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SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
ETHICS COMMISSION

F. Xavier Starkes, Appellate Panel Chair

Complaint Nos.: C2021-078
C2023-129

Appellate Case No.: 2025-002308

South Carolina State Ethics Commission .... Respondent

v.

Lancer Shull .... Appellant.

REPLY BRIEF OF APPELLANT LANCER SHULL

Respectfully submitted,
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STATEMENT OF THE CASE

Appellant reaffirms the statement of the case in its Initial Brief.

ARGUMENT

I. Respondent's Position that Public Officers Were Guilty of Ethical Violations Under the Common Law of England Is Erroneous

In its Brief on page on page 11, Respondent cites the case of Bradley v. City Council of Greenville, 212 S.C. 389, 46 S.E.2d 291 (S.C. 1948) and insinuates that under the common law, a public official was barred from voting to appoint himself to another position, where that position has a non-accountable per diem. Respondent's position misconstrues the law.

In Bradley, the Court held that a public official's tie breaking vote appointing himself to another position, was void because of *public policy* and ***NOT*** on the grounds of the common law. The Court cited an article from the original American Jurisprudence, 42 Am.Jur. Public Officers §97 (1948) for the proposition that the vote of the Public Official was void due to *public policy*, and therefore the appointment was not valid. That section provides:

> A public office is a public trust,[16] and persons to be appointed thereto should be selected solely with a view to the public welfare.[17] ***It goes without saying that the power of appointment to public office is to some degree limited by public policy*** and by statutory provisions which invalidate the appointment of relatives,[18] or which make certain persons ineligible to office.[19] An appointment of an ineligible person is a nullity.[20]
>
> An officer intrusted with the power of appointment should exercise it with disinterested skill and in a manner primarily for the benefit of the public,[21] for it is the policy of the law to secure the utmost freedom from personal interest in such appointments.[1] So, ***it is contrary to public policy to permit an officer having an appointing power to use such power as a means of conferring an office upon himself,***[2] or to permit an appointing body to appoint one of its own members.[3] 42 Am.Jur. *Public Officers* §97 (1948) (emphasis added)

The article cited one case in footnote 2 for the proposition that it is against *public policy* to allow an officer to vote for himself and therefore the vote is void: Hornung v. State, 116 Ind. 456, 19 N.E 151 (Ind. 1888). In Hornung, the Court ***DID NOT*** find an ethical violation; it found the vote was void for *public policy* and therefore did not count. The Court affirmed the lower court's ruling, finding: "We concur in both of the conclusions reached as above by the Supreme Court of Oregon, and, consequently, feel constrained to hold that Hornung's vote for himself for the office of county superintendent was contrary to public policy, land, for that reason, an utterly illegal vote." Id. at 463.

The current version of the American Jurisprudence article is found at 63C Am.Jur.2d *Public Officers and Employees* § 93 (2026) makes the point even more clearly that the vote is void for ***public policy*** reasons. It provides:

> It is sometimes considered to be contrary to ***public policy*** to permit an officer having appointing power to use such power to confer an office on him- or herself in the absence of specific legislative authorization, or to permit an appointing body to appoint one of its own members. 63C Am.Jur.2d *Public Officers and Employees* § 93 (2026)

The footnote cites another case finding the vote of a public official to appoint himself is void for ***public policy*** reasons: Cotlar v. Warminster Township, 8 Pa. Commonwealth Ct. 163 302 A.2d 859 (Pa. Commw. Ct. 1973). The Court found "[i]t is against ***public policy***, in the absence of specific legislative authorization, for a public official to appoint himself to another public office." Id. at 167-68 (emphasis added).

"Public policy" and the "common law" are not and the same; public policy is an ***exception*** to the common law. As stated in United Paperworkers International Union v. Misco, 484 U.S. 29, 108 S.Ct. 364, 98 L.Ed.2d 286 (1987):

> a court may refuse to enforce contracts that violate law or public policy... That doctrine derives from the basic notion that no court will lend its aid to one who founds a cause of action upon an immoral or illegal act, and is further justified by the observation that the public's interests in confining the scope of private agreements to which it is not a party will go unrepresented unless the judiciary takes account of those interests when it considers whether to enforce such agreements... ***In the common law of contracts, this doctrine has served as the foundation for occasional exercises of judicial power to abrogate private agreements.*** Id. at 42. (emphasis added)

Cf. Taghivand v. Rite Aid, 411 S.C. 240, 768 S.E.2d 385 (S.C. 2015) (no public policy exception to employment at will doctrine for reporting of crime); McCormick v. England, 328 S.C. 627, 494 S.E.2d 431 (S.C. Ct. App. 1997)(recognizing action for breach of physician-patient confidentiality under public policy; no right under common law); Ludwick v. This Minute of Carolina, Inc., 287 S.C. 219, 337 S.E.2d 213 (S.C. 1985)(public policy exception to employment at will doctrine for employer who requires employee to violate law to retain employment).

Under the common law, there was nothing barring a public official from voting to appoint himself to another position. In State *ex rel* Clayton v. Bd. of Regents, 635 So.2d 937 (Fla. 1994), appellant contended "that Castor's appointment is void based on the common law rule that a government body with appointment powers may not appoint one of its own to a position." Id. at 937. The Court held: "[w]e find there was no common law principle in existence in England on July 4, 1776, that governs the issue in this case."[1]

This Court should follow Clayton. Bradley held a vote of a public official to appoint himself to another position was void for ***public policy*** reasons; there would be no need to find a public policy ***exception*** to the common law if the common law ***already*** forbade the vote of the public official from being counted. This Court should find that an official voting to appoint himself was permitted under the common law and therefore section 8-13-700(B) of the South Carolina Code should be construed strictly to the extent that it is contrary to the common law.

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1 The "common law" is the common law of England at the time of the American Revolution. Section 14-1-50 of the South Carolina Code provides: "All, and every part, of the common law of England, where it is not altered by the Code or inconsistent with the Constitution or laws of this State, is hereby continued in full force and effect in the same manner as before the adoption of this section." S.C. Code Ann. § 14-1-50 (2026). The Florida statute is even clearer; "[f]or a principle of law to be governed by the common law in Florida, that principle must have existed as part of the common and statutory law of England on July 4, 1776, and must not be inconsistent with the constitution and laws of the United States or the acts of the legislature of this State." State *ex rel* Clayton v. Bd. of Regents, 635 So.2d 937 (Fla. 1994).

It is worth noting that there is a fundamental factual distinction between the votes taken in this case and the cases cited in American Jurisprudence. In this case, even if Appellant's vote is held to be void and his attendance not counted, he has still sufficient votes to be elected to the position of Commissioner of the Joint Municipal Water and Sewer Commission. *See* Raynovich v. Romanus, 450 Pa. 391, 299 A.2d 301 (Pa. 1973) (even where votes were voided for two councilmen who voted for themselves and their attendance not counted, there was a quorum and councilman whose vote was voided was elected mayor)

While there are some cases around the country finding that the ***vote*** of a public official is ***void*** for reasons of public policy, as discussed in Appellant's Initial Brief there are absolutely ***NO CASES*** in the United States finding that a public officer, voting to appoint himself to a position with a non-accountable, IRS approved *per diem* is guilty of a violation of state ethics laws. As the common law did not prohibit an official from voting for himself, and no state has found an ethical violation, this court should apply the strictest of interpretations to section 8-13-700(B).

One of the issues at the heart of this case is whether receipt of a non-accountable, IRS approved *per diem,* whose purpose is to reimburse mileage and expenses paid by the public official is an "economic interest" – something which confers an "economic benefit." As discussed in the Initial Brief, South Carolina allows accountable *per diem* where an employee submits receipts. Accountable *per diem* are not considered to be an "economic benefit" because they are reimbursement of expenses incurred and therefore not a benefit. This Court should not draw an arbitrary distinction between accountable and non-accountable *per diems* where such a distinction is not clearly and unequivocally stated in the law.[2]

II. Respondent Improperly Conflates the Canons of Strict Construction for Penal Law and those Which Are Contrary to the Common Law; the Canons Serve Different Functions and Must be Considered Separately.

Respondent, in its Brief, seeks to address the canons of strict construction for penal laws and laws that are contrary to the common law together, conflating them. Each canon, however, has a different purpose, and therefore each must be considered separately.

The purpose of the canon requiring statutes in derogation of the common law to be strictly construed is to help the court ascertain the intent of the legislature. As stated in Isbrandtsen Co. v. Johnson, 343 US 779, 72 S.Ct. 1011, 96 L.E.2d 1294 (1952):

> Statutes which invade the common law or the general maritime law are to be read with a presumption favoring the retention of long-established and familiar principles, except when a statutory purpose to the contrary is evident. No rule of construction precludes giving a natural meaning to legislation like this that obviously is of a remedial, beneficial and amendatory character. It should be interpreted so as to effect its purpose... "The rule that statutes in derogation of the common law are to be strictly construed does not require such an adherence to the letter as would defeat an obvious legislative purpose or lessen the scope plainly intended to be given to the measure." Id. at 783.

In contrast, the purpose the canon requiring penal statutes to be strictly construed is focused, at least in part, on constitutional due process concerns. As stated in Appellant's initial brief, "[t]he rule-of-lenity fosters the constitutional due-process principle 'that no individual be forced to speculate, at peril of indictment, whether his conduct is prohibited.'" United States v. Bustillos-Pena, 612 F.3d 863, 868 (5th Cir. 2010)(*quoting* United States v. Rivera, 265 F.3d 310, 312 (5th Cir. 2001) *quoting* Dunn v. United States, 442 U.S. 100, 99 S.Ct. 2190, 2197, 60

2 To the extent that, in citing Bradley, Respondent is contending that any vote which violates *public policy* can subject a public official to prosecution for an ethical violation, this argument has been waived as it was never raised at any level below.

L.Ed.2d 743 (1979)). *See also* Hill v. Coggins, 867 F.3d 499, 513-14 (4th Cir. 2017); United States v. Walters, 225 F. Supp.2d 684, 687 (E.D. Va. 2002). "[T]o ensure that a legislature speaks with special clarity when marking the boundaries of criminal conduct, courts must decline to impose punishment for actions that are not 'plainly and unmistakably' proscribed." Dunn, 442 U.S. at 112-13, 99 S.Ct. at 2197, 60 L.Ed.2d at 754.[3]

The canon requiring penal statutes to be strictly construed was designed to prevent the miscarriage that occurred in this case. South Carolina law permits accountable *per diem* plans under which an employee submits receipts and is reimbursed; receipt of an accountable *per diem* cannot considered an "economic benefit" which could subject a public official to criminal sanctions under section 8-13-700(B). *See* Memorandum, *Meal Allowance Ceiling Change* (S.C. Office of Comptroller General June 18, 2019) *See also* Memorandum, *2025 Mileage Rate Change* (S.C. Office of Comptroller General December 20, 2024). IRS regulations permit a nonaccountable *per diem*, under which the employee is provided a *minimal stipend* for expenses, the payment of which is ***proof that the expenses were in fact incurred.*** See IRS

3 *See* 73 Am.Jur.2d *Statutes* § 180 (2023)("when the language of a penal law is reasonably susceptible of two interpretations, a court will construe the law as favorably to criminal defendants as reasonably permitted by the statutory language and circumstances of the application of the particular law in issue; this protects the individual against arbitrary discretion by officials and judges and guards against judicial usurpation of the legislative function which would result from enforcement of penalties when the legislative branch did not clearly prescribe them... [U]nder the "rule of lenity," a criminal statute is construed in favor of lenity toward an accused in situations in which a reasonable doubt persists about the statute's intended scope even after resort to the statute's language, structure, legislative history, and motivating policies.") In this case, the Full Commission implicitly found that receipt of a nonaccountable *per diem* on months when the recipient is unable to work or his actual expenses are less than the flat monthly rate is an "economic interest" and therefore criminally sanctionable when the recipient votes to reappoint himself. Appellant's position is that there is no distinction between accountable and nonaccountable *per diem* plans and that all IRS approved *per diem* do not provide an economic benefit and therefore are not economic interests under section 8-13-100(11). There is ***NO LAW OR REGULATION*** drawing a distinction between the two types of *per diem* plans approved by federal law; the ambiguity should be resolved in favor of Appellant.

Pub. 463 at 43 (2024) ("Per Diem and Car Allowances"). There is ***NO LAW*** in South Carolina prohibiting nonaccountable *per diem* plans or even distinguishing between accountable and nonaccountable *per diem* plans. South Carolina case law only voids the vote of an official voting to appoint himself to a position; it does not go further and find an ethical violation. No state has held that receipt of a nonaccountable *per diem* violates ***any*** ethical rule. Under these circumstances, any reasonable public official would conclude that he could not be held criminally liable for voting to appoint himself to a position with a nonaccountable *per diem*. Appellant plainly had no notice that he could be found guilty of an ethical violation or a crime.

This court should apply the rule of strict construction and find that the phrase "economic benefit" in section 8-13-700(B) does not include reimbursement of expenses under ***either*** an accountable or nonaccountable *per diem* plan. Any other result would unjustly punish Appellant and raise Due Process notice concerns.

III. Respondent's Claims that Appellant Did Not Cite Legal Authority and that Appellant's Arguments Should Be Dismissed Are Meritless.

In footnote 10 of its Brief, Respondent contends that Appellant failed to cite legal authority that there are two types of *per diem*, and that therefore the court should not be considered by the court. A cursory reading of Appellant's Brief, however, shows that Respondent's position is false.

Appellant, on page 5 of its Brief, cites IRS Pub. 463 (2024) and I.R.B. 2023-41 (2023) for the proposition that in a nonaccountable perform plan, the stipend is considered proof that the expenses were actually incurred and the amount of the stipend and how it has increased. The IRS publication is cited again on page 16. An IRS publication certainly is legal authority.

Additionally, Appellant has cited South Carolina publications which mention the federally approved mileage and lodging rates for its accountable *per diem* reimbursement plans. Surely this is legal authority for the existence of IRS accountable plans.

Further, Jay Nicholson of the JMWSC testified that there were two kind of per diem plans; accountable and nonaccountable. His testimony on this point was never challenged by Respondent, either at the hearing or in its briefs. Respondent never introduced any evidence to challenge or impeach this testimony.

Lastly, Appellant has argued repeatedly that other states use nonaccountable per diem plans, citing Noel, Jim; Leonard Sanchez; Stuart Bluestone; Kathy McCoy; Brad Winter; and John Carey. "Subcommittee Report on the Establishment of a State Ethics Commission." at 8 (N. M. Aug. 29, 2006). https://digitalrepository.unm.edu/law_service_ethicsreform/28

Respondent's argument is a red hearing. This court should reject it as specious.

Another red herring is found in footnote 11 of Respondent's brief. Respondent claims there is no law mentioned in the brief supporting Appellant's argument that the JMWSC is an alter ego or an "arm or child" of the county and town governments that created the JMWSC and appoint its Commissioners. Appellant cited two opinions of the Ethics Commission, Bacon v. Cooper, No. 2000-049 (S.C. Ethics Comm'n March 23, 2000) and State Ethics Comm'n v. Wiseman, No. C2000-14 (S.C. Ethics Comm'n Dec. 14, 1999) which support its position. Both of these cases discuss situations where the Commission determined that a secondary board to which respondent was appointed was not "separate and distinct" (Cooper) or "independent" (Wiseman) because the governmental bodies created the secondary board, appointed its members, and/or had the power to dissolve the secondary board, all of which are true in this case.

This "exception" to section 8-13-700(B)" has come to be known as the "arm or child" exception ***in advisory opinions of the Commission*** itself. In Advisory Opinion No. AO2000-011, for example, the Commission opined:

> A final exception to the recusal requirement is that situation in which the public official sits on a board in his official capacity as a council member. In order to be serving in his official capacity, the public official must sit on a board, foundation, agency, etc. which is an ***arm or child*** of the council, i.e. created by council and existing solely at the discretion of council. Advisory Opinion, "Conflicts Of Interest For County, City And Town Council Members Who Sit On Various Boards" No. AO2000-011 (S.C. Ethics Comm'n May 17, 2000) (emphasis added)

Again, in Advisory Opinion AO2002-009, the Commission opined:

> In addition to the large class exception, not applicable to this request, the Commission stated "a final exception to the recusal requirement is that situation in which the public official sits on a board in his official capacity as a council member. In order to be serving in his official capacity, the public official must sit on a board, foundation, agency, etc. which is an ***arm or child*** of the council, i.e. created by council and existing solely at the discretion of council. In addition the public official must sit on the board, etc based solely on his position on council. Clearly many public officials are asked to sit on boards of non-profits because of their public status, but that status does not, in and of itself, fall within this exception to the recusal requirements." SEC AO2000-011 at page 5. Advisory Opinion, "Conflicts Of Interest For Public Officials Sitting on Various Boards" No. AO2002-009 (S.C. Ethics Comm'n Jan 16, 2002) (emphasis added)

It is true that Appellant has also labeled this exception the "alter ego" exception, but only because it bears many similarities to the "alter ego" theory in corporate law. *See e.g.* Highway Comm. of Wyoming v. Utah Construction Co., 278 US 194, 199, 49 S.Ct. 104, 73 L. Ed. 262 (1929) ("The Commission was but the arm or *alter ego* of the State with no funds or ability to respond in damages.") *Alter Ego* translates literally as "other I" or "other self;" the analysis of Cooper and Wisemen focuses on whether a secondary position is truly "separate and distinct" or "independent" of the bodies that created them.

The similarity between the two concepts can be seen in the very first case to coin the phrase *alter ego* in the corporate context, Lennard's Carrying Company v. Asiatic Petroleum

Company, [1915] A.C. 705 (appeal from King's Bench). In Lennard's "[a] cargo… was lost by a fire caused by the unseaworthiness of the ship... The shipowners were a limited company and the managing owners were another limited company. The managing director of the latter company was the registered managing owner and took the active part in the management of the ship on behalf of the owners." Id. at 705. The Court found "[t]he appellants are a limited company and the ship was managed by another limited company, Messrs. John M. Lennard & Sons… Mr. J. M. Lennard, who seems to be the active director in J. M. Lennard & Sons, was also a director of the appellant company, Lennard's Carrying Company, Limited." Id. at 712. The Judge held:

> there was enough known about Lennard to show that, to use the appellants' learned counsel's own phrase, he was the ***alter ego*** of the company. He was a director of the company. I can quite conceive that a company may by entrusting its business to one director be as truly represented by that one director, as in ordinary cases it is represented by the whole board. I am quite sure that you cannot at least put as a general proposition in law that it is true that nothing will ever be the actual fault or privity of an incorporated company unless it is the actual fault of the whole board of directors. Id. at 715. (emphasis added)

Appellant's characterization of the "arm or child" exception to section 8-13-700(B) as an "alter ego" exception is apt and does not merit dismissal of its whole argument. Both doctrines focus, to a large degree, on the degree of control one entity exerts over another, examining issues such as does one entity have the ability to appoint the officers of the other and does one have the ability to create or destroy the other. The logic behind the two doctrines is the same; namely, where one entity exerts enough control over the other, they in essence cease being two "independent" entities. In the corporate context, this can results in "piercing the corporate veil;" in the government context, it results in an agency appointing a member to "itself" or its "alter ego." Where the two government entities are not "independent" or "separate" there can be no conflict of interest; the closest functional analogy is a board or agency appointing a member to a subcommittee.

Contrary to the assertions of Respondent, the Commissioners of the JMWSC are appointed by the counties and municipalities that created it. These bodies have the authority to dissolve the JMWSC. Through the creation, power of appointment, and power to dissolve, the counties and municipalities exert control over the JMWSC.

Respondent's objection is all sound and fury signifying nothing. This Court should reject Respondent's attempt to feed the court another red herring.

IV. Respondent's Contention that the Appellant Did Not Raise the Issue of Strict Construction of Statutes in Derogation of The Common Law and the Commission Did Not Rule On the Issue is Meritless

In footnote 7 of its Brief, Respondent contends that an issue must be raised and ruled upon by the lower court or the issue is considered waived. Respondent further contends that Appellant either never raised the issue of strict construction of statutes in derogation of the common law, or the commission never ruled upon it. Both assertions are false.

As noted above is Section II of this Brief, the canon of construction that penal statutes must be strictly construed and the cannon of construction that statutes in derogation of the common law must be strictly have somewhat different purposes. The canon of construction concerning statutes in derogation of the common law, like all canons of construction, is an interpretive aid to help the court determine the intent of the legislature. *See* Rorrer v. PJ Club, Inc., 347 S.C. 560, 556 SE 2d 726 (S.C. Ct. App. 2001). The canon requiring strict construction of penal statutes has an added purpose related to protection of due process and fair notice.

In Section III of its Brief before the Full Commission, Appellant argued the common law extensively, contending that under the common law, conflicts of interest focused on a public official using his position to gain an advantage in a private contract. For example, if a public official owned a janitorial service, he could not use his influence to obtain a contract for his company to clean government buildings. Appellant cited the common law canon that statutes in derogation of the law must be strictly construed. To the extent that Respondent is contending that Appellant never raised the issue of Respondent's position being in derogation of common law, it is in error.

Respondent is likewise in error in contending that the full Commission did not rule on Appellant's argument. The canon concerning statutes in derogation of the common law is interpretive; the court rejected this interpretation and held that the section 8-13-700(B) encompassed an official voting to appoint himself to a public office with a nonaccountable *per diem,* thereby exposing Appellant to criminal prosecution *if the Commission so chose*. In interpreting the statute and determining that the legislature intended to include such appointments, the court either held that the common law barred such appointments OR that the law was clear and no resort to canons of interpretation was necessary. Either way, the Commission ruled on Appellant's arguments concerning the common law and the proper interpretation of the statute. Respondent's position is meritless.

V. <u>This Court May Look to Other States' Interpretations of the Phrase "Economic Interest" in Their Ethics Laws.</u>

In footnote 8 of its Brief, Respondent contends that how other states interpret their own laws of Ethics should not be considered by the Court. Nothing could be further from the truth.

First, this court frequently looks to the law of other states as persuasive authority to guide its interpretations. *See, e.g.* <u>Whitner v. State</u>, 328 S.C. 1, 492 SE 2d 777 (S.C. 1996) (Court cited cases from Florida, Kentucky, Ohio, California, Georgia, and Massachusetts). The cases from other states cited by Appellant are clearly can be considered and relied upon by the court as persuasive authority.

Other states have ethics laws for their own public officials. Other states use the phrase "economic interest" or very similar "language," yet not one of them has held that receipt of a *per diem,* nonaccountable or otherwise, is an "economic interest." This is clearly a novel case where Respondents are testing the water and pushing the limits of its authority.

This goes to issues which are at the heart of this case. This case involves a law that can be published criminally at the whim of Ethics Commission. It is a completely novel interpretation of the law which no other state has adopted. It very clearly goes to the issue of Due Process notice of whether receipt of a *per diem* can be prosecuted as a crime because it is an "economic interest."

This Court very clearly can, and should, look to the ethics laws of other states and how they interpret the phrase "economic interest" under their own statutes for guidance. Respondent's position is frivolous at best.

VI. The Large Class Exemption Clearly Does Apply This Case Because the Exemption Includes "Professions."

It is axiomatic that "[a] statute should be so construed that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous." State v. Sweat, 379 S.C. 367, 377, 665 S.E.2d 645, 651 (S.C. Ct. App. 2008). What has come to be known as the "Large Class" exemption actually refers to three different groups that can be exempt: "members of a profession, occupation, or large class." To give full meaning to the statute and the exemption, the Court needs to interpret the meaning of "profession," the meaning of "occupation," and the meaning of "large class."

Respondent's arguments are focused on whether Appellant is a member of a "large class." Appellant's arguments, in contrast, focuses, at least in part, on whether Appellant's position qualifies as an "occupation" under the "Large Class" exemption.

Words in a statute are given their plain, ordinary meaning. *Cf.* Creech v. South Carolina Public Service Authority, 200 S.C. 127, 20 S.E.2d. 645 (1942). In its Brief, Appellant has argued that a person can have more than one occupation at the same time, even of the same employer. *See, e.g.* Fast v. Applebee's Intern., Inc., 638 F. 3d 872 (8th Cir. 2011) (Fair Labor Standards Act case); Brumer v. National Life of Vermont, 874 F. Supp. 60 (E.D. N.Y. 1995). It has provided several different definitions for the word "occupation;" Appellant's occupation on the JMWSC fits them. Appellant has provided a proposed test, based on these definitions, to determine whether a person has more than one occupation and whether that "occupation" qualifies under the "Large Class" exemption. This Court should reverse the Commission and find Appellant fits within the "occupation" prong of the "Large Class" exemption.

Conclusion

For the reasons stated above and in its Initial Brief, Appellant respectfully requests the Court grant its Petition and reverse the ruling of the Full Commission.