioned
14 under the Ethics Act. Again, I think if this
15 were true, it would allow public officials to
16 commit any number of violations, resign the next
17 day, and they would be totally fine. Pursuant to
18 8-13-320(9) the Commission has the duty and the
19 power to investigate "an alleged violation of the
20 Ethics Act by a public official, public member or
21 public employee." This means that as long as
22 they were a public servant when the violation
23 occurred, this Commission can receive complaints
24 and do investigations for a period of four years
25 after the conduct occurred. I believe I heard

1 respondent's counsel say that this Commission
2 does not have the authority to find respondent in
3 violation of the Ethics Act. Obviously I
4 disagree with that. The statute specifically
5 gives the Commission not only the authority but
6 the duty to investigate complaints and to conduct
7 hearings and the like. And I believe that is all
8 I have.

9 THE CHAIR: Thank you, Ms. Laster. As I mentioned,
10 there is a five minute rebuttal period. Ms.
11 Laster was under the time that I gave you, and
12 I'm happy to give you, you know, a full five
13 minutes and give you kind of a wave down at five
14 minutes happens should you need it, Ms. Ballard.

15 MS. BALLARD: Start your watch.

16 THE CHAIR: I got you.

17 MS. BALLARD: Thank you so much, Mr. Chairman.

18 THE CHAIR: Yes, ma'am.

19 MS. BALLARD: I'm glad Ms. Laster brought up the
20 numerous procedural irregularities which have
21 infected these proceedings from the time they
22 started. She pointed out that the Complaint by
23 the complainant was received by this Commission
24 on 2/17/21. That is correct. The cover letter
25 which sent that Complaint to Mr. Loveless was

1 dated, signed by Megan Walker, Executive Director
2 -- it was sent on 2/23/21, which even under my
3 math is about a week later. And the cover letter
4 said -- it's part of this record because I
5 introduced it -- the cover letter said the
6 Commission has reviewed the Complaint and
7 determined that there are sufficient facts to
8 warrant an investigation. Well, guess what?
9 There were no meeting at the Commission between
10 the date that the Complaint was filed and the
11 date that Ms. Walker sent this letter to Mr.
12 Loveless. The Commission didn't determine
13 anything. She did. And the statutes make it
14 clear that there are certain statutes that apply
15 when it's a complaint initiated by the
16 Commission, and there are certain statutes that
17 apply when it's initiated by an outside third
18 party, but it's not clear from 8-13-320 which
19 section applies when. The Commission has just
20 decided when they want to comply with which
21 section and when they don't. Interestingly, this
22 Complaint from the complainant was notarized by
23 the receptionist at this Commission. She brought
24 in the Complaint, handed it to the receptionist
25 who notarized it and then accepted it. Is that

1 appropriate. It certainly doesn't sound
2 appropriate. It certainly sounds as if someone
3 was assisting. The same way, when the Notice of
4 Hearing was sent on 7/11/2022, an email to the
5 State Newspaper that afternoon -- we got a FOIA
6 request, and we received a copy of the email to
7 the reporter with the State Newspaper sending a
8 copy of the Notice of Hearing, but the notice
9 that was placed in the mail to the lawyer who was
10 then representing Mr. Loveless was sent certified
11 mail, return receipt to a P.O. Box, and he didn't
12 get it for two weeks. So how is that fair? We
13 email the newspaper and let them know what the
14 charges are, but we don't even let Mr. Loveless
15 know what the charges are at the same time. I
16 could go on and on and on about the number of
17 procedural irregularities that have occurred in
18 this matter, including as you've heard from me in
19 detail, the improper communication between the
20 Inspector General's Office and the employees and
21 staff of this Commission. The Inspector General
22 thanked this Commission for its considerable
23 assistance when it issued its report about some
24 issues involving District 5 well after Mr.
25 Loveless was no longer a part of District 5, but

1 somehow the staff at the State Ethics Commission
2 assisted in that investigation. How the heck
3 does that happen, and I don't get to find out
4 about it? I don't get to look into it. It
5 violates the statutes, and I don't get to look
6 into it. All of the procedural irregularities
7 that are set forth in my brief, they started with
8 the delivery of the Notice of Hearing to Mr.
9 Loveless. Oh, the Commission has decided that
10 probable cause exists. How the heck did the
11 Commission do that when it didn't meet? How on
12 earth? And that's just the first one. The most
13 recent one was during the trial before the
14 subpanel, I introduced exhibits that never made
15 them into the record. They're not in this
16 record. I don't know why, but they're not.
17 That's why I have a court reporter here today
18 because I can't trust the documents that come out
19 of this Commission. They're not accurate. I
20 don't want to go here. I don't want to go here
21 and tell the Supreme Court that you guys had it
22 wrong for 35 years, but you said in 1998 that the
23 statute is unambiguous. That means you cannot
24 apply rules of statutory construction. You
25 cannot. You have to read it like it says.

1 Introduced into evidence during the State's case
2 were the list of votes that were taken at each of
3 the school board meetings at which Mr. Loveless
4 was alleged to have participated in discussions,
5 and none of the votes, none of them, had anything
6 to do with the contract with Contract
7 Construction or the construction of Piney Woods
8 Elementary. So there was no allegation that he
9 was required to take an action or make a decision
10 because if there had been, they would have given
11 you the evidence that it occurred, but it did
12 not. He participated in discussions. He is
13 statutorily required or was statutorily required
14 as a member of the school board to carry out the
15 statutory duties of a school board member, which
16 involved, hey, by the way, I've received
17 complaints that the quality of the construction
18 materials that are being used at Piney Woods
19 Elementary School fall below the standards set by
20 the construction industry. How does he know
21 that? He's been a general contractor for 40
22 years. So he calls it to the attention of the --
23 he calls it to the attention of the
24 superintendent who says I know what we'll do with
25 this, and she testified she gave it to the

1 lawyer. Find an answer for this. And we
2 introduced the records from Michael Montgomery,
3 the lawyer to whom she assigned the
4 responsibility to do that, and he did. He put
5 together an attack on Mr. Loveless' credibility,
6 his honesty, his integrity, which took place on
7 September 14th, 2020 at a preplanned board
8 meeting. We have outstanding civil litigation in
9 which we are pursuing that, and we just received
10 discovery which shows -- lays out in crystal
11 clear detail how the conspiracy to attack Mr.
12 Loveless on that occasion occurred, and it was
13 the intent of that conspiracy to require him to
14 be removed from the board. That didn't happen.

15 THE CHAIR: Ms. Ballard, if I can ask, what is your
16 argument as it relates to the board's collective
17 management and control over matters in the school
18 district and Mr. Loveless' individual actions as
19 we kind of -- I think Commission's counsel said
20 an action is a discussion. An action is writing
21 a letter. An action is deliberating.

22 MS. BALLARD: Well, that's why --

23 THE CHAIR: How do you square that with the board's
24 duty to manage and control and say that that is
25 not part of 8-13-700(b) where the language --

1 MS. BALLARD: Because it's not --

2 THE CHAIR: -- is required to take an action or make a
3 decision?

4 MS. BALLARD: Required to take an action or make a
5 decision, if he is required to take an action or
6 make a decision, only then is he prohibited from
7 participating in deliberations.

8 THE CHAIR: And does that --

9 MS. BALLARD: Only then.

10 THE CHAIR: Is it your argument also that he's
11 compelled, he is required -- I assert those are
12 synonymous -- required to take an action or make
13 a decision, he was compelled to do that?

14 MS. BALLARD: He was compelled to bring matters of
15 concern to the attention of the board, which he
16 did. He did not take an action or make a
17 decision which affects an economic interest of
18 himself. As pointed out in our Motion to
19 Dismiss, if Mr. Loveless' commercial contracting
20 company had a contract with Contract Construction
21 and he's attacking the quality of the work that
22 Contract Construction is doing, that's exactly
23 the opposite of what the State Ethics
24 Commission's statutes are attempting to prohibit.
25 What they're attempting to prohibit is Mr.

1 Loveless going out and saying hey, I voted for
2 you to get that contract for the school. Why
3 didn't you send me some work? What he did
4 instead was say hey, I've got a contract with
5 you, but you're doing poor work on this school,
6 very poor work on this school. He had an
7 obligation to bring that to the court's -- to the
8 school board's attention, and he did. So, yes,
9 that was an action that he took, but I point out
10 again the State put in the record of votes taken
11 at each of those board meetings. There were
12 none.

13 THE CHAIR: I understand.

14 MS. BALLARD: None.

15 THE CHAIR: Thank you, Ms. Ballard.

16 MS. BALLARD: Thank you very much.

17 THE CHAIR: I appreciate that. Ms. Laster, again, I'd
18 like to provide you with the same amount of time.
19 We only went over by about a minute or two.

20 MS. LASTER: Okay, thank you.

21 THE CHAIR: But if you need additional time, I'm happy
22 to grant it.

23 MS. BALLARD: Do you need the citation for the school
24 voucher case?

25 THE CHAIR: No, ma'am. It's a whole bunch of lawyers

1 around here. We'll be able to find it.

2 MS. BALLARD: I looked it up on my phone while I was
3 sitting in the car, and I forgot to write it
4 down.

5 THE CHAIR: That's all right. We'll get it. Thank
6 you, Ms. Ballard.

7 MS. BALLARD: Thank you.

8 THE CHAIR: Ms. Laster, go right ahead.

9 MS. LASTER: Sure. You know, 8-13-320 specifically
10 says how the Commission can accept complaints and
11 under what circumstances. I believe the evidence
12 shows that the Commission has complied with that.
13 The staff has complied with that. The fact that
14 there is a notary here all the time that can
15 notarize complaints, that's what verified means,
16 notarized. That is -- we have a -- actually a
17 policy that requires that based on recommendation
18 from the General Assembly because they want the
19 people to bring in complaints and be able to not
20 have to go to some outside notary. So I don't
21 see any impropriety in that at all. As far as
22 Mr. Loveless perhaps not getting the Notice of
23 Hearing on time or within the same time frame as
24 maybe a media outlet, regulations require that we
25 send hearing notices via certified mail. The

1 same requirement does not exist for media
2 inquiries obviously, and so however long it take
3 the post office to get the certified mail to the
4 respondent is how long it takes. We don't have
5 any control over the post office.

6 THE CHAIR: Was the Commission aware at that time
7 whether or not Mr. Loveless had counsel or as an
8 individual?

9 MS. LASTER: Yeah --

10 MS. BALLARD: It was mailed to his prior counsel.

11 MS. LASTER: I believe so.

12 MS. BALLARD: Yes.

13 MS. LASTER: His prior counsel.

14 THE CHAIR: And so it was also mailed to prior
15 counsel?

16 MS. BALLARD: It was only mailed to prior counsel.

17 MS. LASTER: Yes, only mailed to the prior counsel.

18 MS. BALLARD: I made an appearance after that.

19 THE CHAIR: That makes sense. Okay, thank you.

20 MS. LASTER: And I would just reiterate again 700(b)
21 is not limited to prohibiting just votes. It is
22 limited -- it prohibits a large variety of
23 things, actions. The evidence of the actions
24 that he took are on the meeting videos, which you
25 should all have access to if you should choose to

1 look at them. The staff brief has time stamps
2 for when all these things occurred. If you read
3 the transcript, I think both Ms. Ballard and I
4 were good about identifying where minute wise and
5 second wise we were directing the panel's
6 attention, so reading that should help you find
7 the relevant portions of the meeting that you'd
8 like to see. And also finally, just it's not
9 what the public official or public servant does
10 once they insert themselves into the scenario,
11 it's the insertion into the scenario that is
12 problematic. Where there's an interest, a
13 business interest, there it doesn't matter
14 whether you get in and do bad or you get in and
15 do harm. The point is is that both are possible.
16 And so that is why the Commission always says do
17 not insert yourself into any of it. And I
18 believe that is all I have, Commissioner Truslow.

19 THE CHAIR: Yeah. And Ms. Laster, when you were
20 referencing 8-13-320, that's about the duties and
21 powers of the State Ethics Commission. It says
22 the State Ethics Commission has these duties and
23 powers, and if we go to subsection 9(a) -- and it
24 says the Commission may commence an investigation
25 on the filing of a complaint by an individual --

1 that's one way -- or by the Commission as
2 provided in item 10, subsection (d) upon majority
3 vote of the total membership of the Commission.

4 MS. LASTER: Correct.

5 THE CHAIR: So do I understand that we're breaking up
6 subsection (a) to suggest that one way the
7 Commission may commence an investigation is upon
8 the filing of a complaint by an individual? That
9 is the argument that Commission's counsel is
10 making, correct?

11 MS. LASTER: Yes.

12 THE CHAIR: And for Ms. Ballard, why is that -- can
13 you explain to me why that's not -- can you
14 explain to me why -- can you argue that's not a
15 correct interpretation of 8-13-320(9)(a)?

16 MS. BALLARD: Because nothing that was set forth in
17 the Complaint that was filed on February 17th,
18 2022 was included in the Notice of Hearing. In
19 other words, this Commission found no merit to
20 anything that was alleged in the Complaint. This
21 investigation, this Notice of Hearing, was
22 information that the Commission came up with on
23 its own. This Commission did not find any merit
24 to any of the allegations that were set forth in
25 the Complaint that was filed by an individual on

1 February 17th, 2022, and instead the Notice of
2 Hearing was a result solely of this Commission's
3 own investigation. So this is a complaint by the
4 Commission.

5 THE CHAIR: So I want to make sure I understand this.
6 Is it your contention that the investigation had
7 to be limited in scope only to the matters
8 alleged in the Complaint, and then if the
9 investigator or investigators found anything
10 else, they weren't allowed to provide that to the
11 Commission for consideration?

12 MS. BALLARD: Absolutely not.

13 THE CHAIR: Okay.

14 MS. BALLARD: Absolutely not.

15 THE CHAIR: Help me square that up.

16 MS. BALLARD: They opened their final based on a
17 complaint from an individual.

18 THE CHAIR: Right.

19 MS. BALLARD: They found no merit or at least they
20 didn't charge Mr. Loveless for anything that was
21 set forth in the hundred and some odd pages that
22 were submitted by the complaint of Ms. Benson.

23 THE CHAIR: Okay.

24 MS. BALLARD: What they did instead was they went to
25 the minutes and the videos of the school board

1 meetings, and they decided that Mr. Loveless'
2 participation in discussions that did not lead to
3 votes somehow violated a statute which is
4 unambiguous and prohibits only him from taking
5 votes or taking actions.

6 THE CHAIR: I understand your distinction. Thank you.

7 MS. BALLARD: Thank you.

8 THE CHAIR: And to the extent that I took any more of
9 your time, Ms. Laster, if there's anything else
10 that you need to present, please go ahead because
11 I hijacked this a little bit.

12 MS. LASTER: Thank you. I would just say that I
13 believe that the Complaint does cover all of the
14 conduct alleged in the Notice of Hearing by my
15 recollection in reading of it, but even if it did
16 not, the regulations allow investigators to find
17 additional evidence and bring it to the
18 Commission if they so find any other violations
19 of the Ethics Act, and that's all.

20 THE CHAIR: Thank you.

21 MS. BALLARD: Can I have one more minute?

22 THE CHAIR: Yes.

23 MS. BALLARD: Thank you.

24 THE CHAIR: Please.

25 MS. BALLARD: There was a question I asked of the

1 Commissioner's Investigator on cross examination
2 during the subpanel hearing in this matter. It's
3 on page 205 in the transcript, and it goes over
4 to page 296. And I said to her is it your
5 position that Mr. Loveless participated in any
6 votes. Ms. Caldwell, line 34, no votes. And I
7 said and no actions, correct, and she said, line
8 38, well, I think action could be participating
9 in discussions, so there's no votes. And I said
10 so you read 700(b) to mean discussions are also
11 prohibited; is that your testimony? And she said
12 this, and the bells didn't ring in my ear at the
13 time -- she said yes, ma'am, that has been the
14 Commission's historical stance. In other words,
15 that's how the Commission has construed the
16 statute, but that's not what it says. Thank you.

17 THE CHAIR: Thank you, Ms. Ballard. Okay. I broke my
18 rules on time, but my intent, the Commission's
19 intent, I think here is to allow for a full
20 record to be made. And I think in this
21 circumstance, given the complexities, the volume
22 of documents that all the commissioners have
23 reviewed, that that timing was necessary.

24 MS. BALLARD: The Supreme Court violates its own rules
25 on timing on a regular basis. I think you can do

1 the same.

2 THE CHAIR: Well, I'm not going to compare myself to
3 the Supreme Court. I think at this point I'd
4 like to take a ten minute break to ensure that if
5 other commissioners have questions, we can
6 discuss that approach and --

7 MS. BALLARD: I would also ask that you give us
8 whatever timetable you want for proposed orders.

9 THE CHAIR: I'll do that at the absolute end --

10 MS. BALLARD: Thank you.

11 THE CHAIR: -- because I do -- I am certain that you
12 and Ms. Laster discussed that together. We've
13 discussed it in previous matters. I love that
14 approach, and I'm going to give y'all all the
15 time that you need to do that. Maybe in this
16 break y'all can discuss what would be a
17 reasonable time frame, and if y'all can agree
18 upon one, I'll probably do something in that
19 ballpark.

20 MS. LASTER: Yes, sir.

21 THE CHAIR: At this point we're going to take a ten
22 minute break, and we'll be back. It's 10:27.
23 We'll be back at 10:40.

24 (Off the record.)

25 THE CHAIR: Okay. For the first time today I'm on

1 time with what I set out for. It's 10:40. We
2 are back in session. First, I want to thank
3 counsel. Both of you did an excellent job
4 preparing your oral arguments to supplement what
5 was presented in your briefs. I think I can
6 speak on behalf of the other commissioners when I
7 say we really appreciate that. There was no
8 redundancy beyond what was necessary, and your
9 arguments today were extraordinarily helpful, and
10 so for that we thank you. As I mentioned at the
11 outset, we are going to take these arguments
12 under advisement, and we'll issue an order in
13 accordance with Sections 52-805 and 806 of the
14 Code regulations. I am, as was mentioned -- I am
15 going to request a proposed order from both
16 sides, and I would also like to request that once
17 those proposed orders are exchanged with counsel,
18 y'all have additional time to either supplement
19 or respond to the other side's proposed order. I
20 think that's helpful for the Commission in
21 determining each of your analyses as to what's
22 happening here. Were y'all able to discuss a
23 time period that you could agree upon to submit
24 proposed orders?

25 MS. BALLARD: Yes, we were.

1 THE CHAIR: And what was that time?

2 MS. BALLARD: We agreed to submit proposed orders to
3 each other and to the Commission by February
4 17th.

5 THE CHAIR: Okay. So that's 30 days?

6 MS. BALLARD: That's 30 days, and we --

7 THE CHAIR: Does that give you enough time to get a
8 transcript from your court reporter?

9 MS. BALLARD: It does. I discussed that with her as
10 well.

11 THE CHAIR: Okay. And then the additional time for
12 either a supplemental briefing or a response
13 briefing or whatever we want to call it, how much
14 time do y'all need for that?

15 MS. BALLARD: We discussed 15 days.

16 THE CHAIR: Okay. In the event that 30 days -- you
17 know, next week is another predicted weather
18 disaster. If something else happens and you need
19 additional time on that 30, that February 17th is
20 clearly not going to work for one or both of you,
21 I don't need a formal motion requesting more
22 time. Please send an email, and we're going to
23 grant that. Again, this is -- our packet alone
24 for this matter is over 1,100 pages. It's
25 complex. It's document heavy, and there's a lot

1 of research that goes into it. So if you need
2 additional time, we understand. Just ask.

3 MS. BALLARD: Thank you very much.

4 MS. LASTER: I appreciate that, Commissioner Truslow.

5 MS. BALLARD: Mr. Loveless appreciates your time and
6 attention to these very important issues.

7 THE CHAIR: Thank you very much. We are going to
8 consider this matter closed. Okay. Thank y'all.

9 Further deponent sayeth not.

10 (There being no further questions, the hearing
11 concluded at 10:43 a.m.)

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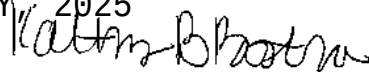
1 CERTIFICATE OF REPORTER
2

3 I, KATHRYN BOSTROM, COURT REPORTER AND NOTARY PUBLIC
4 IN AND FOR THE STATE OF SOUTH CAROLINA AT LARGE, HEREBY
5 CERTIFY THAT I REPORTED THIS HEARING ON THURSDAY, THE 16th
6 DAY OF JANUARY 2025, THAT THE WITNESS WAS FIRST DULY SWORN
7 BY ME AND THAT THE FOREGOING 44 PAGES CONSTITUTE A TRUE AND
8 CORRECT TRANSCRIPTION OF MY STENOMASK REPORT OF SAID
9 DEPOSITION.

10 I FURTHER CERTIFY THAT I AM NEITHER ATTORNEY NOR
11 COUNSEL FOR, NOR RELATED TO OR EMPLOYED BY ANY OF THE
12 PARTIES CONNECTED WITH THIS ACTION, NOR AM I FINANCIALLY
13 INTERESTED IN SAID CAUSE.

14 I FURTHER CERTIFY THAT THE ORIGINAL OF SAID TRANSCRIPT
15 WAS THEREAFTER SEALED BY ME AND DELIVERED TO DESA BALLARD,
16 226 STATE STREET, WEST COLUMBIA, SOUTH CAROLINA, WHO WILL
17 RETAIN THIS SEALED ORIGINAL TRANSCRIPT AND SHALL BE
18 RESPONSIBLE FOR FILING SAME WITH THE COURT PRIOR TO TRIAL
19 OR ANY HEARING WHICH MIGHT RESULT IN A FINAL ORDER ON ANY
20 ISSUE.

21 IN WITNESS WHEREOF, I HAVE SET MY HAND AND SEAL THIS
22 23RD DAY OF JANUARY, 2025

23 
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24 KATHRYN B. BOSTROM, COURT REPORTER

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The Supreme Court of South Carolina

ORDER

Pursuant to Article V, § 4, of the South Carolina Constitution, the Rules of Professional Conduct contained in Rule 407, SCACR, are amended as follows:

- (1) The following is added to the end of Rule 1.8:

(k) In any adversarial proceeding, a lawyer shall not serve as both an advocate and an advisor to the hearing officer, trial judge or trier of fact. A lawyer serving as an advocate in a particular matter shall not directly or indirectly engage in ex parte communication with the hearing officer, trial judge or trier of fact concerning the proceeding.

- (2) The following commentary is added after the commentary to Rule 1.8:

Serving as an Advocate and Advisor in Adversarial Proceedings

This provision addresses those situations which arise primarily in administrative proceedings in which a lawyer who serves as an advisor to that body is permitted to prosecute matters which are adjudicated by that body. This rule prohibits a lawyer who has served or is serving as an advisor on a particular matter from also prosecuting or defending that particular matter. It does not prevent one lawyer from prosecuting an administrative matter in which another lawyer in the same office serves as an advisor to the hearing body, as

long as the lawyers do not communicate with one another or share information about the particular case. Communications by the prosecuting lawyer and the advising lawyer with respect to a particular matter would operate as an indirect ex parte communication with the hearing officer, trial judge or trier of fact, because the information gained by the advising lawyer would be available to the hearing officer, trial judge or trier of fact.

By way of example only:

(A) A lawyer assigned to serve as an advisor to the Board of Dentistry may not prosecute a disciplinary action against Dentist Doe while at the same time he advises the Board on matters relative to the Doe matter. He may advise the Board on the Doe matter while another lawyer employed by the same employer prosecutes the Doe matter; but the two lawyers may not share information with one another, except in the regular course of discovery, with notice to Doe. The lawyers must operate as if they are in separate firms, even though they are employed by a common employer.

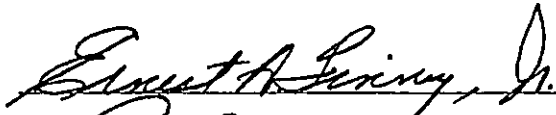
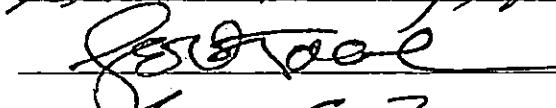
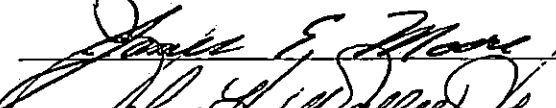
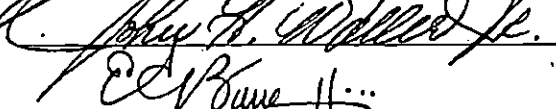
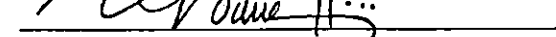
(B) General counsel employed by a state-supported university may not defend the university in a dispute brought by an employee under the university's internal employee grievance system while at the same time serving as an advisor to the internal panel which is adjudicating the employee grievance matter. One lawyer in general counsel's office may advise the employee grievance body on the particular matter while another lawyer in the same office defends the university in the matter, as long as the two lawyers do not share information concerning the matter. The lawyers must operate as if they are in separate firms, even though they are employed by a common employer.

It is recognized that lawyers in private practice would be prohibited, under Rule 1.7, from representing an adjudicatory body in a particular matter while another lawyer in the same law firm prosecutes or defends the same matter before the adjudicatory body. Because of the nature of public employment of lawyers, however, some accommodation must be made to permit the sharing of responsibilities among lawyers of a common employer. The erection of a "Chinese wall" regarding sharing of information among lawyers employed by a common

employer permits the efficient carrying out of administrative functions, while at the same time protecting the rights of individuals whose rights are being adjudicated in the proceedings.

These amendments shall become effective immediately.

IT IS SO ORDERED.

	C.J.
	A.J.
	A.J.
	A.J.
	A.J.

Columbia, South Carolina

November 7, 1996

September 21, 2020

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

Ms. Courtney M. Laster
General Counsel
SC Ethics Commission
201 Executive Center Drive, Suite 150
Columbia, SC 29210

Dear Ms. Laster:

Thank you for taking my call on Friday.

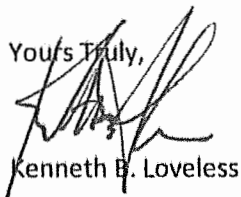
I have a question under the following scenario for you:

"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 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?"

If you could review and provide written guidance, it would be much appreciated.

Yours Truly,

A handwritten signature in black ink, appearing to be 'K. Loveless', written over the typed name.

Kenneth B. Loveless

State of South Carolina
State Ethics Commission

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.

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

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.

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.

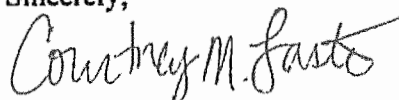
DISCUSSION

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

Kenneth B. Loveless, p. 3
September 25, 2020

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,

A handwritten signature in black ink that reads "Courtney M. Laster". The signature is written in a cursive, flowing style.

Courtney M. Laster
General Counsel

State of South Carolina

State Ethics Commission

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

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(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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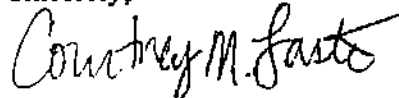
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Kenneth B. Loveless, p. 3
September 25, 2020

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Sincerely,

A handwritten signature in black ink, reading "Courtney M. Laster". The signature is written in a cursive, flowing style with a long horizontal stroke at the end.

Courtney M. Laster
General Counsel

State of South Carolina

State Ethics Commission

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

MINUTES

COMMISSION MEETING

OPEN SESSION

January 21, 2021

The meeting was called to order at 9:30 a.m. by Chairman Childs C. Thrasher at the State Ethics Commission's Hearing Room located at 201 Executive Center Drive, Suite 150, Columbia, South Carolina. Present was Commissioner Brian M. Barnwell. Joining via Zoom call were Vice Chairman Donald Gist, and Commissioners AJ Holloway, Donald H. Jackson, and Brandolyn T. Pinkston.

Staff present: Jimmy Bagnall, Rynne Caldwell, Kevin Hinson, Courtney Laster, Reggie Gaymon, and Deaven Linen were in attendance. Director Meghan Walker, Ami Franklin, Richard Provencher, and Karen A. Wiggins joined via Zoom call.

Others present: S. Jahue Moore, Esquire, Suzanne D. Carver and Sandra K. Backman. Ariel Slade, Kierra Howell and Schuyler Kropf attended via Zoom call.

Chairman Thrasher declared a quorum present. Director Walker noted for the record that the news media was duly notified.

MINUTES

Chairman Thrasher called for approval of the Minutes. A motion was made by Vice Chairman Gist, seconded by Commissioner Jackson, to accept the Minutes. Chairman Thrasher asked for any discussion or opposition. There being none, the motion carried with no opposition to approve the Open Session Minutes and the Executive Session Minutes from the December 3, 2020 Commission meeting. The motion carried with a 6 - 0 vote.

APPEALS

C2015-089 State Ethics Commission vs. Suzanne D. Moore

Commissioner Barnwell and Commissioner Pinkston recused themselves. Chairman Thrasher presented this matter. Respondent's Attorney, S. Jahue Moore, gave an opening statement. General Counsel Laster gave a history of events. Rebuttal statements ensued. Chairman Thrasher thanked everyone for coming and stated the Commission would take this matter under advisement and contact Respondent with their decision.

Commissioner Barnwell, and Commissioner Pinkston returned to the meeting.

C2019-062 State Ethics Commission vs. Sandra K. Backman

Chairman Thrasher, Vice Chairman Gist and Commissioner Barnwell recused themselves. Acting Chairman Pinkston presented this matter. Respondent Backman gave her testimony. General Counsel Laster gave a history of events. Acting Chairman Pinkston thanked Respondent for coming and stated the Commission would take this matter under advisement and contact Respondent with their decision.

Chairman Thrasher, Vice Chairman Gist and Commissioner Barnwell returned to the meeting.

OFFICE OPERATIONS

Director Walker presented the Budget, Compliance Report, and Pending and Paid Orders for information and requested any opposition or discussion. There was none.

EXECUTIVE SESSION

Chairman Thrasher asked for further discussion or a motion to go into Executive Session. A motion was made by Commissioner Barnwell, seconded by Commissioner Holloway, to go into Executive Session for the purpose of discussing a legal matter and probable cause matters. The motion carried with a 6 – 0 vote.

RETURN FROM EXECUTIVE SESSION

Upon return from Executive Session at 11:29 a.m., Chairman Thrasher asked for a motion to adopt and ratify actions taken on legal and probable cause matters in Executive Session. Chairman Gist made a motion, seconded by Commissioner Pinkston, to adopt and ratify actions taken with regard to matters in Executive Session. The motion carried with a 6 – 0 vote.

ADVISORY OPINION

AO2021-001

General Counsel Laster presented a draft of Advisory Opinion 2021-001 concerning Campaign Contributions and Digital Cryptographic Currency. Lengthy discussion ensued. A motion was

made by Commissioner Jackson, seconded by Commissioner Pinkston, to accept draft. All agreed.

LEGAL

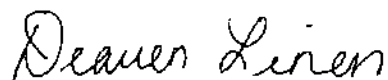
2017-055 In the Matter of Phillip Merry – Offer of Judgment

General Counsel Laster presented this matter. Chairman Thrasher asked for a motion or discussion in this matter. Vice Chairman Gist made a motion, seconded by Commissioner Barnwell, in favor of accepting the offer. The motion carried with a 6 – 0 vote.

ADJOURNMENT

Chairman Thrasher asked for further discussion or a motion to adjourn. There being no further discussion, Commissioner Pinkston made a motion, seconded by Vice Chair Gist, to adjourn at 11:34 a.m. The motion carried with a 6 – 0 vote.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Deaven Linen".

Deaven Linen

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
1020 Dutch Fork Road
Irmo, SC 29063

Re: Recusal of Kenneth B. Loveless on certain matters

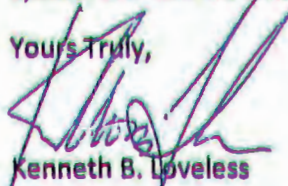
Dear Mrs. Hammond:

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

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



AJ HOLLOWAY
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BRANDOLYN THOMAS PINKSTON

201 EXECUTIVE CENTER DRIVE, SUITE 100
COLUMBIA, S.C. 29210

MEGHAN L. WALKER
EXECUTIVE DIRECTOR

February 22, 2021

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 February 18, 2021, you presented the following:

As you know, I serve on the board of trustees for the School District 5 of Lexington-Richland Counties and had previously requested that the SC Ethics Commission issue guidance on recusal from certain matters. I sought guidance after other board members accused me during open session September 14, 2020.

Some members took issue with me not recusing myself from discussions pertaining to the Piney Woods Elementary School Construction Project. However, the agenda for the September 14, 2020 meeting was set by others. The presenter was a vendor, the construction manager at risk, Contract Construction, Inc. (general contractor).

Kenneth B. Loveless, p. 2
February 22, 2021

The presentation went without much discussion. I asked one question about the number of change orders received as of that date.

Next under the Discussion Agenda was an item entitled "District Construction." It was there that I was basically subjected to public trial for not having recused myself from the previous Discussion Agenda item, Piney Woods. I was dismayed at the accusations and decided to ask guidance of the Commission.

The guidance I received was provided by you as General Counsel in a letter dated September 25, 2020. Your letter provided guidance requested in response to my letter dated September 21, 2020. The letter was couched in terms of possible future events as might occur in the normal course of business for my occupation: employee and stockholder of a general contracting corporation.

No other updates or discussions of the Piney Woods school project have occurred since the September 14, 2020 meeting. I did attend a walk-through for all board members hosted by the school superintendent last month. It was and is my intention to recuse myself when any contract discussion of Contract Construction, Inc. is on the agenda. No discussion of Contract Construction, Inc. or its contract with the District has been on the agenda since December 8, 2019.

At the last school board meeting February 8, 2021[1], I decided to formally recuse myself via a letter to the Board Chair Janis Hammond as follows:

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 with which I am employed and a stockholder, Loveless Commercial Contracting, Inc. operates as a contractor 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 related 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

In light of the above and the information provided, I ask you to formally provide rulings upon:

- (1) I believe recusal is a matter of personal perspective. It is not for other members of the board to question or have a right to demand recusal. Am I correct in that statement?
- (2) Provided that there are no additional projects or business ties, I believe that I have a right to end recusal when the contract relationship at the SC Law Enforcement Division Forensic Lab Project between Contract Construction, Inc. and Loveless Commercial Contracting Inc. has been completed. Am I correct in that belief?
- (3) I believe that I should be allowed in the normal course of duties and responsibilities of a school board trustee to visit Piney Woods Elementary School or any other district construction site and to receive and review those projects and corresponding records as they pertain to the nature of the physical construction product which the district has or is to receive. In reference to ethics under SC Code 8-13-700. Am I correct in that belief?

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.

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.

DISCUSSION

Based on the facts presented in your September 2020 request for an informal opinion, Contract Construction is a "business with which [you are] associated" for purposes of the Ethics Act. As I stated in my September 25, 2020 response, this means that whenever you are faced with a scenario in which Contract Construction has an economic interest, you must recuse yourself following the instructions in Section 8-13-700(B). Keeping that in mind, I have answered your questions below in turn:

1. I believe recusal is a matter of personal perspective. It is not for other members of the board to question or have a right to demand recusal. Am I correct in that statement?

Recusal is mandated by law in certain circumstances, such as when you, your family members, or any individuals or businesses with which you are associated have an economic interest. It is outside the scope of the Ethics Act as to what public officials have a right to question, but you are correct that the ultimate decision to recuse belongs to the public official. If a public servant fails to properly recuse himself from circumstances that require recusal, that public servant subjects himself to a possible enforcement action by the Commission.

2. Provided that there are no additional projects or business ties, I believe that I have a right to end recusal when the contract relationship at the SC Law Enforcement Division Forensic Lab Project between Contract Construction, Inc. and Loveless Commercial Contracting Inc. has been completed. Am I correct in that belief?

Correct. Once the conflict no longer exists, recusal is no longer required.

3. I believe that I should be allowed in the normal course of duties and responsibilities of a school board trustee to visit Piney Woods Elementary School or any other district

February 22, 2021

construction site and to receive and review those projects and corresponding records as they pertain to the nature of the physical construction product -which the district has or is to receive. In reference to ethics under SC Code 8-13-700. Am I correct in that belief?

When disqualification is required, you should not discuss the matter or take any action on it that could be perceived as an attempt to influence the governmental decision. Section 8-13-700 does not simply prohibit voting or taking other official action, but prohibits the public official from making, participating in making, or in any way attempting to use his public office to influence the governmental decision. In fact, the Commission has held that a mere discussion in executive session by a public servant about a matter in which his wife had an economic interest violated Section 8-13-700. See Complaints 97-035 and 97-036. Therefore, you should not make site visits to the Piney Woods Elementary School construction site, nor should you review invoices or any other documents related to this project. Similar activities at other District construction sites are not prohibited as long as you are not recused from those projects.

I hope this is responsive to your request. Keep in mind that this opinion only relates to future conduct and is not intended to apply to events that may have already occurred. Thank you for contacting the Commission. If you have any questions or need anything further, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink that reads "Courtney M. Laster".

Courtney M. Laster
General Counsel

State of South Carolina
State Ethics Commission

CHILDS C. THRASHER, CHAIR
DONALD GIST, VICE CHAIR
A H O L L O W A Y



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: 92148969009997901419048826

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, inquiries, 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,

A handwritten signature in blue ink that reads "Meghan L. Walker".

Meghan L. Walker
Executive Director

MLW:rp
Enclosure: Complaint

State of South Carolina

State Ethics Commission

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



AJ HOLLOWAY
DON JACKSON
BRANDOLYN THOMAS PINKSTON

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

MEGHAN L. WALKER
EXECUTIVE DIRECTOR

MINUTES

COMMISSION MEETING

OPEN SESSION

March 18, 2021

The meeting was called to order at 9:31 a.m. by Chairman Childs C. Thrasher via Zoom at the State Ethics Commission's Hearing Room located at 201 Executive Center Drive, Suite 150, Columbia, South Carolina. Other members present via Zoom calling were Vice Chairman Donald Gist, Commissioner Brian M. Barnwell, Commissioner AJ Holloway, Commissioner Donald H. Jackson, and Commissioner Brandolyn T. Pinkston.

Staff present: Meghan L. Walker, James T. Bagnall, Ryanne Caldwell, Reggie J. Gaymon, Kevin Hinson, Courtney M. Laster, and Deaven Lincn were in attendance. Ami R. Franklin and Karen A. Wiggins joined via Zoom call.

Chairman Thrasher declared a quorum present. Director Walker noted for the record that the news media was duly notified.

MINUTES

Chairman Thrasher called for an approval of the minutes. A motion was made by Vice Chairman Gist, seconded by Commissioner Pinkston, to accept the minutes. Chairman Thrasher asked for any discussion or opposition. There being none, the motion carried with no opposition to approve the open session minutes and the executive session minutes from the January 21, 2021 Commission meeting. The motion carried unanimously with a 6 - 0 vote.

EXECUTIVE SESSION

At 9:33 a.m. Chairman Thrasher stated that the amended agenda called for a legal matter to be discussed in executive session at the request of General Counsel Laster. All agreed to go into executive session to discuss a legal matter.

RETURN FROM EXECUTIVE SESSION

Upon return from executive session at 9:46 a.m., Acting Chairman Gist noted a legal matter was discussed in executive session, and there were no actions to ratify.

APPEAL

C2019-049 Phillip Merry

Because Chairman Thrasher served on the original hearing panel, she recused herself and left the room. Acting Chairman Gist presented this matter. General Counsel Laster gave a statement concerning this Appeal and presented a draft of a Consent Order agreeing to a new hearing. Discussion ensued. A motion was made by Commissioner Pinkston, seconded by Commissioner Jackson, to accept staff recommendation to approve to vacate the prior Order and have a new hearing. The motion carried with a 5 – 0 vote. Chairman Thrasher recused.

Chairman Thrasher returned to the meeting and thanked Vice Chairman Gist for assisting with the meeting.

EXECUTIVE SESSION

At 9:53 a.m. Chairman Thrasher asked for a motion to go back into executive session for the purpose of discussing probable cause matters. A motion was made by Commissioner Barnwell, seconded by Commissioner Holloway, to go into executive session. There being no discussion or opposition, the motion carried with a 6 – 0 vote.

RETURN FROM EXECUTIVE SESSION

A motion was made by Vice Chairman Gist, seconded by Commissioner Holloway, to adopt and ratify actions taken with regard to probable cause matters in executive session. The motion carried with a 6 – 0 vote.

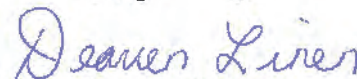
OFFICE OPERATIONS

Director Walker presented the Budget, Compliance Report, and Pending and Paid Orders. Discussion ensued concerning the review of the House Oversight Committee. Any further discussions would need to be presented to Director Walker.

ADJOURNMENT

Chairman Thrasher asked for further discussion or a motion to adjourn. There being no further discussion, Commissioner Barnwell made a motion, seconded by Vice Chairman Gist, to adjourn at 10:39 a.m. The motion carried with a 6 – 0 vote.

Respectfully Submitted,


Deaven Linen

State of South Carolina

State Ethics Commission

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



AJ HOLLOWAY
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201 EXECUTIVE CENTER DRIVE, SUITE 150
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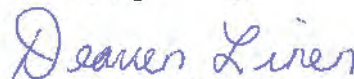
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Director Walker presented the Budget, Compliance Report, and Pending and Paid Orders. Discussion ensued concerning the review of the House Oversight Committee. Any further discussions would need to be presented to Director Walker.

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Respectfully Submitted,


Deaven Linen

From: Walker, Meghan <mwalker@ethics.sc.gov>

Sent: Monday, October 3, 2022 3:24 PM

To: Desa Ballard <desab@desaballard.com>; Beth Cogan <Beth@desaballard.com>; butch@butchbowers.com; Laster, Courtney <claster@ethics.sc.gov>; O'Bryan, Rachael <robryan@ethics.sc.gov>

Subject: RE: Loveless - Expedited Hearing Order Three

Please submit proposed orders for the Motion to Dismiss by Thursday at 1:00.

Meghan

From: Beth Cogan <Beth@desaballard.com>

Sent: Thursday, October 6, 2022 11:56 AM

To: Laster, Courtney <claster@ethics.sc.gov>; Walker, Meghan <mwalker@ethics.sc.gov>; O'Bryan, Rachael <robryan@ethics.sc.gov>

Cc: Desa Ballard <desab@desaballard.com>; butch@butchbowers.com

Subject: RE: Loveless (C-2021-016) Proposed Order Granting Respondent's MTD

Good morning,

Attached is Respondent's Proposed Order.

-B

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE MATTER OF:
Complaint C-2021-016

Kenneth Loveless,
Respondent,

Kim Benson,

Complainant.

) BEFORE THE STATE ETHICS COMMISSION
)
)
)
)

**PROPOSED ORDER GRANTING
RESPONDENT'S MOTION TO DISMISS
(Hearing scheduled Oct. 6, 2022)**

Respondent Kenneth Loveless moves to dismiss this pending action. He asserts legal insufficiency of the Notice of Hearing in that it does not allege violations of the cited statutes. He also asserts procedural defects in these proceedings. For the reasons set forth below, the motion is granted.

By Notice dated July 11, 2022, Respondent was advised that the Commission had determined that "probable cause" existed to support allegations made in the captioned complaint.¹ 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.

Respondent asserts that the key to an alleged violation of the statutory provision is the existence of a "governmental decision" which a public official made or participated in making. Respondent asserts that the four counts against him do not allege that he made or participated in making decisions and the Notice of Hearing establishes no factual basis to proceed with this matter.

¹ Notice of Hearing dated July 11, 2022, of record.

The Notice of Hearing sets forth four scenarios for the alleged violation by Respondent of § 8-13-700(B). According to the Notice of Hearing, the counts against him are:

COUNT ONE: Whether Respondent “**wrote a letter**” on March 24, 2020.

COUNT TWO: Whether Respondent “**participate[d] in discussion**” about construction of a district 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.

Respondent asserts that none of the “particulars” asserted against him, which form the basis of the Commission’s determination of probable cause and determination to proceed with a “formal hearing” alleges Respondent’s participation in a “governmental decision.”

EVOLUTION OF THE COMMISSION’S APPLICATION OF § 8-13-700(B)

Early in its existence, the Commission² issued an advisory opinion that recognized its duties are prescribed by the legislature. In SEC AO-72, we stated “[a] statutory provision should be given reasonable and practical construction consistent with the purpose and policy expressed in the statute.” SEA AO 92-072³aa (pp.2-3). “The real purpose and intent of 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).

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

² 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.

³ This EAO was overturned in part by amendments to § 8-13-740(4) and (5) in 2007, not applicable here.

dated February 13, 1998).⁴ That being the case, Respondent 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.

“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”]

However, in 2000, the Commission issued an advisory opinion which construed and expanded on the language of an 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

⁴ 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 Respondent 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.*

“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.

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.

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 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).

Commission counsel 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.

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.2d 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).

The factual basis for the alleged violations of the Act as set forth in the Notice of Hearing do not challenge Respondent’s actions in connection with any “governmental decision” or “action.” Respondent’s participation in a governmental decision is a clear prerequisite to a determination that there has been a violation of § 8-13-700(B).⁵

Respondent’s motion is based in part 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.” While the procedural aspects of the State Ethics Act do not expressly permit the filing of a motion to dismiss or the ruling on it prior to the final merits hearing, the Administrative Procedures Act recognizes the ability of an agency to issue a “preliminary, procedural or intermediate agency action or ruling.” S.C. Code § 1-23-380.

Respondent also points out what he asserts are procedural defects in these proceedings. In light of the decision issued here, it is not necessary to address those arguments.

This is not a ruling on the merits of the pending complaint. This is not an order that adjudicates any facts nor does it opine on the merits of the original complaint against Respondent. This ruling is

⁵ Respondent asserts that the Commission’s charges against him implicate his rights to free speech and liberty. It is not necessary to address this issue in light of the ruling issued herein.

limited to finding that the Notice of Hearing does not allege violations of § 8-13-700(B) and the proceedings initiated by the Notice of Hearing are dismissed.

The undersigned, as chairman of the hearing panel assigned to hear this matter in February 2023, was designated as hearing officer for this matter by order dated October 3, 2022.

For the reasons set forth above, the motion to dismiss is granted.

F. Xavier Starkes
Chairman, Hearing Panel

October ____, 2022

From: Laster, Courtney <claster@ethics.sc.gov>

Sent: Thursday, October 6, 2022 9:53 AM

To: Walker, Meghan <mwalker@ethics.sc.gov>; Desa Ballard <desab@desaballard.com>; Beth Cogan <Beth@desaballard.com>; butch@butchbowers.com; O'Bryan, Rachael <robryan@ethics.sc.gov>

Subject: RE: Loveless - Expedited Hearing Order Three

Hi All,

Please see the attached proposed Order.

Thank you.

Courtney M. Laster
General Counsel
South Carolina Ethics Commission
201 Executive Center Drive, Suite 150
Columbia, SC 29210
Phone: 803-253-4192

STATE OF SOUTH CAROLINA	)	
COUNTY OF RICHLAND	)	BEFORE THE STATE ETHICS COMMISSION
	)	
IN THE MATTER OF:	)	
COMPLAINT C2021-016	)	
	)	
Kim Benson,	)	ORDER DENYING RESPONDENT'S
Complainant.	)	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 sufficient² to constitute a violation, an investigation may be conducted of the alleged violation.

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

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

...

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

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

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

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

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

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

CONCLUSION

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

AND it is **SO ORDERED**.

F. Xavier Starkes
Chairman, Hearing Panel

October ____, 2022
Columbia, South Carolina

From: [Walker, Meghan](#)
To: [O'Bryan, Rachael](#)
Subject: FW: Office of the State Inspector General Request
Date: Monday, September 22, 2025 3:32:27 PM
Attachments: [image003.gif](#)
[image004.jpg](#)

From: Media Questions
Sent: Tuesday, February 21, 2023 12:23 PM
To: Watson, Bessie <BessieWatson@oig.sc.gov>
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/>



From: Beth Cogan <Beth@desaballard.com>

Sent: Friday, March 3, 2023 3:46 PM

To: mwalker@ethics.sc.gov

Cc: Desa Ballard <desab@desaballard.com>; Butch Bowers, Esquire (butch@butchbowers.com) <butch@butchbowers.com>; claster@ethics.sc.gov; O'Bryan, Rachael <robryan@ethics.sc.gov>

Subject: (Benson v. Loveless C2021-016) Proposed Findings of Fact

Good afternoon,

Desa relays the following:

Meghan:

Attached are proposed findings of fact and conclusions of law for the Panel's consideration. Also attached is a transcript of the testimony we were able to get transcribed by yesterday (which was Cates, Melton and Loveless). I've added Page and line citations to the proposed findings to refer to the exact testimony of each witness.

We do not have the remainder of the transcript, because we expedited what we thought we needed. It was still a push to get it by yesterday. Given more time, there are lots more citations to the transcript that I could provide.

Please send these proposed findings and the partial transcript to the Hearing Panel members. Please extend my thanks for allowing us to submit this for their consideration.

db

Kindest Regards,

-Beth

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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,	)	RESPONDENT’S PROPOSED
	)	FINDINDGS OF FACT AND
Complainant.	)	CONCLUSIONS OF LAW
	)	
Kenneth Loveless,	)	
Respondent.	)	
_____	)	

This panel report is issued following a panel hearing held on February 16, 2023 before Commission Members Xavier Starkes (Panel Chairman), Scott E. Frick, and A.J. Hollway.¹ Prosecuting the case on behalf of the Commission was Courtney Laster. Respondent was represented by Desa Ballard.

Pretrial, Respondent’s Motion to Dismiss was heard by Commissioner Starkes, who denied Respondent’s Motion to Dismiss by order dated October 6, 2022. Respondent filed a Request for Review by the Full Commission in accordance with Reg. 52-801 and 52-805 on October 17, 2022, and the hearing panel was not asked to, and did not, revisit the issues raised in the Motion to Dismiss as part of the merits hearing held on February 16, 2023.²

WITNESSES PRESENTED

Complainant presented testimony from Michael C. Cates, Christina Melton and Commission Investigator Ryanne Caldwell. Respondent presented his own testimony, as well as that of Trey McDaniel, Catherine Huddle and Audrey Jaramillo, who testified via Webex without

¹ Mr. Holloway participated in the hearing by virtual link.

² There were other pretrial motions heard and decided prior to the panel hearing on February 16, 2023, none of which are relevant to the panel’s hearing on the charges contained in the Notice of Hearing dated July 11, 2022. They are referenced here solely to insure the completeness of the record before the Commission.

objection. Commission introduced Exhibits C-1 through C-9, without objection. Respondent introduced exhibits R-1 through R-11 and proffered two other exhibits which were not introduced into evidence but included as proffers to preserve the Chair’s decision to exclude them as exhibits.³

The Commission received a verified complaint from Kim Benson under S.C. Code § 8-13-320(9)(a) on or about February 17, 2021. A determination of probable cause was made in accordance with S.C. Code §8-13-320(10)(d) and a Notice of Hearing was issued by the Commission on July 11, 2022 and served on Respondent’s counsel of record.⁴ The Notice of Hearing alleged four (4) counts of violation of the State Ethics Act, S.C. Code §8-13-700(b) as follows:

COUNT ONE

FAILURE TO RECUSE FROM A GOVERNMENTAL DECISION IN WHICH A BUSINESS WITH WHICH (S/C) ASSOCIATED HAD AN ECONOMIC INTEREST

The factual summary for Count One alleged that Respondent, while serving as a member of Lexington-Richland School District Five School Board, did 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 § 8-13-700(B).

COUNT TWO

FAILURE TO RECUSE FROM A GOVERNMENTAL DECISION IN WHICH A BUSINESS WITH WHICH (S/C) ASSOCIATED HAD AN ECONOMIC INTEREST

The factual summary for Count Two alleged that on June 15, 2020, Respondent, while serving as a member of Lexington-Richland School District Five School Board, participated in

³ The proffered exhibits do not appear on the Commission’s exhibit list and Loveless has asked the Executive Director to provide an updated exhibit list to include the two proffered exhibits.

⁴ At that time, Respondent was represented by Karl “Butch” Bowers. Desa Ballard filed a Notice of Appearance as co-counsel with Mr. Bowers on August 2, 2022.

discussion about construction of a district facility by Contract Construction, Inc., a business with which he was associated, in violation of § 8-13-700(B).

COUNT THREE

FAILURE TO RECUSE FROM A GOVERNMENTAL DECISION IN WHICH A BUSINESS WITH WHICH (S/C) ASSOCIATED HAD AN ECONOMIC INTEREST

The factual summary for Count Three alleged that on September 14, 2020, Respondent, while serving as a member of Lexington-Richland School District Five School Board participated in a discussion on September 14, 2020 “about construction of a district facility by Contract Construction Inc., a business with which he was associated” in violation of, in violation of § 8-13-700(B).

COUNT FOUR

FAILURE TO RECUSE FROM A GOVERNMENTAL DECISION IN WHICH A BUSINESS WITH WHICH (S/C) ASSOCIATED HAD AN ECONOMIC INTEREST

The factual summary provided for Count Four alleged that in June of 2020, Respondent participated in a site visit of a district facility being constructed by Contract Construction Inc., a business with which he was associated, in violation of § 8-13-700(B).

On January 25, 2022, Respondent was requested to file a written response to the Notice of Hearing, which he did by written submission dated February 28, 2022. In responding, Respondent waived the confidentiality of these proceedings provided to him by S.C. Code § 8-13-320(10)(b).

In his written response,⁵ Respondent denied having participated in decisions or votes relative to the Contract Construction Company Inc. project on any of the dates alleged in the Notice of Hearing, asserted that each incident of alleged violation of the State Ethics Act was him carrying out his statutory duties as an elected member of the District Five School Board, that Contract

⁵ Exhibit C-8.

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.

Respondent further pointed out that he had requested and received an informal letter from Commission Counsel Courtney Laster dated September 25, 2020 which stated that, in her opinion, he should recuse himself from "that matter" (which was not defined in the letter) but concluded "you are correct that the ultimate decision to recuse belongs to the public official." Respondent stated that 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. Respondent also attached the following formal advisory opinions of the State Ethics Commission: SEC AO2003-002, SEC AO2004-001, SEC AO2008-004, SEC AO92-201, and SEC AO2010-004. Respondent further requested;

If there is existing precedent which prohibits [Respondent] from voicing his opinion regarding the quality of work being performed for the school district, and therefore expressly allows such an infringe[ment] on his first amendment right of free speech, please point those out for our consideration/ Similarly, if he is prohibited from listening to discussion 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.

Exhibit C-8.

The record does not reflect that any response was transmitted by Commission staff in

response to Respondent's request or that Respondent's counsel was provided with any authority as requested.

The panel's findings of fact are based on a detailed review of the exhibits, its deliberate and careful review of the testimony as well as the credibility of the witnesses and the weight of the testimony. The panel carefully observed each witness, and noticed such things as their tone of voice, gesture, hesitation or readiness to answer questions, their sincerity and mannerisms, as well as their biases and alliances, all of which assisted in the panel's evaluation of the credibility of each witness.

The burden of proof of a violation of the State Ethics Act is on the Commission, which is required to prove misconduct by a preponderance of the evidence.⁶ Based on the panel's evaluation of the testimony and exhibits, the panel makes the following:

FINDINGS OF FACT

1. District Five, through Superintendent Christina Melton, signed a contract for construction of a new elementary school with Contract Construction on or about December 19, 2018. (Transcript p. 32, line 15 – p. 33, line 5; **Exhibit C-6**). The Board of Trustees did not sign the contract, but at a Board meeting on December 10, 2018, the Board authorized Melton to "confirm the acceptability of all contract terms with the District's counsel and return the matter to the agenda for a special called meeting for further approval if necessary. . .". **Exhibit C-6**. Loveless voted against the motion, but it passed. *Id.*

⁶ The State Ethics Act does not state what the Commission's burden of proof is in establishing a violation of the act. § 8-13-320(10)(j) requires that the panel hearing be conducted in accordance with Administrative Procedures Act, which also does not dictate the applicable burden of proof for contested cases before administrative agencies. However, § 1-23-600(A)(5) requires that contested case hearings conducted before the Administrative Law Court must be established by a preponderance of the evidence, and that standard is applied here. To the extent the Commission's decision might involve a referral to the attorney general for prosecution, it is unknown what burden of proof would apply to the Commission's findings of fact. *See also* SCRE 301.

2. The elementary school for which Contract Construction was contacted eventually came to be known as Piney Woods Elementary School. (Tr. p. 29, lines 25 – p. 30, line 5).
3. Respondent’s written response to the Commission states that, 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. **Exhibit C-8.** Respondent was not on the Board at that time. *Id.*
4. The district’s official public records also reflect that all Requests for Proposal for construction of ES-13 were required to be submitted no later than October 4, 2018, before Respondent was on the Board. Respondent began his term on the Board on November 15, 2018. (Tr. p. 70, lines 3-7).
5. The minutes of the December 10, 2018 meeting reflects that Respondent seconded a motion to delay the vote on final selection of the architect and contractor until the Superintendent had explored the opportunity to build the school on an “already purchased site of Derrick’s Pond because it is a safer site and is where the extended growth is located.” **Exhibit C-9, also attached to Exhibit C-5.**
6. Public records of the district include a press release issued by District Five on December 18, 2018 which announced the District Superintendent had signed a contract for construction-manager-at-risk with Contract Construction Inc., for construction of the new elementary school.⁷ The press release further stated that Board Chairman Robert Gantt noted that no Board action was required in order for the Superintendent to execute the contracts.
7. Ms. Melton testified that the Board “made that decision” but the minutes clarify that Ms.

⁷ Rule 201(c) of the South Carolina Rules of Evidence permits an adjudicatory body to take judicial notice of facts which appear in certain public records.

Melton was the one who signed the contract with Contract Construction and it was signed on December 19, 2018. (Tr p. 31, lines 1-6; p. 32, lines 15-20). She clarified that the Board reviewed the contracts in executive session but did not vote on anything during the executive session. (Tr. p. 46, lines 11 – p. 46, line 20).

8. The Commission does not assert that Respondent was prohibited from voting on anything related to Contract Construction at the December 10, 2018 Board meeting. His only vote on that date was a “no” vote in favor of delegating the Board’s responsibility for review and approval of the contract for architect and construction company to the Superintendent. **Exhibit C-9.**
9. Other than Respondent’s “no” vote to authorize the Superintendent to proceed on December 10, 2018, there is no evidence Respondent ever voted or participated in any Board action as it related to Contract Construction or Piney Woods Elementary School. Michael Cates, who was the Chairman of the Board at that time, confirmed that Respondent did not vote on anything related to Contract Construction on the dates for which the Board’s records were introduced by the Commission, *i.e.*, June 15, 2020, September 14, 2020, or September 28, 2020. (Tr. p. 18, line 23 – p. 21, line 22).
10. Respondent is the principal of Loveless Commercial Contracting Inc., which has engaged in commercial contracting in South Carolina and surrounding states for 37 years. Respondent is a licensed general contractor in South Carolina and North Carolina. He is also licensed by South Carolina as a construction manager. (Tr. p. 65, line 22 – 25). Loveless Commercial Contracting Inc. became proficient in concrete construction, heavy concrete construction, and are both general contractors and work as subcontractors to other construction projects, usually on large projects on concrete work. (Tr. p. 66, lines

9-24).

11. The Board of Commercial Contractors has categorized Loveless Commercial Contracting as Group 5, having an unlimited amount per job of contracts it can perform, and a surety bond amount of \$500,000.00, the maximum authorized by LLR.⁸
12. Respondent was elected to the Lexington-Richland District Five Board of Trustees during the general election on November 6, 2018. He was sworn in and became a member of the Board on November 19, 2018. (Meeting Minutes November 19, 2018).
13. Upon his election, Respondent attended mandatory training with the South Carolina School Board Association (SCSBA), receiving and studying materials which included instruction on applicability of the State Ethics Act as it applied to school board trustees. (Exhibit R-11).⁹ He also studied relevant portions of the State Ethics Act. (Tr. p. 71, lines 1-23). Respondent ran for re-election in 2022, but was not successful and is no longer a public official. (Tr. p. 63, lines 6-9).
14. Loveless Commercial Contracting Inc. had no business relationship with Contract Construction Inc. when Respondent took office. (Tr. p. 70, line 8 – 25).
15. Similarly, at the time District Five awarded the construction contract to Contract Construction Inc., Loveless Commercial Contracting Inc. had never done business with

⁸ Information verified by the public records of the Department of Contractors, Department of Labor, Licensing and Regulation. John Fulton “Trey” McDaniel III, a project manager for Loveless Commercial Contracting, also testified to the meaning of the bonding amount which Loveless Commercial Contracting Inc. is authorized, and he estimated the average annual gross income of Loveless Commercial Contracting at \$25 million dollars. Respondent’s expertise and qualifications as a commercial contractor are not in question in this proceeding.

⁹ The hearing panel studied Exhibit R-11, a 25-page handout from the SCSBA, and notes on page 5 the section on “ethical principles” includes the statement “avoid conflict of interest between your public position, your professional career and your private life.” However, the SCSBA handout does not mention the State Ethics Act nor does it reference its application to School Board members. Incidentally, under “Duties” the handout does include a requirement that “[q]uestions, requests complaints and other information presented to individual board members outside of a board meeting. . . should be referred to the superintendent.” R-11, p. 6.

Contract Construction. *Id.*

16. Respondent's successful commercial contracting business is operated by senior staff who individually bid commercial projects as contractors and sub-contractors, and supervise work on subcontracts or contracts that are awarded. Respondent normally doesn't know anything about the bids submitted by his company unless or until his company is selected for a job and it's time to sign a contract.
17. After being asked to bid on the SLED project by Cleveland Construction, Loveless Commercial Contracting submitted competitive bids to four (4) of the commercial contractors who were participating in the competitive bid process for District Five's proposal to build a new elementary school.
18. In 2019, Contract Construction notified Loveless Commercial Contracting of its "intent" to award a subcontract to Loveless Commercial Contracting as a subcontractor for the District Five project. This "notice" was invalid, according to Respondent and his project manager Trey McDaniel, because the award of the bid to Contract Construction was delayed by a protest under the South Carolina Procurement Code and Contract Construction could not be awarded the District Five project until the procurement appeal was concluded.
19. Respondent eventually signed a contract as a subcontractor of Contract Construction Inc. on March 2, 2020 for the unrelated project for SLED. Respondent had no knowledge of the project until the contract was signed, nor did he oversee or supervise the work done by his company on the SLED project. Respondent was not involved in the bidding or subcontracting work on the SLED project. The project was completed by Loveless Commercial Contracting and the application for final payment was submitted on October

22, 2021. **Exhibit R-7.**

20. Loveless Commercial Contracting issued a warranty for the SLED project in February 2022, although Contract Construction asked for, and received, an extension of the warranty to begin on April, 2022, although the work was finished well before that.

Exhibits R-7, R-8 and R-9.

21. None of the Commission’s witnesses could reliably state there had been a site visit to the construction site of Piney Woods Elementary School by members of the District Five School Board in June 2020. Michael Cates testified to a date in June 2020, but said the date had been provided to him, and he did not know it of his own knowledge. (Tr. p. 16, lines 5-15; Tr. p. 27, lines 6-21). Christina Melton had no knowledge of a site visit by the Board in June 2020. (Tr. p. 55, lines 17 – p. 56, line 14).
22. Commission Investigator Ryanne Caldwell responded to a question by Commission Counsel Courtney Laster, which inquired if Mr. Loveless’s response to the Notice of Hearing confirmed he had attended a site visit at Piney Wood Elementary School in June 2020, and she responded yes. However, on cross, on the panel’s own review of **Exhibit C-8**, there is no evidence that a site visit occurred in June 2020.
23. In his capacity as a Board member, Respondent wrote a letter to Superintendent Christina Melton on March 24, 2020 asking a number of questions about the progress of construction at Piney Woods Elementary School. Ms. Melton testified that Respondent “requested action.” (Tr. p. 34, lines 20-25). Ms. Melton provided the notebook to Mike Montgomery,¹⁰ who was the district’s attorney at that time, and “reached out” to Dan Neil (*sic*). (Tr. p. 35, lines 19-25). Rather than “taking action”, at some later point, Ms. Melton

¹⁰ See also Tr. p. 61, lines 2-13.

provided Respondent with two letters obtained by Montgomery or Neal, both of which told Respondent his concerns were unfounded. (Tr. p. 36, lines 4-25). **Exhibit C-1**. Ms. Melton was unable to confirm that the exhibits had been provided to anyone but she was “confident” Mr. Montgomery had done so. (Tr. p. 49, line 9 – 52, line 16).

24. Respondent’s letter asked a number of questions about construction occurring at Piney Woods, but his questions did not lead to any decision, action or Board vote in any way.
25. Indeed, Superintendent Melton’s contract with the School District contained the following requirement: “The Board, individually and collectively, shall refer all substantive criticisms, complaints and suggests called to the Board’s attention to the Superintendent for study and appropriate action and the Superintendent shall investigate such matters or cause such matters to be investigated, and when requested or as is otherwise necessary, shall inform the Board of the results of such investigations. Requests for substantive information shall be made to the Superintendent and not to individual members of the district. **Exhibit R-1** (Tr. p. 40, line 13 – p. 42, line 4). As a Board member, Respondent was required to direct his questions to Ms. Melton and it was within her discretion how to proceed upon receiving Respondent’s questions.
26. Ms. Melton testified Respondent complied with his obligations by forwarding his letter dated March 24, 2020 to her rather than distributing it to anyone else. (Tr. p. 53, line 13- p. 54, line 6).
27. No Board action or votes were taken in response to Respondent’s letter. Minutes of Board meetings held on June 15, 2020, September 14, 2020, and September 28, 2020 (**Exhibits C-1, C-3 and C -5**) reflect discussions by Board members and representatives of contractors, including Contract Construction, regarding whether proper construction

standards were being met during the Piney Woods Elementary School Construction, However no vote or action is recorded in the official minutes of those meetings and the videos introduced by the Commission similarly do not show any votes or actions taken following the discussions regarding construction on the new elementary school.

28. Each set of Board minutes contains a detailed roster of questions posted to and voted on by the Board at each meeting and no votes or decisions were taken as it related to Piney Woods Elementary School or Contract Construction at any of the Board meetings on June 15, 2020, September 14, 2020 or September 28, 2020.
29. Respondent's wife Jondy Loveless served on the District Five Board from 2012 to 2016. (Tr. p. 63, lines 15-23). During her tenure on the District Five Board, there were a number of issues with new construction problems at Chapin High School. *Id.* Respondent got involved in assisting issues as Jondy worked her way through the numerous construction problems the Board was dealing with, as well as multiple litigation that arose from the defects with construction. (Tr. p. 67, line 22 – p. 69, line 2). It was partly due to this experience that Respondent ran for school board, in light of his construction expertise. (Tr. p. 68, lines 11-17; p. 74, lines 74; p. 75, line 25).
30. Respondent found that the district did not have staff with sufficient expertise to provide the kind of granular review during construction problems, and he noted that the District “were more worried about making those vendors happy than they were about protecting the interest of the School District.” (Tr. p. 76, line 7 – 25).
31. While Respondent raised questions about issues with construction at Piney Woods Elementary School, he 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).

32. Despite his thorough self-education on the rules which applied to his conduct as a School Board member, Respondent 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.
33. Respondent 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 - Respondent 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.
34. Additionally Respondent had not participated in any official function in the award of the 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.
35. After the issue was raised at the September 14, 2020 Board meeting, Respondent contacted the State Ethics Commission and requested written advice regarding the issue of whether he was required to recuse himself. He received a response letter from Commission Counsel Courtney Laster that suggested he recuse himself from matters

involving Contract Construction going forward.¹¹

36. Commission Investigator Rynne Caldwell testified that, in her opinion, Respondent'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)." Ms. Caldwell acknowledged she was aware of no evidence Respondent had participated in any vote or decision regarding Contract Construction while serving as a Board member.
37. Respondent testified the entire Board was invited to tour the construction site of Piney Woods Elementary School in January of 2021, and he attended with other Board members.¹² He recalled wearing a heavy coat, and viewing a project well toward completion at the time. At the Panel hearing, Respondent viewed a photograph presented to the Board by Contract Construction at the June 15, 2020 School Board meeting, which showed only basic layout and footings of the walls that would eventually be constructed. Respondent verified he had never visited the construction site when the construction was at that stage of completion.
38. When Respondent attended the site visit in January, 2021, Contract Construction principal Greg Hughes attempted to engage him in a discussion about Contract

¹¹ Ms. Laster's letter to Respondent was not introduced into the record. Regardless, Ms. Laster's letter could not have been an ethics opinion of the State Ethics Commission and it had no force and effect because Advisory Opinions can only be issued by the Commission itself, following a majority vote to issue a formal opinion in accordance with S.C. Code § 8-13-320(11)(a). At most, Ms. Laster's letter would have been an "informal staff opinion that is not binding on the Commission. § 8-13-320(11)(c).

¹² Exhibit C-7, the minutes of the District Five Board meeting held on February 8, 2021 contain as an exhibit an email dated January 20, 2021 among members of the Board and the Superintendent, that a site visit to Piney Woods Elementary School was scheduled to occur on January 28, 2021. (Ex. 5 to C-7). The minutes of the February 8, 2021 do not address whether or not the site visit occurred. If a site visit occurred on January 28, 2021, it was not an official board meeting, because it was not noticed pursuant to the Freedom of Information Act, nor was an agenda or minutes published, so no votes or decisions could have been made at the site visit. The only evidence in the record that the site visit is Respondent's candid admission that it did.

Construction's future plans to bid a project for the University of South Carolina. Respondent knew nothing about the project and did not permit Hughes to engage him in the conversation about future work. The Commission had not charged Respondent with misconduct in connection with a site visit to Piney Woods in 2021.

39. Based in part on the letter he received from Ms. Laster (which, as noted, is not in the record), Respondent 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." (**Exhibit C-7**, Attachment 3). The Panel's review of all Board meetings¹³ held between after September, 2020 (when Respondent was accused of having a conflict of interest) and February 8, 2021, when Respondent recused himself, reflect there were no notes or actions or decisions regarding Contract Construction on any topic taken by the Board during that time.¹⁴
40. Respondent receives a salary from Loveless Commercial Contracting Inc. However, as a member of the School Board for District Five, he unilaterally declined to accept

¹³ Minutes of Board meetings appear at <http://www.lexrich5.org/Page/13591>. The Panel reviewed the District Five 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.

¹⁴ In reviewing the Board minutes from February 8, 2021 (**Exhibit C-7**), the Panel notes that there was an active attempt during this time by at least one Board member to force Respondent 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." 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 Respondent. This issue is further discussed in Conclusions of Law, below.

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. (Tr. p. 83, lines 13-15; p. 84, line 8 – p. 85, line 15). Respondent considered his service as a Board member to be a volunteer position and he elected not to be compensated for his volunteer work. (Tr. p. 85, line 16 – p. 86, line 15).

41. 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.
42. Respondent 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.

CONCLUSIONS OF LAW

43. Once elected to serve as a member of the Lexington-Richland District Five Board of Trustees, Respondent 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.
44. 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. Exhibit R-5, 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, cited in Respondent’s written response dated February 28, 2022 (“. . .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.”)¹⁵

45. 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 (Exhibit R-2) governs the duties of the Chairman of the Board of Trustees. Policy BA (Exhibit R-3) 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 (Exhibit E-4) 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).
46. District Policy BCA, cited in Respondent’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. . .”
47. 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. Respondent’s vocational experience as a commercial contractor gave him unique knowledge and experience to contribute in discussions regarding ongoing construction within the District.
48. All four counts leveled against Respondent by the Commission relate to events that did not include a vote or Board action. There is no allegation that Respondent participated in any vote regarding Contract Construction Inc. either before or after Respondent’s

¹⁵ 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.

company became a subcontractor of Contract Construction Inc. for the SLED project in 2020.

49. Because the District's selection of Contract Construction Inc. as Construction Manager at Risk through a competitive bidding process, § 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 AO93-054.¹⁶
50. There is no allegation 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.
51. The Commission asserts that Respondent's participations in discussions regarding the construction of Piney Woods Elementary School by Contract Construction Inc. violate S.C. Code § 8-13-700(B) because Respondent's discussions and actions had the effect of "influenc[ing] a government decision" as it related to Contract Construction's obligations to the district. However, the Commission does not identify any government decisions which Respondent attempted to or did influence. It is undisputed that Respondent did not take action or vote on anything regarding Contract Construction at any time during his service on the Board.
52. The Commission's "historical interpretation" of § 8-13-700(B) came into existence by a Formal Opinion issued 23 years ago.
53. The Commission is authorized to issue an Advisory opinion only in certain

¹⁶ 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.

circumstances, as provided by S.C. Code § 8-13-320(11)(a). The Commission has no authority to *sua sponte* issue advisory opinions. Section 8-13-320(11)(b); it may issue advisory opinion is “for public officials, public members, and public employees for which it has proper jurisdiction to make findings of fact and impose penalties pursuant to this chapter.” Several provisions of § 8-13-320(11) indicate that advisory opinions may be issued only upon request of a person covered by the act.

54. Early in its existence, the Commission¹⁷ 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 92-072¹⁸aa (pp.2-3). “The real purpose and intent of 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).
55. 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).¹⁹ That being the case, Respondent 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.

¹⁷ 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.

¹⁸ This EAO was overturned in part by amendments to § 8-13-740(4) and (5) in 2007, not applicable here.

¹⁹ 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 Respondent 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.*

56. “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”]
57. 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.

58. 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.
59. 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.
60. 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 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).
61. Commission counsel 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.
62. 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.2d 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).

63. 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.
64. 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).

65. While the four counts alleged against Respondent 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.
66. The Notice of Hearing, and the evidence presented, clearly establishes that Respondent 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. The Notice of Hearing does not allege Respondent engaged in any prohibited acts and the evidence presented confirms that to be true.
67. The Panel notes that 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

68. The Commission has failed to establish that Respondent violated any provision of the State Ethics Act. The Panel recommends that the charges against Respondent be dismissed.

STATE ETHICS COMMISSION

F. XAVIER STARKES, HEARING CHAIR

March __, 2023

From: O'Bryan, Rachael <robryan@ethics.sc.gov>
Sent: Friday, March 3, 2023 1:34 PM
To: Walker, Meghan <mwalker@ethics.sc.gov>
Cc: Desa Ballard <desab@desaballard.com>; Beth Cogan <Beth@desaballard.com>; Laster, Courtney <claster@ethics.sc.gov>
Subject: C2021-016 - Kenneth Loveless

Meghan,

Attached please find the proposed Decision and Order for the above captioned matter.

Thank you.

Rachael O'Bryan
Administrative Assistant
South Carolina State Ethics Commission
201 Executive Center Drive, Suite 150
Columbia, SC 29210
Phone: 803.253.4192
Fax: 803.253.7539

STATE OF SOUTH CAROLINA	)	
COUNTY OF RICHLAND	)	BEFORE THE STATE ETHICS COMMISSION
	)	
IN THE MATTER OF:	)	
COMPLAINT 2021-016	)	
	)	
Kim Benson	)	DECISION AND ORDER
Complainant.	)	
	)	
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. In June of 2020, Melton, Hughes, and several Board members, to include Respondent, visited the PWES construction site to review progress and provide feedback. According to then Board Chair Michael Cates (Cates), Respondent and Hughes spoke to each other during the site visit.
9. 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.

Respondent subsequently stated, in relevant part:

By the way, when I was on the job site just that one time I've been on the job site for us to be out there. I talked to Ryan, I pointed out to him three things to do with masonry. Because I know masonry. I used to be a masonry contractor. I pointed out three things to him that would make the project better. Okay. And there's nothing wrong with having a team approach. I didn't tell him to do something. I just said, have you thought about doing this? Because I've got 45 years' experience doing this.

10. Also during the September 14, 2020 District Board meeting, Respondent questioned Hughes about

Loveless's contract with Contract Construction as follows:

Respondent: Did I ever contact you or talk to you or do anything about the job at SLED?

Hughes: No, sir.

Respondent: Did Ken Loveless ever use his influence with you? Did he ever ask you anything about the job at SLED?

Hughes: No, sir.

Respondent: The fact is we've never talked about that, have we?

Hughes: Only on June 18.

Respondent: We saw – when you were on the job site out there, I said I was going to come by the job site and see you.

Hughes: And I told you that you were doing a good job.

11. 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.”

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 the four (4) counts of Section 8-13-700(B) outlined in 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; (3) June 2020 site visit to PWES; and (4) participation in the September 14, 2020 District Board meeting discussion regarding PWES were matters that required recusal pursuant to Section 8-13-700(B).

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, to include its contract with the District for the construction of PWES.

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), Respondent is hereby assessed a total civil penalty of \$8,000.00 (\$2,000.00 per count);

AND, pursuant to Section 8-13-130 and in addition to the aforementioned amount owed, the Panel hereby orders Respondent to pay an administrative fee of \$900.00, making Respondent’s total amount owed to the Commission \$8,900.00.

AND, pursuant to Section 8-13-320 of the Ethics Act, if the \$8,900.00 is not paid within six (6) months from Respondent’s receipt of this Order, a judgment in the amount of \$8,900.00 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 \$8,900.00 in its Judgment Rolls, without cost to the Commission.

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

AND IT IS SO ORDERED THIS ____ DAY OF _____ 2023.

STATE ETHICS COMMISSION

F. XAVIER STARKES, HEARING CHAIR

Columbia, South Carolina

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

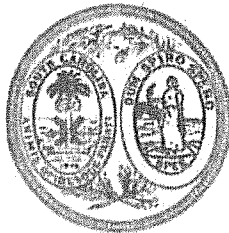
Mr. McGee:

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.oig.sc.gov



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.

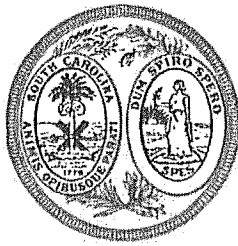
This access was limited in duration to the period of the OIG's investigation of LR5 with the understanding the OIG would not retain copies of the records. The OIG released its report to the public on August 18, 2023. South Carolina Code of Laws, §1-6-35 (E) established that information gathered during 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,

A handwritten signature in black ink, appearing to read "Brian D. Lamkin", is written over a horizontal line.

Brian D. Lamkin
State Inspector General



State of South Carolina
Office of the Inspector General

January 22, 2024

OIG File No.: A4-0143

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 1/9/24, pursuant to the Freedom of Information Act (FOIA), South Carolina Code of Laws, §30-4-10 et seq. The SIG possesses records responsive to your request.

SIG review of Contract Construction records

You have requested all correspondence, letters, emails, attachments, text messages, phone messages, voicemail messages and transcripts, notes or minutes of any meetings, phone conversations or discussions, or other records that support the SIG's position that the SIG is unable to share all of the information provided by Contract Construction.

With respect to your request records that support the SIG's position that the SIG is unable to share information provided by Contract Construction, please find enclosed SIG letter dated 9/13/23 to Thomas William McGee, III. In addition, please find enclosed two pages containing three emails dated 6/19/23 (10:06AM), 6/19/23 (3:24PM), and 9/12/23 (8:22AM). There will be no charge for these records.

To be clear, the SIG does not possess the Contract Construction documents examined through a secure portal provided by Mr. McGee's office that were not retained, and, therefore, cannot produce them. On 10/19/23, we hand-delivered you the work papers associated with the review of the Contract Construction records.

Records in connection with interviews or contacts with persons

In addition, you have requested all emails, phone call notes and other correspondence from 9/13/21 through the present with all previous and current Lexington Richland Five (LR5) board

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)

ROA 0877

members, all previous LR5 attorneys, all previous and current LR5 auditors, all previous and current LR5 superintendents, all previous and current LR5 employees, all current and former employees and commissioners of the South Carolina Ethics Commission and all LR5 vendors and LR5 vendor agents, representatives or attorneys.

We interpret your request as limited to records of interviews and contacts with persons related to the *Review of Project Management and Internal Controls – Piney Woods Elementary School Construction, School District Five of Lexington & Richland Counties*. If you are asking for a search of all SIG records relating to the persons named above, please advise this office as such a request will substantially change the parameters and cost of our search for records. Please also specify the identities of former board members, superintendents, and attorneys for whom contacts with the SIG should be searched, because not all contacts are entered into the investigative file.

With respect to the request for records of interviews and contacts with persons, an initial review of the case file identified a minimum of 2,458 records. It is estimated the search, retrieval, and redaction of case file records for matters exempt from disclosure will require a minimum of 409.67 hours. In addition, the email accounts, including deleted emails, of 13 SIG employees, four former employees, and the office account will be manually searched for emails and attachments to or from seven school board members. The total estimate includes 36 hours for the manual search, retrieval, and redaction of emails in 18 accounts; six and one-half hours for the search, retrieval, and redaction of text messages; two hours for the search, retrieval, and redaction of voicemails, and 13 hours for the search, retrieval, and redaction of notes.

There will be no charge for supervisory review, which will be required for each record. The estimated time for supervisory review is 40 hours.

The total estimated time associated with the search, retrieval of records, including emails, and redaction of matters exempt from disclosure is 467.17 hours. Of course, the number of hours required to search, retrieve, and redact records is an estimate, and the actual labor costs may differ.

The pro-rated hourly salary of the lowest paid employee with the necessary skill and training to perform the search, retrieval, and redaction is \$32.00.

Documents will be provided in electronic format, and there will be no copy charges for documents provided in electronic format. For identified records not in electronic format, a charge will be assessed for the transfer of files to electronic format, and a \$5.00 fee will be assessed for a compact disc.

It is estimated that the cost of search, retrieval, and redaction of records, including the compact disc fee, will total \$14,953.44. Per South Carolina Code of Laws, §34-4-30(B), please remit

\$3,738.36, which is 25% of the estimated total cost. Upon receipt, my staff will begin the process of search, retrieval, and redaction.

Confidentiality of records and information

Your request also asked for the authority by which the SIG redacts information requested pursuant to FOIA. The South Carolina Code of Laws, §30-4-40(a)(3)(4) provides that matters exempt from disclosure include those specifically exempted from disclosure by statute or law. The South Carolina Code of Laws, §1-6-100(A) provides, in part:

(A) If an individual discloses information alleging fraud, waste, abuse, mismanagement, misconduct, violations of state or federal law, and wrongdoing in an agency in good faith to the State Inspector General, the individual's identity is confidential and must not be disclosed to anyone other than the Governor, the staff of the Office of the State Inspector General, or an authority to whom the investigation is subsequently referred or certified, unless:

- (1) the State Inspector General makes a written determination that it is in the public interest to disclose the individual's identity; or
- (2) the individual consents in writing to disclosure of the individual's identity.

(B) After an investigation is completed and a report is issued pursuant to Section 1-6-50(C), the investigative records of the State Inspector General are subject to public inspection pursuant to Chapter 4 of this title. However, if an individual's identity is confidential pursuant to subsection (A), the individual's identity or any information that reasonably might lead to the discovery of the individual's identity must not be disclosed, except as pursuant to subsection (A) or subsection (E).

The consequences for a violation of §1-6-100(A) are serious. The statute further provides:

(D) Except as provided in subsection (E), a person commits the misdemeanor of unlawful disclosure of confidential information if he knowingly or intentionally discloses:

- (1) confidential information or records; or
- (2) the identity of a person whose identity is confidential under subsection (A).

A person convicted pursuant to this subsection must be fined not more than one thousand dollars or imprisoned not more than one year. If the person convicted is an officer or employee of the State, he must be dismissed from office or employment and is ineligible to hold any public office in this State for a period of five years after the conviction.

By letter dated 10/25/12, the Attorney General opined that "the identity of any individual must remain confidential if he or she, in good faith, discloses information to the Inspector General

alleging fraud, waste, abuse, wrongdoing, etc.” The SIG interprets “identity” as broader than “name,” and should include any information that would tend to identify a person.

Please advise if a narrower scope would be feasible and satisfy your concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Brian D. Lamkin". The signature is fluid and cursive, with a horizontal line extending from the end.

Brian D. Lamkin
State Inspector General

BDL/lw

Encl: 1) SIG letter dated 9/13/23 to Thomas William McGee, III
2) Two pages containing three emails dated 6/19/23 (10:06AM), 6/19/23 (3:24PM), and 9/12/23 (8:22AM)

From: Beth Cogan <Beth@desaballard.com>
Sent: Tuesday, January 23, 2024 10:49 AM
To: mediaquestions@ethics.sc.gov
Subject: FOIA request

Good morning,
Please see the attached FOIA request.

Kindest Regards,
-Beth

Beth Cogan, Paralegal
Ballard & Watson, Attorneys at Law
226 State Street
West Columbia, South Carolina 29169
803.796.9299
803.796.1066 Facsimile
beth@desaballard.com
www.desaballard.com



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 Hubbard
haley@desaballard.com

From: Media Questions <MediaQuestions@ethics.sc.gov>
Sent: Wednesday, January 31, 2024 10:58 AM
To: Beth Cogan <Beth@desaballard.com>
Subject: RE: [External] FOIA request

Beth,

Please see the attachment.

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/>

Search openings at careers.sc.gov

From: O'Bryan, Rachael <robryan@ethics.sc.gov>
Sent: Wednesday, May 15, 2024 3:56 PM
To: Walker, Meghan <mwalker@ethics.sc.gov>
Cc: Desa Ballard <desab@desaballard.com>; Haley Hubbard <haley@desaballard.com>; Beth Cogan <Beth@desaballard.com>; Laster, Courtney <claster@ethics.sc.gov>
Subject: C2021-016 - Kenneth Loveless - Proposed Motion Order

Director Dayson,

Attached please find staff's proposed Order Denying Respondent's Motion to Admit Additional Evidence.

Thank you.

Rachael O'Bryan
Administrative Assistant - Legal
South Carolina State Ethics Commission
201 Executive Center Drive, Suite 150
Columbia, SC 29210
Phone: 803.253.4192
Fax: 803.253.7539

STATE OF SOUTH CAROLINA	)	
COUNTY OF RICHLAND	)	BEFORE THE STATE ETHICS COMMISSION
	)	
IN THE MATTER OF:	)	
COMPLAINT C2021-016	)	
	)	
Kim Benson,	)	ORDER DENYING RESPONDENT’S
Complainant.	)	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 Evidence¹ (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.

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

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

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.

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.

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. Peoplelease 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

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

May ____, 2024
Columbia, South Carolina

From: Beth Cogan <Beth@desaballard.com>

Sent: Monday, May 20, 2024 12:48 PM

To: mwalker@ethics.sc.gov

Cc: claster@ethics.sc.gov; Desa Ballard <desab@desaballard.com>; Haley Hubbard <haley@desaballard.com>; O'Bryan, Rachael <robryan@ethics.sc.gov>

Subject: Ken Loveless (C2021-016) Proposed Order Granting Motion

Good afternoon,

Please find attached Respondent's proposed Order Granting Motion to Admit Additional Evidence.

Kindest Regards,

-Beth

Beth Cogan, Paralegal

Ballard & Watson, Attorneys at Law

226 State Street

West Columbia, South Carolina 29169

803.796.9299

803.796.1066 Facsimile

beth@desaballard.com

www.desaballard.com

) BEFORE THE STATE ETHICS COMMISSION
)

**PROPOSED ORDER GRANTING
RESPONDENT'S MOTION TO ADMIT
ADDITIONAL EVIDENCE**

$$\left(\begin{array}{c}) \\) \end{array} \right)$$

)

)

A hearing on Respondent's Motion was held on March 21, 2024. Present at the hearing were Acting Chairman Neal Truslow, and Commissioners Matthew N. Tyler, Mary Hunter Tomlinson, Brandolyn Thomas Pinkston and Bryant S. Caldwell. Respondent was represented by Desa Ballard and the Commission was represented by Courtney M. Laster.

PROCEDURAL BACKGROUND

Respondent is a former member of the School Board for Lexington-Richland School District 5 (hereafter “District 5”). On February 17, 2021, while Respondent was still serving on the District 5 School Board, a constituent filed a complaint against Respondent with the Commission under S.C. Code § 8-13-320(9)(a). In pertinent part, the complaint 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 an

unrelated project at the time Respondent began to question the quality of work being performed for District 5.

Respondent provided a written response to the Commission on February 28, 2022, asserting *inter alia*, that as a Board member, he had no individual authority over any issue with any project at District 5, since the Board acted only in the collective. S.C. Code § 59-19-10. He further asserted that the Code of Ethics for Board members required him to “accept the responsibility along with . . . fellow board members of ensuring that optimal facilities and resources are provided for the proper functioning of schools.” District Policy BCA. Respondent asserted that since the discussions regarding Piney Woods elementary school on September 14, 2020 and September 28, 2020 did not include any “action” items for Board vote, and instead discussions in which participated were on the “discussion” agenda, he had an obligation and right to participate in the discussions.

By Notice of Hearing dated July 11, 2022, Respondent was advised that the Commission had determined that probable cause existed to support allegations made in the above-captioned complaint in accordance with S.C. Code §8-13-320(10)(d), and a hearing on the matter had been noticed for February 16, 2023.¹ The Notice of Hearing alleged four (4) counts of violation of the State Ethics Act, S.C. Code §8-13-700(b) as follows:

COUNT ONE

FAILURE TO RECUSE FROM A GOVERNMENTAL DECISION IN WHICH A BUSINESS WITH WHICH (SIC) ASSOCIATED HAD AN ECONOMIC INTEREST

The factual summary for Count One alleged that Respondent, while serving as a member of Lexington-Richland School District Five School Board, did write a letter dated March 24, 2020

¹ Respondent asked the Commission to expedite the hearing to an earlier date because he had filed for re-election to the School Board, and he wished the issue to be resolved before voting in November 2022. The Commission denied his request.

“inquiring about construction work of a district facility by Contract Construction, Inc., a business with which he was associated in violation of § 8-13-700(B).

COUNT TWO

FAILURE TO RECUSE FROM A GOVERNMENTAL DECISION IN WHICH A BUSINESS WITH WHICH (S/C) ASSOCIATED HAD AN ECONOMIC INTEREST

The factual summary for Count Two alleged that on June 15, 2020, Respondent, while serving as a member of Lexington-Richland School District Five School Board, participated in discussion about construction of a district facility by Contract Construction, Inc., a business with which he was associated, in violation of § 8-13-700(B).

COUNT THREE

FAILURE TO RECUSE FROM A GOVERNMENTAL DECISION IN WHICH A BUSINESS WITH WHICH (S/C) ASSOCIATED HAD AN ECONOMIC INTEREST

The factual summary for Count Three alleged that on September 14, 2020, Respondent, while serving as a member of Lexington-Richland School District Five School Board participated in a discussion on September 14, 2020 “about construction of a district facility by Contract Construction Inc., a business with which he was associated” in violation of, in violation of § 8-13-700(B).

COUNT FOUR

FAILURE TO RECUSE FROM A GOVERNMENTAL DECISION IN WHICH A BUSINESS WITH WHICH (S/C) ASSOCIATED HAD AN ECONOMIC INTEREST

The factual summary provided for Count Four alleged that in June of 2020, Respondent participated in a site visit of a district facility being constructed by Contract Construction Inc., a business with which he was associated, in violation of § 8-13-700(B).

A hearing on the matter was held before a Commission sub-panel on February 16, 2023, during which Respondent denied having participated in decisions or votes relative to the Contract

Construction Company Inc. project on any of the dates alleged in the Notice of Hearing. Respondent asserted that each incident of alleged violation of the State Ethics Act was him carrying out his statutory duties as an elected member of the District Five School Board, 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.

Respondent further pointed out that he had requested and received an informal letter from Commission Counsel Courtney Laster dated September 25, 2020 which stated that, in her opinion, he should recuse himself from "that matter" (which was not defined in the letter) but concluded "you are correct that the ultimate decision to recuse belongs to the public official." Respondent stated that 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.

Following the hearing in February 2023, the Commission subpanel issued a Decision and Order on March 24, 2023, finding that Respondent had violated Section 8-13-70(B) as to Count One (the March 24, 2020 letter); Count Two (June 15, 2020 Board meeting); and Count Three (September 14, 2020 Board meeting). Respondent timely filed a Request for Review of Decision and Order on April 3, 2023, and the matter is currently pending on appeal before the Full Commission.

OFFICE OF INSPECTOR GENERAL

While awaiting a hearing before the Full Commission, Respondent received a copy of a public Report of the Office of the State Inspector General dated August, 2023 which, among other things, described the “methodology” that office used to produce a report in response to District Five’s request and the Governor’s request to review “procurement-related issues.”² (Exhibit A, Motion to Admit Additional Evidence, p. 1). The report is published at <https://oig.sc.gov/index.php/reports>.

According to the report, the OIG’s methodology included a review of “relevant documentation, including emails. . . and conducted interviews of current and former District leadership . . . as well as . . . the State Ethics Commission. *Id.* The report also stated that the OIG “is appreciative of the collaboration with. . . the State Ethics Commission. . .” *Id.* p. 17.

In January of this year, in an attempt to determine what information the Commission provided to OIG or vice versa, Respondent’s counsel submitted a FOIA request dated January 23, 2024 to the Commission. One document was produced in response, specifically, an email from an investigator with the OIG to SEC Executive Director Meghan Walker a/k/a Meghan Dayson requesting an audio recording of the hearing held February 16, 2023 and related exhibits introduced during the hearing. Following the investigator’s request, the Commission provided the OIG with a copy of an audio recording of the hearing. This limited FOIA response appears to indicate that the OIG was actively conducting its investigation at the same time the Commission panel was deliberating, prior to issuing the March 24, 2023 Order.

² The request from the School District was not attached to the OIG report. The second of two letters from the Governor is attached as Exhibit 2 to Respondent’s Reply to Response to Motion to Admit Additional Evidence filed March 21, 2024. Respondent does not have the Governor’s first letter. His second letter (dated January 17, 2023) references an earlier letter from the Governor to the OIG dated December 1, 2022, which is among the documents sought by the additional discovery requested by Respondent.

DISCUSSION

This motion began with a request to the Director for subpoenas filed with the Commission by Respondent on February 13, 2024. The purpose of the request for subpoenas was to obtain evidence of whatever interaction had occurred between the OIG and the SEC, which Respondent asserts occurred during the deliberations by the Commission panel following the hearing in February 2023. The Commission declined to issue the subpoenas requested by Respondent and the instant motion to admit additional evidence followed. Pursuant to SEC Reg. 52-806, the Commission is expressly authorized to permit the admission of additional evidence into the record following an appeal from the Decision and Order of the hearing panel.

The Office of Inspector General is authorized to conduct investigations; however, it is not authorized to secretly conduct interviews or coordinate with another agency³ in a “collaboration” as set forth in the OIG’s report. This must be true particularly when the agency with which it consults is deliberating on a dispositive motion. S.C. Code § 1-6-20(B) (“The State Inspector General is responsible for investigating and addressing allegations of fraud, waste, abuse, mismanagement, violations of state or federal law, and wrongdoing in agencies.”). It is undisputed that the contacts between the OIG and the SEC occurred, at least initially, before the panel’s Decision and Order on March 24, 2023.

In conducting its investigation, the OIG has no authority to conduct informal interviews. Importantly, it’s only authority to examine witnesses is “under oath.” § 1-6-50(A)(2). There is no authority for unrecorded general conversations with anyone, especially with an agency who is

³ See also S.C. Code § 1-6-20(E), which authorizes other agencies to provide documents on request of the Inspector General. Specifically, agencies are required to provide “documents, reports, answers, records, accounts, papers and other necessary data and documentary information to perform the mission of the State Inspector General.” *Id.* There is no mandate for agency employees or officials to meet privately, off the record, with the OIG for interviews.

considering a charge of wrongdoing against a Respondent at the time the OIG is conducting its investigation.

The OIG 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.2d 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).

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). *See also Jack's Custom Cycles Inc. v. South Carolina Department of Revenue, supra.*, (citations omitted) (existing agency interpretation “affords no basis for the perpetuation of a patently erroneous application of the statute”)

If the “collaboration” between the OIG and agents of the SEC involved discussions that were not of record, they were illegal. Respondent has a right to know what occurred. Since multiple FOIA attempts have not produced any evidence of the “collaboration”, limited discovery is appropriate. The OIG does have authority to file a complaint with the SEC, but not to “collaborate.” S.C. Code § 1-6-60.

Once the OIG’s report is issued, the records which it maintains become public. S.C. Code 1-6-100(B).⁴ The only exception to the ability of the OIG to provide documents is if “an individual discloses information alleging fraud, waste, abuse, mismanagement, misconduct, violations of state or federal law, and wrongdoing in an agency in good faith” and other conditions are met.

Respondent has provided evidence that with respect to at least one company whose representatives were interviewed, the OIG destroyed records it examined during the OIG investigation at the request of the third party whose records were reviewed.⁵ That evidence will not be of record in the OIG’s files. (Ex. B to Request for Subpoenas)⁶ The statutes vesting authority in the OIG do not permit

⁴ The statute provides that the records “are subject to public inspection pursuant to Chapter 4 of this title.” However, there is no Chapter 4 of Title 1. Respondent has written to the OIG and requested copies of records maintained by the OIG. However, if informal interviews were conducted, which the SEC’s executive director has denied, they would not be “of record” nor were they authorized by statute. And evidence already discovered by Respondent makes clear the OIG destroyed documents to which it previously had access.

⁵ “Please accept this letter as attestation that the OIG has destroyed and no longer retains any privileged business record or other materials provided for review by your client, Mr. Gregory Hughes of Contract Construction, Inc.” (Exhibit B to Request for Subpoenas). The letter further discusses an agreement between Counsel for Contract Construction and the OIG that the OIG “would not retain copies of the records.” It is apparent the OIG took steps, not authorized by statute, to minimize the records that would eventually become public. At all times, the case against Respondent was pending before this Commission. Identifying what information was shared by the OIG with the SEC, or vice versa, is critical to Respondent’s due process rights.

⁶ It is unclear to Respondent and his counsel whether Respondent’s Request for Subpoenas dated February 13, 2024 was ever submitted to the Commission for decision. Commission Counsel refused the request for subpoenas but did not indicate whether that was her decision or the Commission’s.

the OIG to destroy documents obtained in the course of its investigation.⁷ But the evidence is undisputed that, according to OIG, it did, in fact, destroy records it obtained in the course of its investigation. *Id.*

Respondent has raised sufficient issues of concern that these proceedings have not been conducted in strict compliance with the statutes that govern the Commission's power and proceedings. Respondent has a right to explore these questions to ensure that the record clearly reflects whether there have been inappropriate communication between agents of the SEC and the OIG such that his procedural due process rights may have been infringed by flaws in these proceedings. *Richardson v. \$220,771.00*, 437 S.C. 290, 878 S.E.2d 868 (2022), citing *Mathews v. Eldridge*, 424 U.S. 319, 335, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976).⁸

CONCLUSION

For the reasons set forth above, Respondent's Motion to Admit Additional Evidence into the record on appeal is granted. Respondent shall submit new requests for subpoenas to the Commission, within thirty (30) days of the date of this Order. The request for subpoenas is to be considered by the Commission, not the Commission's staff.

For the reasons set forth above, the motion to admit additional evidence is granted.

AND it is **SO ORDERED**.

Neal D. Truslow
Chairman, Appellate Panel

May ___, 2024

⁷ Inexplicably, much of the authority of the SC OIG contradicts the *Quality Standards for Offices of Inspector General*, (last amended 2014), Association of Inspector Generals.

⁸ The procedural due process rights of a proceeding examine "(1) the private interest affected by the proceeding; (2) the risk of error created by the chosen procedure; and (3) the countervailing governmental interest supporting the challenged procedure." *Richardson, supra*. 437 S.C. 300. *Richardson* also discussed the application of South Carolina law to administrative penalties versus criminal fines and sanctions, which is especially applicable here.

From: Beth Cogan <Beth@desaballard.com>

Sent: Monday, March 3, 2025 10:50 AM

To: mwalker@ethics.sc.gov

Cc: O'Bryan, Rachael <robryan@ethics.sc.gov>; claster@ethics.sc.gov; Haley Hubbard <haley@desaballard.com>; Desa Ballard <desab@desaballard.com>

Subject: (Benson v. Loveless C2021-016) Respondent's Proposed Final Order

Good morning,

Please find attached Respondent's proposed final order in the above-referenced matter.

Also, please confirm we will have 15 days to respond to the opposing proposed order.

Kindest Regards,

-Beth

Beth Cogan, Paralegal

Ballard & Watson, Attorneys at Law

226 State Street

West Columbia, South Carolina 29169

803.796.9299

803.796.1066 Facsimile

beth@desaballard.com

www.desaballard.com

STATE OF SOUTH CAROLINA	)	
COUNTY OF RICHLAND	)	BEFORE THE STATE ETHICS COMMISSION
	)	
IN THE MATTER OF:	)	
Complaint C2021-016	)	
	)	
Kim Benson,	)	RESPONDENT’S PROPOSED FINAL ORDER
	)	
Complainant.	)	
	)	
Kenneth Loveless,	)	
	)	
Respondent.	)	
_____	)	

A final hearing was held before the Commission on January 16, 2025, before Chairman Neal Truslow and Commission members Matthew N. Tyler, Mary Hunter B. Tomlinson and Brandolyn Thomas Pinkston, who appeared via Zoom. Commission members F. Xavier Starkes, A. J . Holloway and Scott E. Frick did not participate, because they served on the panel which issued its recommendation via Decision and Order dated March 24, 2023. The Commission was represented by Courtney M. Laster and Respondent Loveless (hereafter “Loveless”) was represented by Desa Ballard.

During the final hearing, the Commission heard argument on Loveless’ Request for Review of Decision and Order filed April 3, 2023, as well as Loveless’ request for review of Commissioner Starkes’ order dated October 6, 2022, denying Loveless’ Motion to Dismiss, from which Loveless sought review by the Full Commission by filing dated October 17, 2022. The record included all previous proceedings before the Commission, including the transcript of proceedings which occurred on October 6, 2022 (Loveless’ Motion to Dismiss), February 16, 2023 (Hearing before subpanel), and March 21, 2024 (Loveless’ motion for additional evidence). In advance of this hearing, the Commission also received Loveless’s brief filed September 3, 2024, Commission’s response brief dated September 30, 2024 and Loveless’ reply brief filed October 10, 2024.

Loveless also requested, and the Commission granted, his request that the record before the Commission include all filings from South Carolina Court Appellate Proceeding 2024-001376, in which Loveless asked the South Carolina Supreme Court to invoke its original jurisdiction to consider his declaratory judgment complaint seeking to determine whether the Commission's historical interpretation of S.C. Code § 8-13-700(B) was correct. By order dated October 31, 2024, the South Carolina Supreme Court declined to entertain the petition for declaratory judgment in its original jurisdiction.

This proceeding was initiated by the filing of a complaint by Kim Benson on February 17, 2021.¹ By letter dated February 23, 2021, the Executive Director notified Loveless that on February 17, 2021, the Commission had found "sufficient facts [in the complaint] to investigate the matter. Among Loveless's challenges to the procedural defects in these proceedings is that there was no meeting of the State Ethics Commission between the date of Ms. Benson's complaint and the letter from the Executive Director on February 23, 2021, based on public records of the Commission. A year later, staff requested Loveless to submit a written response to the complaint, which he did, through his prior counsel, on February 28, 2022. Commission records reflect that the Commission again found probable cause and the complainant was notified of the probable cause finding by email dated July 8, 2022.²

¹ Among the procedural irregularities Loveless had asserted throughout these proceedings is the complaint by Ms. Benson was notarized by staff at the Commission. Counsel for the Commission argued this is a "convenience" provided to the public. It is not necessary to address the procedural irregularities alleged by Loveless since the Commission finds the charges against Loveless should have been dismissed in response to Loveless' Motion to Dismiss. Loveless also alleged that the initial letter which stated the Commission had found probable cause was a procedural irregularity that tainted these proceedings because there was no Commission meeting reflected between the date the Commission received Ms. Benson's complaint and the letter sending it to him, which stated that the Commission had found "probable cause.". In light of the Commission's ruling in this order, these issues are not addressed.

² Loveless obtained a copy of staff's email to Ms. Benson of July 8, 2022 via a Freedom of Information Request to the Commission. Loveless was not copied on the communication at any time and learned of it only through his FOIA request. The Commission expresses no opinion on whether this *ex parte* communication with the complainant was

On July 11, 2022, three days after staff notified the complainant of the finding of probable cause, a Notice of Hearing was sent to Loveless, through counsel, charging him with four (4) counts of violating § 8-13-700(B). Those allegations were:

COUNT ONE

**FAILURE TO RECUSE FROM A GOVERNMENTAL DECISION IN WHICH A
BUSINESS WITH WHICH ASSOCIATED HAD AN ECONOMIC INTEREST
§ 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 § 8-13-700(B).

COUNT TWO

**FAILURE TO RECUSE FROM A GOVERNMENTAL DECISION IN WHICH A
BUSINESS WITH WHICH ASSOCIATED HAD AN ECONOMIC INTEREST
§ 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 § 8-13-700(B).

COUNT THREE

**FAILURE TO RECUSE FROM A GOVERNMENTAL DECISION IN WHICH A
BUSINESS WITH WHICH ASSOCIATED HAD AN ECONOMIC INTEREST
§ 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 § 8-13-700(B).

COUNT FOUR

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

proper nor does Loveless ask us to.

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 § 8-13-700(B).

Loveless moved to dismiss the allegations, alleging the Notice did not charge him with a violation of § 8-13-700(B). Commissioner Starkes heard Loveless' Motion to Dismiss and denied it by order dated October 6, 2022. Loveless sought review of Commissioner Starkes' decision by the Full Commission by filing dated October 17, 2022. Commissioner Starkes disagreed with Loveless' argument that § 8-13-700(B) did not prohibit him from sending a letter or participating in discussions that did not result in any vote or voting on any matter covered by the statute. Loveless argued before Commissioner Starkes that the statute prohibited him from "making, participate in making . . . a governmental decision" yet the charges did not allege he had taken any action or made any decision.

Commissioner Starkes ruled that the essence of the complaint was that Loveless "improperly participated in Board discussions and/or other activities that involved a District Contract with . . . a business with which [Loveless] was associated." (Order dated 10.6.2022 p. 1). In finding that the Notice of Hearing was sufficient, Commissioner Starkes cited § 8-13-700(B)(4), which Commissioner Starkes concluded prohibited Loveless from participating in "any votes, deliberations or other actions on the matter. . ." *Id.* at p. 4. Commissioner Starkes reasoned that Subsection (4) of § 8-13-700(B) merely "clarifies" the actual prohibition contained in the statute.

In his argument before the Full Commission, Loveless pointed out prior precedent from the Commission cited by Commissioner Starkes, SEC AO2000-011, had been repealed by the Commission in a later advisory opinion, and Loveless is correct. *See* SEC AO2020-002.

Loveless also argues that the Commission's earlier finding that § 8-13-700(B) is unambiguous prohibits the Commission from interpreting the statute and argues that the Commission must apply the literal terms of the statute without extrapolating what the unambiguous terms might mean.

The statute reads 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 . . . 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** . . .

S.C. Code Ann. 8-13-700(B) (emphasis added)(hereafter "the statute").

Very early in its existence, 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).³ That being the case, Loveless asserts the Commission may not construe the statute and must only apply the statute as written. Loveless argues that the Commission lacked authority

³ 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." The issue raised by Loveless in this matter was not raised by the Respondents. The Commission had no reason to address the substantive difference between "votes" and "discussions" and was not 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.* The Commission's lack of jurisdiction over the wives did not apparently make any difference to the Commission.

to construe an unambiguous statute and reference to earlier advisory opinions which included Subparagraph (4) in its interpretation were incorrect.

The South Carolina Supreme Court has confirmed the mandate that an agency cannot construe an unambiguous statute. “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. *Tilley 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”).

Even though the statute is unambiguous, the Commission has also recognized its own limitations in construing statutes, when it is appropriate to do so. Following its creation, the Commission recognized its duties are prescribed by (and therefore necessarily limited by) the legislature. In SEC AO92-72, the Commission stated, “[a] statutory provision should be given reasonable and practical construction consistent with the purpose and policy expressed in the statute.” SEC AO 92-072⁴ (pp. 2-3).

Loveless asserts that from its creation in 1991, this Commission has construed § 8-13-700(B) well beyond its meaning in what has been a decades-long pattern of applying the Commission’s own expanded interpretation to § 8-13-700(B), despite its unambiguous language. In SEC AO92-014, the Commission construed the statute to conclude that even though the Chairman of

⁴ This EAO was overturned in part by amendments to § 8-13-740(4) and (5) in 2007, not applicable here.

Charleston County Council would not violate the State Ethics Act by taking proposed action “the Commission would advise against participation, to avoid even the appearance of impropriety.” No such language appears anywhere in the statute, nor is it implied in anything contained in the State Ethics Act.

Since 1992, the Commission has repeatedly expanded on the language of the statute in its advisory opinions, and to litigate proceedings for activities that are not prohibited by the statute. The Commission has repeatedly construed the unambiguous statute to broaden its meaning beyond the precise language of the statute and has continuously repeated its incorrect and unlawful expansion of the statute. *See* SEC AO92-077, SEC AO92-115, SEC AO131, SEC AO92-145, SEC AO92-152, SEC AO92-221, SEC AO95-10, SEC AO98-99.

Loveless argues the Commission confused itself by referencing the mandates that are triggered when an affected individual does in fact have a conflict under § 8-13-700(B) by including Subsection (B)(4) as a part of the trigger for when the statute applies. Section 8-13-700(B)(4) prohibits a public official from participating in any “deliberations⁵” only if he is required to take an “action” or participate in a “decision”. Clearly if the public official cannot “vote” or “take action” under § 8-13-700(B), he similarly cannot deliberate in anticipation of the “vote” or “action.” However, nothing in §8-13-700(B) prohibits a public official from participating in discussions that do not require a “vote” or “decision.”

The Commission’s prior advisory opinions have equated “deliberations” with “discussions” which is incorrect. The South Carolina Supreme Court and Court of Appeals have recognized repeatedly that the term “deliberations” is a process that leads to a decision and is not under any circumstance a

⁵ During argument, Loveless’ counsel provided the Commission with a color-coded “flow-chart” of § 8-13-700(B), including subsection (B)(4) which demonstrated clearly that subsection (4) only applies when a public official is required to “required to take an action or makes a decision”. In that event, per subsection (B)(4), the public official “must be excused from any votes, deliberations and other actions on the matter. . .”

“discussion” unless there is a pending “act” or “decision” that follows the “deliberations”. *State v. Johnson*, 444 S.C. 442, 908 S.E.2d 102 (2024); *Jolly v. Fisher Controls International LLC*, 443 S.C. 511, 905 S.E.2d 380 (2024); *Pratt v. Amisbud of SC Inc.*, Op.No. 6096 (Court of Appeals January 15, 2025); *State v. Dennis*, 444 S.C. 353, 907 S.E.2d 142 (2024).⁶

The Commission has misconstrued the language of 8-13-700(B)(4) to set the standard for when a public official’s actions are triggered. Subsection (B)(4) applies only if the public official is “required to take an action or make a decision.” § 8-13-700(B). Indeed, the evidence introduced by the Commission here included the minutes of meetings of the Board of Trustees on which Loveless served, and in which his participation in “discussions” is apparently the Commission’s allegation of wrongdoing. However, the voting records of each of those Board meetings reflect that no “action” or “decision” was taken on any of the topics in which Loveless participated in discussions. Thus, he did not participate in “deliberations” since no vote was scheduled or taken on any of the occasions in which the “discussions” occurred, and upon which these charges were prosecuted.⁷

In denying Loveless’ Motion to Dismiss, Commissioner Starkes cited to a 2006 opinion of the Attorney General that says “[p]rimary jurisdiction for the interpretation of the Act is bestowed upon the State Ethics Commission.” (Order dated 10. 6. 2022, p. 4). While that interpretation has apparently supported the Commission’s prior misapplication of the statute for decades, the United States Supreme

⁶ There are hundreds of published decisions from the South Carolina Supreme Court and the South Carolina Court of Appeals which discuss and therefore elucidate the meaning of the word “deliberations.” Virtually all of them reference “jury deliberations,” which obviously refer to discussions which occur prior to a jury taking “an action” or making “a decision.” The “action” or “decision” is the statutory prerequisite which prohibits a public official from participating in “deliberations” which would lead to an “action” or “decision.” Nothing in § 8-13-700(B)(4) prohibits a public official from participating in “discussions” which do not lead to an “action” or “decision.” A pending “action” or “decision” as set forth in § 8-13-700(B) is clearly a prerequisite to the public officials’ participation in “deliberations.”

⁷ Count 1 alleged a violation of § 8-13-700(B) in connection with a letter that Loveless wrote to the School Superintendent, which was not a “discussion” or a “deliberation.”

Court has recently made clear that only the Courts can interpret the law, and that agencies have no special expertise in what the law is, such that the Courts cannot defer to agency interpretations of statutes.

In June 2024, the United States Supreme Court reversed decades of federal case law that had caused inappropriate judicial deference to agency construction of legal doctrines. *Loper Bright Enterprises et al. v. Raimondo, Secretary of Commerce*, 603 U.S. 369, 144 S.Ct. 2244, 219 L.Ed.2d 832 (2024). In the plurality opinion, Chief Justice Roberts overruled any requirement that federal courts defer to agency interpretations of statutes, noting that construction of statutes by administrative agencies are subject to strict construction and that only the Courts have authority to decide issues of law. The Chief Justice said such historic deference to agency interpretations of statutes is “misguided. . . because agencies have no special competence in resolving statutory ambiguities.” *Id.* at 2266, 859. He also noted that the Constitution is framed as it is “to ensure federal judges could exercise judgment free from the influence of the political branches.” *Id.* at 2268, 861.⁸

South Carolina has long done as the federal courts have done, which is to defer to agency interpretations of statutes when reviewing appeals from administrative agencies. *Kiawah Dev. Partners II v. S. C. Dep’t of Health & Env’t Control*, 411 S.C. 16, 766 S.E.2d 707 (2014); *Chapman v. S. C. Dep’t of Social Services*, 420 S.C. 184, 801 S.E.2d 401 (Ct.App. 2017). South Carolina courts still afford deference to agency interpretations of statutes in some cases. *See Brown v. Bilo Inc.*, 354 S.C. 436, 581 S.E.2d 836 (2003).

⁸ The Court of Appeals recently cited *Loper Bright Enterprises v. Raimondo* favorably in *Colonial Pipeline Co. v. S. C. Dept of Revenue*, 443 S.C. 448, 905 S.E.2d 129 (Ct App. 2024), which it read to support the legal doctrine that courts should not mechanically afford binding deference to agency interpretations, while “leaving in place *Skidmore v. Swift & Co.*, 323 U.S. 134 (1944)” which “endorses exercising independent judgment consistent with the ‘respect’ historically given to Executive Branch interpretations.” *Colonial Pipeline Co.*, 443 S.C. 448, 905 S.E.2d 129 (Ct App. 2024) (quoting *Loper*, 603 U.S.369, 144 S.Ct. 2244, 219 L.Ed.2d 832 (2024)).

Pursuant to the mandates of *Loper*, such deference to agency interpretations of statutes is no longer permitted. Similarly, neither the Commission nor the Courts can continue to rely upon opinions of executive agencies which stepped outside the bounds of their constitutional limits and attempted to construe what the law means.⁹

In denying Loveless’ Motion to Dismiss, Commissioner Starkes said his interpretation of § 8-13-700(B) was “supported by decades of guidance and enforcement actions.” (Order dated 10.6.2022, p. 4). While that may true, the guidance and enforcement actions during those decades were based on an inaccurate and inappropriate reading of § 8-13-700(B). Commissioner Starkes referred to as the “clarifying” language of § 8-13-700(B)(4) in determining what actions were prohibited by § 8-13-700(B). Not only was this interpretation wrong that (B)(4) “clarified” 8-13-700(B), but the Commission is also not permitted to look for clues to clarify what the statute meant since the statute was unambiguous. “[U]nder 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.” *Hodges v. Rainey*, 341 S.C. 79, 87, 533 S.E.2d 578 (2000).

⁹ While the majority decision in *Loper* did not dwell on the separation of powers doctrine, the doctrine leaps from the lines of the plurality decision. The concurring opinion of Justice Thomas in *Loper* expressly addresses the separation of powers doctrine that prohibits political branches from stating what the law is. “*Chevron* deference . . . violates our Constitutions’ separation of powers, as I have previously explained at length. (citations omitted). 603 U.S. 369 at, 144 S.Ct. 2274 (opinion of Thomas, J.). Chief Justice Roberts plurality decision did, in fact, state that the now-abolished *Chevon* doctrine requires courts to decide what the law is and not defer to political branches of government. 603 U.S. 369, 144 S.Ct. 2244. Justice Gorsuch’s concurring opinion also points out that the court’s exclusive authority to construe the law rejects any permissible interference by executive branch agencies in determining the law to “review by political actors.” 603 U.S. 369 at, 144 S.Ct. 2284 (opinion of Gorsuch, J.) (citing *The Federalist* No. 81, at 482.). “All of this served to ensure the same thing: ‘A fair trial in a fair tribunal.’ . . . [o]ne in which impartial judges, not those currently wielding power in the political branches would “say what the law is” in cases coming to court.” *Id.* (citations omitted).

In light of *Loper* pointing out that only courts can construe issues of law, and since the Commission has, for decades, ignored the plain language of the statute in order act outside its jurisdiction, Commissioner Starkes' deference to "decades" of prior construction by the Commission is a fatal flaw and the Commission had no basis upon which to prosecute these charges against Loveless.

In 2000, the Commission continued its expansion of the circumstances in which recusal of a public official is required under the statute. In 2000, however, the Commission issued an advisory opinion *sua sponte*, which is not permitted by statute. S. C. Code § 8-13-320(11)(a) permits the Commission to issue an advisory opinion when requested by a person whose public acts fall within its jurisdiction. SEC AO2000-011, relied upon by Commissioner Starkes, 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 1991.¹⁰" The statute permits the Commission to issue advisory opinions only when requested to do so "for public officials, public members and public employees for which it has proper jurisdiction to make findings of fact and impose penalties pursuant to this chapter." § 8-13-310(11)(b). In other words, the Commission may not simply issue an advisory opinion on its own volition, as it did in SEC AO2000-011, to pontificate on the Commission's own concern regarding possible misunderstanding of the statute by people to whom it applies. The Commission had no authority to issue SEC EAO 2020-011. When Commissioner Starkes relied upon it in denying Loveless' Motion to Dismiss, he did not note that SEC AO2000-011 had been expressly repealed by the Commission in SEC AO2020-002.

¹⁰ This is another of the procedural irregularities that Loveless asserts tainted these proceedings. As with the others, our disposition of this matter does not require that we address the multiple alleged procedural irregularities in these proceedings.

The Commission has struggled with its own *sua sponte* and gratuitous issuance of SEC EAO 2000-011. For instance, in SEC AO2003-002, the Commission properly followed the express language of the statute and limited the application of § 8-13-700(B) to “action” and “agency decisions” in concluding that agency staff¹¹ who serve as liaison to the decision-making body are not prohibited by § 8-13-700(B) from performing administrative tasks in support of the decision-making body which operated the agency. That was a permissible construction of the statute, since administrative staff do not make “decisions” or take “actions” and § 8-13-700(B) is not implicated.

In 2020, the Commission may have anticipated its error in expanding on the express language of the statute. In SEC AO2020-002, the Commission issued an opinion in which it addressed individual line items in budgets that are voted on by the agency’s decision-making body, and said it was permissible for agency employees (staff) to participate in budget discussions¹² even if a family member might eventually benefit from a salary increase adopted by the agency. Recognizing the confusion its previous advisory opinions had created by expanding the language in § 8-13-700(B) to include “discussions,” the commission expressly withdrew SEC EAO 2000-011 in SEC EAO-2020-002.

In the pending Commission action, Loveless was charged with four counts of a violation of § 8-13-700(B), in that he (1) wrote a letter; (2) participated in discussions; (2) participated in discussions; and (4) participated in a site visit. The subpanel did not conclude that Loveless’ participation in a site visit (Count 4) violated § 8-13-700(B). However, none of the actions which

¹¹ By definition administrative employees/staff are not public officials who vote or take actions. They are public employees who assist not public officials, but only the public officials make “decisions” or take “action”. See § 8-13-100 (definitions of “public employee in subsection (25) versus definition of “public official” in subsection (27)).

¹² In SEC AO2020-002 opinion, the Commission did not attempt to equate (and therefore confuse) “deliberations” with “discussions” as it did in the instant case.

formed the charges against Loveless alleged that he participated in a “vote” or a “decision” and none of those actions is prohibited by § 8-13-700(B). Loveless was permitted to participate in discussions, but if he indeed was associated with Contract Construction,¹³ he was not permitted to participate in deliberations which led to votes or actions with respect to Contract Construction. The charges against Loveless do not allege that Loveless participated in any vote, decision or deliberations with respect to Contract Construction. The Commission’s inquiry necessarily ends there.

While finding that Commissioner Starkes properly relied upon decades of prior administrative decisions and guidance from the Commission, the full Commission concludes that much of that decades-long precedent was erroneous, a conclusion mandated by *Loper*. Loveless’ Motion to Dismiss should have been granted. The counts against Loveless made no allegation that Loveless had voted or participated in any agency decision related to Contract Construction (the business with which he was allegedly associated) which is the only conduct prohibited by § 8-13-700(B).¹⁴

In the final hearing in this matter, Loveless pointed out his counsel’s cross-examination of Commission’s investigator Ryane Caldwell, when counsel asked Caldwell whether she believed Loveless had violated §8-13-700(B). While not considered remarkable at the time, Ms. Caldwell’s statement was prescient, in that she very carefully said that Loveless had violated the Commission’s

¹³ Because the Commission finds that the counts against Loveless did not allege a violation of S. C. Code § 8-13-700(B), it is not necessary to determine if Contract Construction was a business with which Loveless was associated.

¹⁴ Loveless pointed out in his motion to dismiss that the proceedings before this Commission had been initiated without subject matter jurisdiction because there was no factual allegation that a violation of § 8-13-700(B) had occurred, *i.e.* no “vote” or “decision.” Loveless was charged with “writing a letter” (Count 1), “participating in discussions” (Counts 2 and 3) and “participat[ing] in a site visit” of a construction site. Loveless was not charged with engaging in any “votes” or “decisions” regarding Contract Construction, a general contractor chosen by District Five to construct an elementary school before Loveless was elected to the Board.

“historical interpretation” of the statute. (Testimony of RYANNE CALDWELL, Tr. Feb. 16, 2023, p. 109, lines 1-9). That was the same way as saying Loveless had not violated the statute.

CONCLUSION

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.2d 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).

While 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, the decision of the United States Supreme Court in *Loper* compels a fresh examination of prior Commission interpretations of § 8-13-700(B).

Loper compels the conclusion that Loveless' motion to dismiss should have been granted. 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).

To be clear, the prohibition of § 8-13-700(B) must be restricted to votes or decisions by a public official, none of which were alleged against Loveless. Loveless was charged with writing a letter, participating in discussions at two (2) Board meetings at the school district, and participating in a site visit in his capacity as member of the Board. None of those actions is prohibited by § 8-13-700(B).

It is the unanimous decision of the Commission that Loveless' Motion to Dismiss should have been granted. The Decision and Order of the sub-panel dated March 24, 2023 is vacated in its entirety and Loveless' Motion to Dismiss is granted.

STATE ETHICS COMMISSION

NEAL TRUSLOW, HEARING CHAIR

March __, 2025

From: O'Bryan, Rachael <robryan@ethics.sc.gov>
Sent: Monday, March 3, 2025 11:12 AM
To: Walker, Meghan <mwalker@ethics.sc.gov>
Cc: Laster, Courtney <claster@ethics.sc.gov>; Haley Hubbard <haley@desaballard.com>; Desa Ballard <desab@desaballard.com>; Beth Cogan <Beth@desaballard.com>
Subject: RE: [External] (Benson v. Loveless C2021-016) Respondent's Proposed Final Order

Good morning,

Attached please find staff's proposed appeal order.

Thank you,

Rachael O'Bryan
Administrative Assistant - Legal
South Carolina State Ethics Commission
201 Executive Center Drive, Suite 150
Columbia, SC 29210
Phone: 803.253.4192
Fax: 803.253.7539

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

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 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

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).

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 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

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.

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) Forensic Services 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 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 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:

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.

- (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). “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 “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

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.

of guidance and enforcement actions, not only from the Commission, but from other entities responsible for interpreting and enforcing the Ethics Act.⁵

Regardless, Respondent has violated Section 8-13-700(B) by his own admission. 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 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).

Here, it is undisputed that Contract Construction entered into a contract with the District in 2018 for the construction of PWES. It is also undisputed that Respondent, who personally carries

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).

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 from any matter in which Contract Construction had an economic interest, to include the PWES contract. 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.

The governmental decision at the heart of this matter concerns the District’s contract with Contract Construction for the construction of PWES. Section 8-13-700(B) prohibited Respondent

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 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.

from participating in any matter related to the PWES contract, including discussions about the terms of the contract and Contract Construction's progress or performance under the 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 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 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.

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

membership of the commission.” (emphasis added).

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

- (a) The commission shall accept from an individual, whether personally or on behalf of an organization or governmental body, a verified complaint, in writing, that states the name of a person alleged to have committed a violation of this chapter and the particulars of the violation. The Commission shall forward a copy of the complaint, a general statement of the applicable law with respect to the complaint, and a statement explaining the due process rights of the respondent including, but not limited to, the right to counsel to the respondent within ten days of the filing of the complaint.

...

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

As an initial matter, Respondent appears to conflate the process for opening a Commission-generated complaint (outlined in Section 8-13-320(10)(d)) with a complaint filed by a member of the public (outlined in Section 8-13-320(10)(c)). Pursuant to Section 8-13-320(10)(c) of the Ethics Act, “if the Commission, its executive director, or staff designated by the commission determines that the complaint alleges facts sufficient to constitute a violation, an investigation may be conducted of the alleged violation.” This is exactly what occurred - the complaint was filed on

February 17, 2021 by a member of the public, the Executive Director determined the complaint contained sufficient facts, an investigation was ordered, and Respondent was notified by way of a certified letter dated February 23, 2021. Accordingly, the investigation into this matter was opened under the lawful authority given to the Executive Director by Section 8-13-320(10)(c) of the Ethics Act.

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

DECISION

NOW, based on the evidence in the record and oral arguments presented, the Appellate Panel affirms the Hearing Panel’s Decision and Order and finds that Respondent is in violation of three (3) counts of Section 8-13-700(B) as outlined in Count One (1), Count Two (2), and Count Three (3) of the Notice of Hearing. Specifically, the Appellate Panel finds that Respondent’s (1) March 24, 2020 letter; (2) participation in the June 15, 2020 District Board meeting discussion regarding PWES; and (3) participation in the September 14, 2020 District Board meeting discussion regarding PWES were matters that required recusal pursuant to Section 8-13-700(B). Therefore, pursuant to Section 8-13-320(1)(i) of the Ethics Act, the Appellate Panel hereby issues a Public Reprimand and orders Respondent to pay a reduced civil penalty of \$5,250.00 (\$1,750.00

for each count);

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

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

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

AND IT IS SO ORDERED THIS ____ DAY OF _____ 2025.

STATE ETHICS COMMISSION

NEAL D. TRUSLOW,
APPELLATE PANEL CHAIR

Columbia, South Carolina

From: O'Bryan, Rachael <robryan@ethics.sc.gov>

Sent: Friday, March 14, 2025 11:10 AM

To: Walker, Meghan <mwalker@ethics.sc.gov>

Cc: Laster, Courtney <claster@ethics.sc.gov>; Desa Ballard <desab@desaballard.com>; Haley Hubbard <haley@desaballard.com>; Beth Cogan <Beth@desaballard.com>

Subject: Kenneth Loveless Proposed Appeal Order - Revised - C2021-016

Director Dayson,

Attached please find staff's revised proposed appeal order for the above referenced matter.

Thank you,

Rachael O'Bryan

Administrative Assistant - Legal

South Carolina State Ethics Commission

201 Executive Center Drive, Suite 150

Columbia, SC 29210

Phone: 803.253.4192

Fax: 803.253.7539

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

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 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

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).

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 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

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.

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 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

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.

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 “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

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.

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 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.

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.

Moreover, Respondent has violated Section 8-13-700(B) by his own admission. 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).

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

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

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

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

- (a) The commission shall accept from an individual, whether personally or on behalf of an organization or governmental body, a verified complaint, in writing, that states the name of a person alleged to have committed a violation of this chapter and the particulars of the violation. The Commission shall forward a copy of the complaint, a general statement of the applicable law with respect to the complaint, and a statement explaining the due process rights of the respondent including, but not limited to, the right to counsel to the respondent within ten days of the filing of the complaint.

...

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

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

Act.

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

DECISION

NOW, based on the evidence in the record and oral arguments presented, the Appellate Panel affirms the Hearing Panel’s Decision and Order and finds that Respondent is in violation of three (3) counts of Section 8-13-700(B) as outlined in Count One (1), Count Two (2), and Count Three (3) of the Notice of Hearing. Specifically, the Appellate Panel finds that Respondent’s (1) March 24, 2020 letter; (2) participation in the June 15, 2020 District Board meeting discussion regarding PWES; and (3) participation in the September 14, 2020 District Board meeting discussion regarding PWES were matters that required recusal pursuant to Section 8-13-700(B). Therefore, pursuant to Section 8-13-320(1)(i) of the Ethics Act, the Appellate Panel hereby issues a Public Reprimand and orders Respondent to pay a reduced civil penalty of \$5,250.00 (\$1,750.00 for each count);

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

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

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

AND IT IS SO ORDERED THIS ____ DAY OF _____ 2025.

STATE ETHICS COMMISSION

NEAL D. TRUSLOW,
APPELLATE PANEL CHAIR

Columbia, South Carolina

From: Desa Ballard <desab@desaballard.com>

Sent: Tuesday, March 18, 2025 11:24 AM

To: Meghan L. Walker, Esquire (mwalker@ethics.sc.gov) <mwalker@ethics.sc.gov>; Courtney Laster, Esquire (claster@ethics.sc.gov) <claster@ethics.sc.gov>

Cc: Beth Cogan <Beth@desaballard.com>; Haley Hubbard <haley@desaballard.com>

Subject: Ken Loveless - objections to proposed order by Courtney Laster

Members of the Commission:

Having reviewed the proposed order prepared by Ms. Laster on March 14, 2025, (which was amended from an earlier submission), I object to FOUR portions of the order, with Objection 4 being fatal to the proposed order from Ms. Laster.

Objection 1: On Page 1, footnote 1, Ms. Laster says “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). “

(1) Neither Mr. Loveless nor his counsel have been notified of Commissioner Caldwell’s participation in this matter, and since he was not present during the hearing, we object to his participation. (2) If Ms. Laster has had *ex parte* communications with Commissioner Caldwell or via a surrogate, that disqualifies him from participation. (3) Regulation 52-805(D) is an expansion not permitted by the applicable statutes and is therefore not consistent with the statutory authority granted to the administrative agency. The agency’s regulations cannot conflict with or expand on the Code. S.C. Code Section 1-23-10(4) and South Carolina Coastal Conservation League v. South Carolina Department of Health and Env’tl. Control, 390 S.C. 418, 702 S.E.2d 246 (2010) (regulation may not expand on statute).

Objection 2: On Page 5, footnote 3 Ms. Laster argues that Section 8-13-775 is not applicable to this scenario. That is incorrect. Her argument is not supported by the statute, and the statute is certainly applicable, to the extent it is relevant, which I believe is minimal. It does address Ms. Laster’s argument that Mr. Loveless was obligated by his duties as a school board member to carry out his obligations to his constituents and her argument in the proposed order that Loveless admitted participation in discussions that are prohibited. As discussed below, the Commission’s historical interpretation of Section 8-13-700(B) must fall in light of the United States Supreme Court’s recent decision in Loper.

Objection 3: On page 11, the proposed order states: “This is exactly what occurred – the complaint as filed. . . by a member of the public, the Executive Director determined the complaint contained sufficient facts. . .” That is not what happened here. The Executive Director falsely advised Ms. Loveless that “the Commission” had determined there were sufficient facts to warrant an investigation. The letter was introduced into evidence as Exhibit A to the Motion to Dismiss and is attached again here. The statute cited by Ms. Laster in her proposed order does not allow the Executive Director to falsify the notice to a respondent with a false claim that the Commission has reviewed the complaint when it had not. Ms. Walker’s letter states expressly “On February 17, 2021. . . the State Ethics Commission reviewed the complaint and determined that there are sufficient facts to warrant an investigation.” That is patently false, as has been pointed out repeatedly, there was no Commission meeting on that date and Ms. Walker’s statement was false. Mr. Loveless’ Motion to Dismiss set forth numerous procedural irregularities, the false statement of the Executive Director being only one. The statute cited in Ms. Laster’s proposed order does, in

fact, allow the Executive Director to determine if sufficient facts exist, but it does NOT allow the Executive Director to falsely state who had determined sufficient facts existed to warrant an investigation.

Objection 4: Lastly, and most importantly, Ms. Laster ignores the recent United States Supreme Court authority (recognized by the South Carolina Court of Appeals) that an administrative agency has no authority to declare what the law is, when the statute is unambiguous, as is the case here.

The contents of Footnote 5 on page 7 of Ms. Laster's proposed order continues the Commission's wrongful interpretation of Section 8-13-700(B) that it has historically used, when it is clear that its historical interpretation is no longer valid law. The proposed order from Ms. Laster makes no effort to distinguish the Loper decision, which is cited extensively in the proposed order submitted by counsel for Loveless: "In June 2024, the United States Supreme Court reversed decades of federal case law that had caused inappropriate judicial deference to agency construction of legal doctrines. *Loper Bright Enterprises et al. v. Raimondo, Secretary of Commerce*, 603 U.S. 369, 144 S.Ct. 2244, 219 L.Ed.2d 832 (2024). In the plurality opinion, Chief Justice Roberts overruled any requirement that federal courts defer to agency interpretations of statutes, noting that construction of statutes by administrative agencies are subject to strict construction and that only the Courts have authority to decide issues of law."

Please ensure this communication is submitted to the Commission members (not to Mr. Caldwell, who is not authorized to participate as set forth above).

Thank you.

db

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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 (<i>Exhibit A</i>) (Action); b. Selected employment items (<i>Exhibit B</i>) (Information Only)	X	A	A	X	X	X	A
4. M. -- S. -- (<i>consent approval of minutes as presented</i>) Approve the minutes of the May 18, 2020 board meeting	X	X	X	X	X	X	X
5. M. -- S. -- (<i>consent approval of minutes as presented</i>) 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

Questions Raised about Construction on Amicks Ferry Road

Kenneth B. Loveless

228 Lookout Pointes Drive

Chapin, SC 29036

March 24, 2020

Dr. Christina Melton

Superintendent Lexington-Richland School District 5

1020 Dutch Fork Road

Irmo, SC 29063

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.

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 6/16/2020
meeting, at the request of Board member
Dan Neal
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 10/15/2020 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.

- e) 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 12/15/2020
meeting, at the request of Board member
Ed Wulfe
pursuant to South Carolina Code
Ann. Section 30-4-90(a)(4)
and Board Policy BLEDG. 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 June 18, 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.

- 1.7) 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 12/15/2020 meeting, at the request of board member Ed W. Miller.

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 # 26)

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 (9.6) is included with the minutes of the 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.

#1, pg. 7 is included with the minutes of the 10/13/2020 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.

- 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.

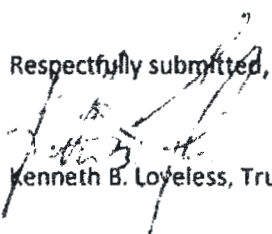
Please keep in mind that only the Architect may change project specification requirements issued after the contract has been signed. He or she may only do so a change order executed by the Owner (the board).

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.

Please act accordingly.

Respectfully submitted,


Kenneth B. Loveless, Trustee

Attachment #1, pg. 8 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.

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, PE (ret)

Attachment #2, pg. 1 is included with
the minutes of the 6/19/2020
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.



4/20/20

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

Responses to Questions Raised
by Ken Loveless

Attachment #3, pg. 1 is included with the minutes of the 6/19/2020 meeting, at the request of Board member Ed White

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

Dear Dan:

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.

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:

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.

Safety
Record



#3, pg. 2
the minutes of the 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.

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



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."

Attachment #3, p. 3
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 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.



Attachment #3, pg. 4 is included with the minutes of the 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.



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:

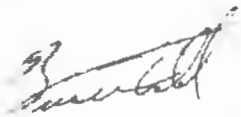
This letter is in response to item #3 of a correspondence between Ken Loveless (Trustee – LRSD5) and Dr. Christina Melton (Superintendent- LRSD5) dated March 24, 2020. The item is in reference to testing for structural strength of concrete poured for curb and gutters.

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 01/19/2020 meeting, at the request of Board member Ed (W.H.)
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, SC
PLANT 7 IRMO, SC
PLANT 8 LUGOFF, SC
PLANT 9 WINNSBORO, SC

Attachment #4, pg. 2 is included with the minutes of the meeting, at the request of Board member Ed White

pursuant to South Carolina Code Ann. Section 30-4-90(a)(5) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise action on the contents of this attachment.

UNLOADING

Drivers are not permitted to add water to the mix to exceed the maximum pump. Drivers are prohibited from delivering concrete except under the truck's win 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 under the authorization of the customer. This includes acceptance of risk for any loss or damage to the property or equipment. This includes any wrecker or towing charges for getting out of the local area. Water added.

RECEIPT AND RELEASE

Customer's representative
ORDERED BY
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	PO NUMBER	ZONE	ORDERED BY	TIME	DATE	TICKET
201269				11:13 AM	1/14/13	14657
NOTE TO:			DELIVER TO			
QUANTITY THIS LOAD	QUANTITY ORDERED	QUANTITY DELIVERED	PRODUCT CODE	PRODUCT DESCRIPTION	UNIT OF MEASURE	UNIT PRICE
5.20	5.20	1.00	ENVEEEM	ENVIRONMENTAL FEE #100		
1.00	1.00	1.00	ENVEEEM	ENVIRONMENTAL FEE #100		
1.00	1.00	1.00	ENVEEEM	ENVIRONMENTAL FEE #100		
TRUCK	DRIVER	SLUMP	USE OF CONCRETE			
CALCIUM	WATER REDUCER	AIR ENTRAIN	PHONE			
DELIVERY INSTRUCTIONS						SUB TOTAL
						TAX
						TOTAL

10 MINUTES PER YARD ALLOWANCE
PER MINUTE HOUR 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, pg. 3 is included with the minutes of the meeting, at the request of Board member Ex. 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.

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 of our equipment. This includes any wrecker or towing charges for getting out of the location.

RECEIPT AND RELEASE:

Gallons

Customer's representative
RECEIVED SUBJECT TO CONDITIONS ON REVERSE SIDE

CAUTION

May cause eye or skin injury. Contains Portland cement, Freshly 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

QUANTITY	QUANTITY ORDERED	QUANTITY DELIVERED	PRODUCT CODE	PRODUCT DESCRIPTION	UNIT OF MEASURE	UNIT PRICE	EXTENDED PRICE
THIS LOAD							
TRUCK	DRIVER	SLUMP	ONE AT A TIME	USE ON CONCRETE			
CALC M	WATER REDUCER	AIR ENTRAIN	PHONE				
DE VERY INSTRUCTIONS:							SUB TOTAL
							TAX
							TOTAL

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 LRS 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 LRS 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 12/15/2020 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.