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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.

RECORD ON APPEAL

DAVIS | FRAWLEY, LLC
140 East Main Street, P.O. Box 489
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(803) 359-2512

BY: */s/ James Randall Davis*__________
James Randall Davis, SC Bar No. 1580
ATTORNEYS FOR APPELLANTS

Lexington, South Carolina

August 13, 2026

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STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND) BEFORE THE STATE ETHICS COMMISSION
)
IN THE MATTER OF:)
Complaints C2021-078)
C2023-129)
)
Shirley Etheredge Mitchell)
Stephen D. Cain) **DECISION AND ORDER**
Complainants.)
)
Lancer Shull)
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 complaints and found probable cause to charge Lancer Shull (Respondent) with six (6) counts of violating Section 8-13-700(B). Present at the hearing held on February 20, 2025, were Commissioners Brandolyn T. Pinkston, AJ Holloway, and Scott E. Frick, Hearing Panel Chair. Respondent was represented by James Randall Davis and the Commission was represented by Courtney M. Laster. The following charges were considered:

COUNT ONE
ATTEMPT TO INFLUENCE A GOVERNMENTAL DECISION IN WHICH RESPONDENT HAD AN ECONOMIC INTERESTS
SECTION 8-13-700(B), S.C. CODE ANN., 1976, AS AMENDED

That Lancer Shull, Mayor of Batesburg-Leesville, attempted to influence a governmental decision in which he had an economic interest by participating in discussions regarding his appointment to the Joint Municipal Water and Sewer Commission at a January 13, 2020 Town Council meeting, in violation of Section 8-13-700(B).

COUNT TWO
ATTEMPT TO INFLUENCE A GOVERNMENTAL DECISION IN WHICH RESPONDENT HAD AN ECONOMIC INTERESTS
SECTION 8-13-700(B), S.C. CODE ANN., 1976, AS AMENDED

That Lancer Shull, Mayor of Batesburg-Leesville, attempted to influence a governmental decision in which he had an economic interest by voting to appoint himself to the Joint Municipal Water and Sewer Commission at a January 21, 2020 Town Council meeting, in violation of Section 8-13-700(B).

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

That Lancer Shull, Mayor of Batesburg-Leesville, failed to provide a written recusal statement regarding his appointment to the Joint Municipal Water and Sewer Commission at a January 13, 2020 Town Council meeting, in violation of Section 8-13-700(B).

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

That Lancer Shull, Mayor of Batesburg-Leesville, failed to provide a written recusal statement regarding his appointment to the Joint Municipal Water and Sewer Commission at a January 21, 2020 Town Council meeting, in violation of Section 8-13-700(B).

COUNT FIVE
ATTEMPT TO INFLUENCE A GOVERNMENTAL DECISION IN WHICH RESPONDENT HAD AN ECONOMIC INTERESTS
SECTION 8-13-700(B), S.C. CODE ANN., 1976, AS AMENDED

That Lancer Shull, Mayor of Batesburg-Leesville, attempted to influence a governmental decision in which he had an economic interest by voting to appoint himself to the Joint Municipal

Water and Sewer Commission at a December 11, 2023 Town Council meeting, in violation of Section 8-13-700(B).[1]

COUNT SIX
FAILURE TO RECUSE FROM A GOVERNMENTAL DECISION IN WHICH RESPONDENT HAD AN ECONOMIC INTERESTS
SECTION 8-13-700(B), S.C. CODE ANN., 1976, AS AMENDED

That Lancer Shull, Mayor of Batesburg-Leesville, failed to provide a written recusal statement regarding his appointment to the Joint Municipal Water and Sewer Commission at a December 11, 2023 Town Council meeting, in violation of Section 8-13-700(B).

FINDINGS OF FACT

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

1. Respondent has served as mayor for the Town of Batesburg-Leesville (Town) since 2018. The Town has a Council-Manager form of government, with the Town Council (Council) being comprised of the Mayor and eight (8) Council members.
2. Respondent was appointed by Council to the Lexington County Joint Municipal Water and Sewer Commission (JMWSC) in 2018. The purpose of the JMWSC is, in part, to meet water and wastewater service needs in certain unincorporated areas of Lexington County.
3. The JMWSC meets monthly for regular business and holds special meetings as needed. From 2018 through 2023, the JMWSC met, and Respondent attended, as follows:
    a. In 2018, the JMWSC convened for eight (8) monthly meetings. Respondent attended all meetings.
    b. In 2019, the JMWSC convened for ten (10) monthly meetings. Respondent attended only nine (9) meetings in 2019.
    c. In 2020, the JMWSC convened for six (6) monthly meetings. Respondent attended every meeting in 2020.

[1] Count Five of the Commission's Notice of Hearing contains a scrivener's error in stating Respondent participated in a discussion regarding appointing himself to the JMWSC during a December 11, 2023 Council meeting.

d. In 2021, the JMWSC convened for eighty (8) monthly meetings. Respondent attended only seven (7) meetings in 2021.

e. In 2022, the JMWSC convened for six (6) monthly meetings. Respondent attended every meeting in 2022.

f. In 2023, the JMWSC convened for eight (8) monthly meetings, and Respondent attended every 2023 meeting.

4. From 2018 through 2023, Respondent received $250.00 each month from JMWSC. These payments were made without regard to the JMWSC convening a monthly meeting or Respondent's attendance. The JMWSC issued Respondent 1099 tax forms for each year, showing Respondent received $3,000.00 each year, equating to $250.00 each month, for his service on the JMWSC. Respondent reported the money on the Statement of Economic Interest for each respective year. The JMWSC did not maintain records related to Respondent's mileage or actual expenses.

5. During a January 13, 2020 Council meeting, Respondent participated in discussions and a corresponding vote regarding his reappointment to the JMWSC. Council voted against placing Respondent on the JMWSC and instead appointed Councilmember Stephen Cain in a 5-4 vote. Respondent did not provide a written recusal statement.

6. Council held a special meeting on January 21, 2020, in part, to reconsider Council's January 13, 2020 appointment to the JMWSC. During the meeting, Respondent participated in the discussion and corresponding vote for him to be reappointed to the JMWSC. Council reappointed Respondent in a 7-2 vote. Respondent did not provide a written recusal statement.

7. On December 11, 2023, Council held a regular meeting wherein a motion was made to reappoint Respondent to the JMWSC. Respondent participated in the corresponding vote, and the Council reappointed him to the JMWSC. Respondent did not provide a written recusal

statement.

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 8-13-700 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.

3. Section 8-13-100(11) defines "economic interest," in relevant part, 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] may gain an economic benefit of fifty dollars or more.

(b) This definition does not prohibit a [public official] 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] is incidental to the [public official's] position or which accrues to the [public official] 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.

4. 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 Lancer Shull is in violation of six (6) counts of Section 8-13-700(B) as outlined in the Notice of Hearing. Specifically, the Panel finds Respondent in violation of three (3) counts of Section 8-13-700(B) for his attempts to influence a governmental decision in which he had an economic interest in by participating in either discussions or votes related to his reappointment to the JMWSC during Council meetings held on January 13, 2020, January 21, 2020, and December 11, 2023. The Panel further finds Respondent in violation of three (3) counts of Section 8-13-700(B) for his failure to provide written recusal statements regarding his reappointment to the JMWSC during the January 13, 2020, January 21, 2020, and December 11, 2023 Council meetings.

THEREFORE, pursuant to Section 8-13-320(l)(i) of the Ethics Act, the Panel hereby issues a Public Reprimand and orders Respondent to pay a reduced civil penalty of $300.00 ($50.00 for each count);

AND, pursuant to Section 8-13-130 of the Ethics Act, and in addition to the reduced civil penalty, the Panel hereby orders Respondent to pay an administrative fee of $1.000.00 ($700.00 for C2021-078 and $300.00 for C2023-129), making Respondent's total amount owed to the Commission $1,300.00.

AND, pursuant to Section 8-13-320 of the Ethics Act, if the $1,300.00 is not paid within sixty (60) days from Respondent's receipt of this Order, the civil penalty shall revert to the statutory maximum of $12,000.00 ($2,000.00 per count) and a judgment in the amount of $13,000.00 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 $13,000.00 in its Judgment Rolls, without cost to the Commission.

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

AND IT IS SO ORDERED THIS 7th DAY OF March 2025.

STATE ETHICS COMMISSION

Scott E. Frick

SCOTT E. FRICK, HEARING CHAIR

Columbia, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)))	BEFORE THE STATE ETHICS COMMISSION
IN THE MATTER OF: Complaints C2021-078 C2023-129 Shirley Etheredge Mitchell Stephen D. Cain Complainants. Lancer Shull Respondent.	)))))))))))	**APPEAL OF DECISION AND ORDER**

Respondent, Lancer Shull, appeals the Decision and Order of the three Commission Panel dated March 7, 2025.

Respondent contends that the Commission failed to meet its burden of proof by preponderance of evidence that Respondent violated §8-13-700(B).

Respondent's position is also that the Commission failed to issue findings of fact and conclusions of law on the matters set forth on pages 3 and 4 of this appeal.

The sole evidence presented by the Commission to prove that there was violation of the statute referred to above is that which is set forth in paragraphs 3 and 4 of the Decision and Order. Respondent believes Commission's evidence fails to carry the burden of preponderance of evidence for the following reasons: (1) neither Complainant, Shirley Etheredge Mitchell or Stephen D. Cain, testified in this matter for their complaints; (a) the 2023 Complaint filed by Stephen D. Cain was dismissed by the Commission for lack of probable cause as to his claim of recusal when contract and financial policy issues that require Town of Batesburg-Leesville participation and also involves Joint Municipal financially; (b) no one on behalf of the Commission interviewed the Respondent as to the complaints against the Respondent; and (c) no vote by the Respondent for the 2021 Complaint or the 2023 Complaint caused a favorable vote for the Respondent by Town Council for Batesburg-Leesville for the appointment to the JMWSC Board. The January 21, 2020 vote was 7 to 2 and the January 2023 vote was 6 to 2; and (d) the vote by the Respondent for the 2021 and 2023 Complaints was a vote only for the appointment to the Commission itself; (2) §8-13-100 indicates the economic interest involves property or services which a public employee gains an economic benefit of $50 or more. The per diem payment to the Joint Municipal Water and Sewer commissioners is not an economic benefit under the Ethics statute. Joint Municipal Water and Sewer Commission (hereinafter "JMWSC") statute provides the following: "No commissioner of a joint system shall receive any compensation solely for the performance of duties as commissioner, but each commissioner may be paid per diem mileage and subsistence expenses and provided by law the State boards, committees and commissions incurred while engaged in the performance of such duties". Black's Law Dictionary defines "per diem" as "a payment paid for a day's work, not paid weekly or monthly, but daily." It has also been defined as a payment of daily expenses and/or fees. They are simply reimbursement for expenses incurred. Logically, it would not a "gain" of economic benefit that could result in a conflict of interest; (3) JMWSC pays $250/month reimbursement to its Board members which reimbursement plan is qualified with the Internal Revenue Service under a non-accountable qualified per diem payment plan. This plan is consistent with the Commission's Code §6-25-60(c); (4) Purpose of Ethic statute is to build public trust in officials by preventing them from using their position to gain an economic benefit for themselves; per diem reimbursement expenses does not impact the decisions making process of members of the Board. Facts in this case indicate that is true as to Respondent in that his basis for voting was to continue his involvement as Mayor since 2018 in resolving a DHEC Consent Order mandating the Town of Batesburg-Leesville address long term water supply issues and he can best resolve that by continuing on the JMWSC Board. Also, his history of public service, which includes those matters shown on Exhibit "A" attached hereto indicate his background as to public service.

(5) Respondent found no legal precedents in South Carolina or otherwise, indicated that the per diem reimbursement plan was an economic benefit to a public official. See attached "Exhibit B".

The three Commissioner panel failed to issue any finding of facts or conclusions as defenses to disqualification of voting law which were presented by Respondent by pleading, Brief and/or argument to the Commission. (A) The JMWSC is a statutory public entity created by legislature. Statutes dealing with the same subject matter are *in pari materia* and must be construed together. Any other conclusion would effectively invalidate per diem reimbursements, mileage reimbursements and any payments made for expenses. Implied repeal is not favored. The two statutes must be read *in pari materia* to give effect to both. "[S]tatutes dealing with the same subject matter are *in pari materia* and must be construed together, if possible, to produce a single, harmonious result." *Joiner v. Rivas*, 342 S.C. 102, 109, 536 S.E.2d 372 (S.C. 2000). The specific statute relating to per diem reimbursement should control over the more general statute regarding conflict of interest. "Generally, specific laws prevail over general laws..." *Langley v. Pierce*, 438 S.E.2d 242, 249 (S.C. 1993); (B) JMWSC is not "separate and distinct" from the governing bodies of the towns and county which appoint the JMWSC commissioners and therefore there is no violation of *SC Code Ann.* §8-13-700(B). JMWSC is a "public entity" created by the participating towns and county. The Commissioners are appointed by the Councils of participating towns and county. Further, the JMWSC is only dissolved through a vote of both the Commission and the Councils of participating towns and county. See *S.C. Code Ann.* §6-25-80 (2023). The JMWSC is clearly an "arm or child" of the county and towns that created it. As an "arm or child" or "alter ego" of the participating county and towns, and decision of the Commission is effectively a decision of the participating county and towns. The Ethics Commission should find there is no violation of *SC Code Ann.* §8-13-700. See *Bacon v. Cooper*; No. 2000-049 (S.C. Ethics Comm'n March 23, 2000); *State Ethics Comm'n v. Wiseman*, No. C2000-14 (S.C. Ethics Comm'n December 14, 1999); (C) The "large class" exception applies to the disqualification of voting by the Respondent. The only economic interest or foreseeable benefit that may accrue to the Respondent because of vote accrues to the public service as a member of a profession, occupation or large class to no great extent than economic interest or potential benefit that could reasonably be foreseen to accrue to all members of a profession, occupation or class. In this case, the "class" applies to all JMWSC commission members, except the Commission Chairman, receives the same reimbursement figure of $250 per month. See *SC Code Ann.* §8-13-700(B); (D) "Incidental economic interest" is an exception to disqualification as to voting. Disqualification is not required in this set of facts in that Respondent fits into the incidental exception which indicates if the economic interests or reasonably foreseeable benefit accrues to the public service if incidental to the public service position (i.e. reimbursement of expenses).

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BY: ____________________
James Randall Davis
Attorneys for the Respondent

Lexington, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)))	BEFORE THE STATE ETHICS COMMISSION
IN THE MATTER OF: Complaints C2021-078 C2023-129 Shirley Etheredge Mitchell Stephen D. Cain Complainants. Lancer Shull Respondent.	)))))))))))	**CERTIFICATE OF SERVICE**

I, Nicole T. Price, a paralegal with the law firm of Davis Frawley, LLC, do hereby certify that I have this date served a copy of the following document upon the Respondent, by hand delivering a copy to the following physical address indicated below:

DOCUMENT SERVED: **APPEAL OF DECISION AND ORDER**

RESPONDENT: Courtney M. Laster, Esquire
General Counsel
South Carolina Ethics Commission
201 Executive Center Drive, Suite 150
Columbia, SC 29210

Nicole T. Price

Nicole T. Price

March 24, 2025

Lexington, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)))	BEFORE THE STATE ETHICS COMMISSION
IN THE MATTER OF: Complaints C2021-078 C2023-129 Shirley Etheredge Mitchell Stephen D. Cain Complainants/Appellees. Lancer Shull, Respondent/Appellant.	)))))))))))	**ORDER**

Procedural History and Finding of Facts

The Lexington County Joint Municipal Water and Sewer Commission (hereinafter "JMWSC") is comprised of representatives from the surrounding towns and Lexington County. The elected county and town governing bodies appoint their own representatives, overwhelmingly from among their own elected officials to the Joint Commission.

Appellant Lancer Shull is the mayor of the Town of Batesburg-Leesville, South Carolina. He was appointed to be the Commissioner for the Town of Batesburg-Leesville by vote of town council in 2018. He participated in the vote for his reappointment to the JMWSC on January 13. 2020 and again on January 21, 2020, when he was reappointed by a margin of 7 to 2. He again participated in voting for his reappointment in December of 2023, when he was reappointed by a margin of 6 to 2. Appellant Lancer Shull testified that he voted for his reappointment to the JMWSC Commission because of the Commission's ability to assist the town of Batesburg-Leesville as to required actions by DHEC.

The meetings of the JMWSC begin at 5:30 pm on the second Wednesday of the month in Lexington and require Commissioners to travel from different areas.

In 2018, Appellant attended all regular meetings of the JMWSC. In 2019, Appellant attended 9 regular meetings; the meetings for March and July were not held and Appellant did not attend the April meeting. In 2020, during COVID, six meetings were held, many virtually; Appellant attended all meetings. In 2021, eight meetings were held; the April, June, July, and December meetings were not held and Appellant did not attend the August meeting. In 2022, the March, April, June, July, October, and December meetings were not held; Appellant attended all meetings that were held. In 2023, the April, June, August, and December meetings were not held; Appellant attended all meetings.

In addition to the monthly meetings of the JMWSC, Commissioners have other duties during the month that require travel, according to John "Jay" Nicholson, the General Manager and Chief Executive Officer of the JMWSC. These duties ***include*** traveling to the offices of attorneys and consulting firms.

All Commissioners receive a monthly *per diem* of two hundred fifty dollars ($250.00). Jay Nicholson stated that the ***monthly per diem*** was intended to cover all expenses – mileage, lodging, food and incidentals. Lancer Shull stated that when he first joined JMWSC, during the height of negotiations by Mayor Shull on the town of Batesburg-Leesville's water contract with Joint Municipal, he spent upwards of 15 hours per week meeting with architects, meeting with engineers, meeting with Mr. Nicholson, meeting with other mayors. He currently spends 3 to 4 hours per week in addition to the regular monthly meetings.

According to Jay Nicholson, two types of *per diem* plans are permitted by the IRS: (1) an accountable plan under which an employee submits receipts to his employer and is reimbursed; and (2) an un-accountable or non-accountable *per diem* plan, under which an employee is paid a ***flat rate*** per day set by the IRS, and is accountable only to the IRS. He stated that after consulting with an attorney and talking to an Ethics Investigator informally who was investigating another matter, the JMWSC administratively opted for an unaccountable or nonaccountable *per diem* plan.

Pursuant to section 6-25-60 of the South Carolina Code, commissioners receive a *per diem* of $250 ***per month*** to reimburse them for all expenses incurred while serving on the JMWSC. The *per diem* for Commissioners is paid on the same basis as other state officials; it is not paid according to standards set by the JMWSC.

These rates are in compliance with Federal per diem rules, which exclude qualifying *per diem* payments from income. Under Federal regulations, the car allowance or ***per diem itself*** can generally be used as ***"proof"*** of the amount of expenses incurred. IRS Pub. 463 at 43 (2024) ("Per Diem and Car Allowances"). From 2018 and through September 2024 per diem rate for lodging, meals and incidentals increased from $191 ***per day*** of travel to $214 ***per day*** of travel. *See* I.R.B. 2017-42 (2017) and I.R.B. 2023-41 (2023)("Section 5. High-Low Substantiation Method") The ***monthly per diem*** of $250 was adopted before Appellant Lancer Shull was appointed as Commissioner for the Town of Batesburg-Leesville and was sufficient to fully cover one day of travel.

On September 8, 2021 and October 19, 2023 the Commission filed six (6) counts against Lancer Shull alleging violations of section 8-13-700(B) of the South Carolina Code. Specifically, the counts allege that on January 13, 2020, January 21, 2020, and December 11, 2023 Appellant Lancer Shull voted to reappoint himself to the Joint Water and Sewer Commission and thereby received an "economic benefit" in the form of a *per diem.*

A hearing was held before a three member panel on February 20, 2025. On March 7, 2025, the panel issued its decision, finding Appellant Lancer Shull had violated section 8-13-700(B) of the South Carolina Code and made the following Decision:

> "THEREFORE, pursuant to Section 8-13-320(l)(i) of the Ethics Act, the Panel hereby issues a Public Reprimand and orders Respondent to pay a reduced civil penalty of $300.00 ($50 for each count); AND, pursuant to Section 8-13-130 of the Ethics Act, and in addition to the reduced civil penalty, the Panel hereby orders Respondent to pay an administrative fee of $1,000.00 ($700,00 for C2021-078 and $300.00 for C2023-129), making Respondent's total amount owed to the Commission $1,300.00."

Appellant filed a timely appeal of the decision.

A hearing was held before the full commission on July 17, 2025. Both sides have submitted briefs in support of their positions.

Conclusions of Law

This matter primarily involves an interpretation of the term "economic interest" in section 8-13-700(B). This section provides:

> (B) No public official, public member, or public employee may make, participate in making, or in any way attempt to use his office, membership, or employment to influence a governmental decision in which he, a family member, an individual with whom he is associated, or a business with which he is associated has an ***economic interest..*** S.C. Code Ann. § 8-13-700(B) (2023). (emphasis added)

> "Economic interest" is defined as:

> an interest distinct from that of the general public ***in a purchase, sale, lease, contract, option, or other transaction or arrangement involving property or services*** in which a public official, public member, or public employee may gain an ***economic benefit*** of fifty dollars or more. S.C. Code Ann. § 8-13-100(11)(a) (2025).

It is undisputed that Appellant was paid a *per diem* and that this *per diem* was compliant with all applicable IRS regulations. It is also undisputed that IRS regulations permit two types of "per diem" plans: an accountable plan, where receipts are submitted to the employer to be reimbursed; and an "un-accountable" or "non-accountable" plan, where the employer pays the employee a set fee, capped by IRS regulations, and the employee is responsible to account for his expenses directly with the IRS and not his employer. Under Federal regulations, the payment of the *per diem itself* can generally be used as *"proof"* of the amount of expenses incurred. IRS Pub. 463 at 43 (2024) ("Per Diem and Car Allowances")

What is disputed is whether a *per diem* can be an "economic benefit" and an therefore an "economic interest." The phrase *"per diem"* has two distinct meanings, one of which relates to reimbursement for expenses. *"Per diem,"* according to BLACK'S LAW

DICTIONARY, means: "1. A monetary daily allowance, usu. to cover expenses. 2. A daily fee." BLACK'S LAW DICTIONARY 523 (2nd Pocket Ed. 2001).

The Commission finds that the *per diem* in this case was intended to "reimburse" expenses incurred by a member of the Joint Municipal Water and Sewer Commission and was not intended to be a "daily fee." As "reimbursement" of an expense paid out of the pocket of a member, it is axiomatic that the member could not reap a "benefit," let alone an "economic benefit" from reimbursement of a loss, i.e. the payment of an out of pocket expense. A benefit is an "1. Advantage; privilege; 2. Profit or gain." BLACK'S LAW DICTIONARY (2nd Pocket Ed. 2001). Reimbursement does not provide an advantage, a profit, or a gain to a member of a Joint Municipal Water and Sewer Commission.

The *per diem* was "reimbursement" as opposed to a "daily fee" for many reasons. First, it is undisputed that the "per diem", after advice of counsel, to be compliant with IRS regulations. A *per diem* under IRS regulations is clearly intended as "reimbursement" of expenses incurred by the employee; otherwise, it would be considered income and therefore be taxable. The *per diem* was ***intially determined, intended, and operated*** to reimburse expenses incurred by an employee in compliance with IRS regulations.

Second, the South Carolina Code itself provides that a *per diem* of a Joint Municipal Sewer and Water Commission was intended to "reimburse" a Commissioner for expenses he personally paid rather than be a "daily fee." Section 6-25-60 of the South Carolina Code, which authorizes the payment of a *per diem* to members of a Joint Municipal Sewer and Water Commission, provides in part: "No commissioner of a joint system shall receive any compensation solely for the performance of duties as a commissioner, ***but each commissioner may be paid per diem, mileage, and subsistence expenses,*** as provided by law for state boards, committees, and commissions, incurred while engaged in the performance of such duties." S.C. Code Ann. §6-25-60(C) (2025).

"The Court may not, in order to give affect to particular words, virtually destroy the meaning of the entire context; that is, give the particular words a significance which would be clearly repugnant to the statute, looked at as a whole, and destructive of its obvious intent." Southern Mut. Church Ins. Co. v. South Carolina Windstorm and Hail Underwriting Assoc., 306 S.C. 339, 342, 412 S.E.2d 377 (S.C. 1991). In section 6-25-60(C), the phrase "per diem" is found literally next to words such as "mileage" and "subsistence expenses," which are clearly terms of "reimbursement" for expenses incurred by an employee. Section 6-25-60(C) further provides that "[n]o commissioner of a joint system shall receive any compensation solely for the performance of duties," distinguishing this statutory "per diem" as "reimbursement" and not "a daily fee" to compensate a commissioner.

The Commission is aware, as counsel for Appellee points out, that it does not have the authority to render authoritative, binding interpretations of statutes other than those relating to the rules of ethics. That does not mean, however, that the Commission cannot consider other statutes enacted by the legislature, such as section 6-25-60(C), in interpreting the ***legislative intent*** behind section 8-13-700(B) and other ethics statutes.

"The cardinal rule of statutory interpretation is to ascertain and effectuate the intent of the legislature." CFRE, LLC v. Greenville County Assessor, 395 S.C. 67, 74, 716 SE 2d 87 (S.C. 2011). The canons of construction are intended to help discern legislative intent. Id. The canons help to determine the intent of the legislature in enacting section 8-13-700(B)

There are several canons of construction which deal with the interplay of different statutes. For example, the Commission cannot interpret the Rules of Ethics in a way that would render another statute enacted by the legislature "nugatory;" the legislature could not have intended to enact a statute which eviscerates another statute it created. *See, e.g.* McMillen Feed Mills, Inc. of SC v. Mayer, 265 S.C. 500, 512, 220

SE 2d 221 (S.C. 1975) ("The position urged by McMillen would do violence to the expressed legislative intent and is so repugnant to the statute, that its adoption would, in effect, deprive the Act of its efficacy and render its provisions nugatory.") Further, "[s]tatutes dealing with the same subject matter are *in pari materia* and must be construed together, if possible, to produce a single, harmonious result." *Joiner v. Rivas*, 342 S.C. 102, 109, 536 S.E.2d 372 (S.C. 2000).

Similarly, statutes specifically dealing with a particular subject prevail over those that are more general in nature. *Langley v. Pierce*, 438 S.E.2d 242, 249 (S.C. 1993). This is common sense; a statute specifically dealing with a subject is clearly the best expression of how the legislature intends that subject to be treated. That legislative intent impacts how other, more general statutes should be interpreted.

It cannot be the intent of the legislature, in enacting section 8-13-700(B), to render section 6-25-60 nugatory by punishing a *per diem* allowed by statute as an ethical violation; the two statutes have to be interpreted together to discern the intent of the legislature in regards to section 8-13-700(B).1 The legislature could not have intended to punish a commissioner for voting to reappoint himself, thereby entitling him to the receipt of a *per diem,* where another, more specific statute, expressly authorizes the receipt of a *per diem.* Appellee's position that the Commission cannot consider other statutes in determining the legislative intent behind section 8-13-700(B) is incorrect.

Third, this interpretation is consistent with the common law on conflicts of interest. "[A] statute is not to be construed in derogation of common law rights if another interpretation is reasonable." Doe v. Marion, 361 S.C. 463, 473, 605 S.E.2d 556 (S.C. 2004). In general, under the common law:

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1 Section 6-25-60 was enacted prior to section 8-13-700. To the extent that Appellees' interpretation results in the implied repeal of section 6-25-60, it is unfounded. Implied repeals of statutes are not favored. *See* Hodges v. Rainey, 341 S.C. 79, 533 SE 2d 578 (S.C. 2000)

> A public official may not use his official power to further his own interest and is not permitted to place himself in a position that will subject him to conflicting duties -- that is in a position where the official's private interest conflicts with his public duty -- or cause the official to act, or expose the official to the temptation of acting, in any manner other than in the best interests of the public
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> Under the principle prohibiting conflicts of interest, public officers may not contract with the public agency which they represent or have a private interest in its contracts. Also, an officer cannot lawfully act as the agent of one person where the private agency will come in conflict with his or her official duties; to act for one of the parties implies an interest adverse to the other. 63C Am.Jur.2d *Public Officers and Employees* § 262 (2018)

Section 8-13-700(B) codifies the common law rule. It provides that a public official may not contract with the public agency on which they serve to provide goods or services. Section 8-13-700(B) provides, in part that a public official may not have an interest "***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." Section 8-13-700(B) codifies a long standing common law principle barring public officials from voting for contracts under which they provide goods or services to the agency, thereby providing a personal benefit to the official or his company.

Appellee has contended that the phrase "***in a purchase, sale, lease, contract, option, or other transaction or arrangement involving property or services***" was intended to include "public service" on a state agency and thereby forbid a public official from voting to appoint himself to another state agency which offers a *per diem* to reimburse expenses. The Appellee's position is contrary to the common law, which only forbade conflicts between the public official's independent, private interests in contracts with the government for the provision of goods or services. The phrase "***in a purchase, sale, lease, contract, option, or other transaction or arrangement involving property or services***" however, does not evince a "clear intent" to change the common law rule. *See e.g.* Grier v. AMISUB of South Carolina, 397 S.C. 532 , 536, 725 SE 2d 693 (S.C. 2012); Crosby v. Glasscock Trucking Co., Inc., 340 S.C. 626, 628, 532 SE 2d 856 (S.C. 2000). It does not, contrary to Appellee's position, dramatically expand the common law by providing that a public official, voting to reappoint himself to an agency with a *per diem* that reimburses him for expenses he has personally paid, is guilty if an ethical violation.2

Fourth, three states employ similar definitions to the definition of "economic interest" in South Carolina's statute. Kentucky's statute uses the term "Economic Interest," which is defined as "an interest distinct from that of the general public in a state purchase, sale, lease, contract, option, or other transaction or arrangement involving property or services in which a legislator may gain an economic benefit of fifty dollars ($50) or more." Ky. Rev. Stat. Ann. § 6.611(11) (West 2023). Indiana's statute defines "Financial Interest" as "an interest: (A) in a purchase, sale, lease, contract, option, or other transaction between an agency and any person; or (B) involving property or services." Ind. Code Ann. § 4-2-6-1 (West 2023). Kansas' statute defines "Economic Opportunity" as "any purchase, sale, lease, contract, option, or other transaction or arrangement involving property or services wherein a state officer or employee or candidate for state office may gain a personal economic benefit, but not including any gift." Kan. Stat. Ann. § 46-217 (West 2023). No court in any of these states has found that receipt of a *per diem* is an "economic interest," a "financial interest," or an "economic opportunity" under their state's ethics law, or that participating in an election to a state board or commission that reimburses its members for travel expenses through a *per diem* is an ethical violation. No

[2] Other states have similarly held that their version of the Ethics Act simply codifies common law, and is not in derogation of it. *See, e.g.* Lexin v. Superior Court, 47 Cal. 4th 1050, 1072, 222 P.3d 214, 228, 103 Cal. Rptr. 3d 767, 784 (Ca. 2010) (the statute "codifies the long-standing common law rule that barred public officials from being personally financially interested in the contracts they formed in their official capacities.") The California Act and the South Carolina Act have similar purposes. State v. Thrift, 312 S.C. 282, 440 S.E.2d 341, 354, 1994 S.C. LEXIS 25 at *40 (S.C. Jan. 17, 1994)("the purposes of the Act include the fostering of public trust and confidence in government, and the promotion of the integrity of government through openness."); Lexin, 222 P.3d at 229 ("The evil to be thwarted by section 1090 is easily identified: If a public official is pulled in one direction by his financial interest and in another direction by his official duties, his judgment cannot and should not be trusted, even if he attempts impartiality.")

Ethics Commission in any of these states has issued any Advisory Opinion or Order finding an ethical violation.

Appellee has stated in its brief that Appellant ***may*** have benefited three thousand dollars per year from the *per diem* – the full amount of all reimbursement over a year. The record does not support this contention. At the hearing before the three member panel of the Commission, Jay Nicholson and Lancer Shull testified that on some months the flat rate monthly *per diem* under-reimbursed for expenses incurred, especially in the early days of the Joint Municipal Water and Sewer Commission. The evidence is that Commissioners have other duties requiring them to travel. The evidence is that monthly $250 per diem is less than federal allowances for un-accountable per diems, which are calculated on a per meeting basis.

Appellee has the burden of proof in this matter. S.C. Code Ann. Regs. 52-714(B) (2025). Appellee cannot simply blankly state that ***ALL per diem*** reimbursements ***could have been*** economic benefits; it has the burden of establishing which months appellant Lancer Shull was over-reimbursed, which months he was under-reimbursed, and that over the course of a year long appointment an economic benefit of fifty dollars or more could be reasonably foreseen. Otherwise, the assertion that he "may" have reaped an economic benefit is mere conjecture. Without this evidence, Appellant cannot meet its burden of proof establishing an economic interest or an economic benefit of fifty dollars or more.

IRS regulations provide that for un-accountable or non-accountable *per diem* plans, evidence of the payment of the *per diem* is ***itself*** evidence that the expenses were incurred by the employee. Thus, under normal circumstances, in an un-accountable plan, an employee does not have to keep receipts or record mileage. If the Commission on Ethics would like officials operating under an un-accountable plan to keep receipts and store them for a number of years, it can propose and enact regulations requiring such record keeping. It can enact regulations shifting the burden of production, not persuasion, to the employee in cases involving a *per diem* where an ethical violation is alleged. The Commission has done neither.

Holding Appellant Lancer Shull guilty of an ethical violation under these circumstances is inequitable. He was complying with the requirements of federal law for record keeping and had no notice, either in state statute or regulation of the Commission, that he was in any way expected to keep additional records and receipts and defend against charges that he reaped an economic benefit or had an economic interest in receiving a *per diem.3*

The *per diem* is not an economic interest because the *per diem* in this case is not a "benefit," let alone an "economic benefit;" a *per diem* simply puts a member of the Joint Water and Sewer Commission in the same position he would have been in had he not incurred the work-related expense and paid for it from his own personal funds. It is also not an "economic interest" because it is statutorily excluded from the definition of "economic interest."

Section 8-13-100(11), defining "economic interest," provides, in part.

> (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.*** S.C. Code Ann. § 8-13-100(11)(b)(2025)(emphasis added).

Section 8-13-100(11)(b) creates two exceptions to the definition of "economic interest" in section 8-13-100(11)(a): (1) a "large class" exception, or more specifically a "profession, occupation, or large class" exception; and (2) an "incidental" benefit exception. The Commission finds that the both exceptions apply.

The primary issue involving the "large class" or "occupation" exception involves whether the class is: (1) the town council that appointed Appellant Lancer Shull; or (2) those who serve on the Joint Municipal Water and Sewer Commission. This Commission finds that

[3] The Commission is troubled about the lack of notice in this case. There is no evidence that Appellant had any notice, actual or constructive, that a statutorily authorized *per diem* could give rise to any ethical violation.

the class is all those who would be entitled to receive the *per diem,* namely, the members of the Joint Municipal Water and Sewer Commission.

Members of the town council cannot be members of the "class;" it is common sense that a class cannot include those not even eligible to receive the *per diem*. It makes no sense to say that all members of all town and county councils comprising the Joint Municipal Water District are members of the class; town council members, unless they are appointed to the Commission, do not incur personal expenses in furtherance of their duties on the Joint Municipal Water District. They have no need for the *per diem.*

The only reasonable definition of "class" is those who are eligible to receive the *per diem.* The only evidence before this Commission is that all members of the Joint Municipal Water and Sewer Commission are entitled to the *per diem*; Appellant Lancer Shull does not receive a *per diem* that is denied other members.

Appellee contends that the class is too small to qualify for the "large class" exception. The exception covers "occupations" and "professions" as well. None of these phrases are defined by statute, and this Commission can find no interpretive guidance in its adjudicated cases or advisory opinions. "Occupation" is defined as "[a]n activity or pursuit in which a person is engaged; esp., a person's usual or principle work or business." BLACK'S LAW DICTIONARY 494 (2nd Pocket Ed. 2001). The term "occupation" is broader than "profession." This Commission finds that the Joint Municipal Water and Sewer Commission is a large class and that Appellant Lancer Shull's work as a Commissioner of the Joint Municipal Water and Sewer Commission qualifies as an "occupation" for purposes of section 8-13-100(11)(b). The Commission further finds that the *per diem* could reasonably be foreseen to accrue to all other members of the profession, occupation, or large class and that the exception of section 8-13-100(11)(b) therefore applies.

The Commission has found that the un-accountable or non-accountable *per diem* in this case, which is fully complaint with IRS regulations and ***created, intended, and operated as*** a *per diem*, provides no "economic benefit" to a member of the Joint Municipal Water and Sewer Commission because it reimburses a member for expenses he or she has paid out of his or her own pocket. The Commission further finds that any over-reimbursement falls under the "incidental" benefit exception of section 8-13-100(11)(b).

The undisputed evidence in this case is that, on any given month, the *per diem* could under-reimburse ***or*** over-reimburse a member. It is further undisputed that members of the Joint Municipal Water and Sewer Commission had other expenses and were required to travel for purposes other than the monthly meetings of the Commission. The *per diem* in this case was computed on a *monthly* basis, as opposed to a *per meeting* basis, and was sufficient to cover one trip and part of another per IRS allowances for non-accountable plans.

The term "incidental" is not defined in the statute. "The term "incidental" has been defined as "subordinate to something of greater importance; having a minor role." BLACK'S LAW DICTIONARY 338 (2nd Pocket Ed. 2001). Given the unique circumstances of this case, even assuming there is "over-reimbursement" on any given month, even assuming such over-reimbursement could be a "benefit," such "over-reimbursement" is clearly "incidental" and of minor importance. As such, it falls within the "incidental" exception of section 8-13-100(11)(b).4

The Commission notes that other states have adopted a $250 *per diem* for daily expenses of its officials. New Jersey, Delaware, Iowa, Mississippi, Missouri, Nevada Ohio, Pennsylvania, and Rhode Island all use a $250 *per diem* or per meeting reimbursement scheme. 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.

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4 Appellant had no role in voting for the creation of the *per diem*; he did not determine whether the *per diem* was non-accountable plan which over-reimbursed on some months and under-reimbursed on others.

29, 2006). *https://digitalrepository.unm.edu/law_service_ethicsreform/28.* None of these states have found that receipt of a $250 *per diem* is an ethical violation.5

The Commission has found that the un-accountable or non-accountable *per diem* in this case, which is fully complaint with IRS regulations and ***created, intended, and operated as*** a *per diem,* provides no "economic benefit" to a member of the Joint Water and Sewer Commission because it reimburses a member for expenses he or she has paid out of his or her own pocket. The Commission has found, alternatively, that any over-reimbursement falls under the "incidental" benefit and "large class" exceptions of section 8-13-100(11)(b). The Commission lastly finds that the Joint Municipal Water and Sewer Commission is not a separate private entity in which Appellant Lancer Shull has an interest and that therefore there is no conflict of interest.

The Commission finds that the Joint Water and Sewer Commission is an "arm or child" or "alter ego" of the town and county governing bodies that created it. The members of the Joint Municipal Water and Sewer Commission are appointed only by the Councils of participating towns and counties. Further, the Joint Commission is only dissolved through a vote of both the Commission and the Councils of participating towns and counties. *See* S.C. Code Ann. § 6-25-80 (2023). The Joint Commission is clearly an "arm or child" of the counties and towns that created it. *See, e.g.* Bacon v. Cooper, No. 2000-049 (S.C. Ethics Comm'n Marc 23, 2000); State Ethics Comm'n v. Wiseman, No. C2000-14 (S.C. Ethics Comm'n Dec. 14, 1999)("The Newberry Opera House Foundation is clearly a creation of Newberry City Council and all its board members are appointed by Council. Since the Foundations is not an

[5] The Court notes in roughly analogous situation in Indiana, a private party wanted to reimburse the Commissioner of Motor Vehicles for his expenses. In dicta, the commission noted "The Commission discussed that ***if the amount of the per diem was small and intended to cover food that was not furnished,*** it felt the amount could be accepted. However, if the amount was larger than the cost of food, or meals were provided, then it could not be considered part of actual travel expenses." Indiana Ethics Opinion 91-I-3 (March 14, 1991). This is obviously not a situation where a private party is offering to pay expenses, but the Commission notes that no evidence has been submitted as to the actual amount of over-reimbursement, if any, but that it appears that the per diem in this case is both small according to federal standards, used by other states, and was intended to cover expenses.

independent body, and has no assets, Dr. Wiseman would not have a conflict of interest when voting as a Councilman on matters affecting the Foundation.") *Cf.* 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) ("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... agency, etc.*** *which is an arm or child of the council, i.e. created by council and existing solely at the discretion of council.*")(emphasis added),

As an "arm or child" or "alter ego" of the participating towns and counties, a decision of the Commission is one and the same as a decision of the town and county councils that created it . "It takes two" to have a conflict of interest; a member of a town council, acting in his official capacity, cannot have a conflict of interest with an arm or "alter ego" of the town.

Appellee contends that there is a conflict because Appellant, acting in his official capacity as mayor, voted to reappoint himself to an alter ego of the town which has a *per diem*. This assertion goes far beyond the common law, under which "public officers may not contract with the public agency which they represent or have a private interest in its contracts." 63C Am.Jur.2d *Public Officers and Employees* § 262 (2018). There is no allegation that Appellant Lancer Shull personally contracted with the town or its alter ego, or had a financial interest in a company that had a contract with either the town or its alter ego. Since the Joint Municipal Water and Sewer Commission is not an independent body, Appellant Lancer Shull does not have a conflict of interest when voting as a Councilman on matters affecting the Joint Municipal Water and Sewer Commission.

Decision

The State Ethics Commission has determined that Appellant Lancer Shull has not violated section 8-13-700(B) of the South Carolina Code. The Commission dismisses all charges in accordance with section 8-13-320(10)(b). The entire matter is stricken from public record unless the Appellant Lancer Shull, by written authorization to the State Ethics Commission, waives the confidentiality of the existence of the complaint and authorizes the release of information about the disposition of the complaint.

IT IS SO ORDERED this ______ day of ________, 20____

STATE ETHICS COMMISSION

____

xxxxxxxxx
Chair

STATE ETHICS COMMISSION
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STATE OF SOUTH CAROLINA COUNTY OF RICHLAND IN THE MATTER OF: Complaints C2021-078 C2023-129 Shirley Etheredge Mitchell Stephen D. Cain Complainants. Lancer Shull Respondent.	)	BEFORE THE STATE ETHICS COMMISSION **APPEAL ORDER**

This matter comes before the State Ethics Commission (Commission) by way of a timely Notice of Appeal filed by Lancer Shull (Respondent), Mayor of Batesburg-Leesville (Town). Therein, Respondent seeks review of the March 7, 2025 Order of the Commission Hearing Panel (Hearing Panel or Panel) which found him in violation of the Ethics, Government Accountability, and Campaign Reform Act of 1991 (Ethics Act or Act). Present at the July 17, 2025 Appeal Hearing were Commissioners Bryant S. Caldwell, Helen Munnerlyn, Sara Parrish, Mary Hunter B. Tomlinson, Matthew N. Tyler, Neal D. Truslow, and F. Xavier Starkes, Appellate Panel Chair.[1]

RELEVANT PROCEDURAL HISTORY

The above-referenced Complaints were filed on September 8, 2021 (C2021-078) and October 19, 2023 (C2023-129), alleging, among other things, that Respondent improperly participated in and voted on matters related to his appointment to the Lexington County Joint Municipal Water and Sewer Commission (JMWSC) during Batesburg-Leesville Town Council meetings held on January 13, 2020, January 21, 2020, and December 11, 2023. Following

[1] Pursuant to Reg. 52-805(A), the Appellate Panel is comprised of the full Commission "excluding the original hearing Commissioners." The Hearing Panel consisted of Commissioners Scott E. Frick, Brandolyn Thomas Pinkston, and AJ Holloway, whose terms all expired on March 30, 2025.

investigations into the complaints, the Commission found probable cause existed to believe Respondent violated the Ethics Act as follows:

COUNT ONE ATTEMPT TO INFLUENCE A GOVERNMENTAL DECISION IN WHICH RESPONDENT HAD AN ECONOMIC INTEREST SECTION 8-13-700(B), S.C. CODE ANN., 1976, AS AMENDED. That Lancer Shull, Mayor of Batesburg-Leesville, attempted to influence a governmental decision in which he had an economic interest by participating in discussions regarding his appointment to the Joint Municipal Water and Sewer Commission at a January 13, 2020 Town Council meeting, in violation of Section 8-13-700(B).

COUNT TWO ATTEMPT TO INFLUENCE A GOVERNMENTAL DECISION IN WHICH RESPONDENT HAD AN ECONOMIC INTEREST SECTION 8-13-700(B), S.C. CODE ANN., 1976, AS AMENDED. That Lancer Shull, Mayor of Batesburg-Leesville, attempted to influence a governmental decision in which he had an economic interest by voting to appoint himself to the Joint Municipal Water and Sewer Commission at a January 21, 2020 Town Council meeting, in violation of Section 8-13-700(B).

COUNT THREE FAILURE TO RECUSE FROM A GOVERNMENTAL DECISION IN WHICH RESPONDENT HAD AN ECONOMIC INTEREST SECTION 8-13-700(B), S.C. CODE ANN., 1976, AS AMENDED. That Lancer Shull, Mayor of Batesburg-Leesville, failed to provide a written recusal statement regarding his appointment to the Joint Municipal Water and Sewer Commission at a January 13, 2020 Town Council meeting, in violation of Section 8-13-700(B).

COUNT FOUR FAILURE TO RECUSE FROM A GOVERNMENTAL DECISION IN WHICH RESPONDENT HAD AN ECONOMIC INTEREST SECTION 8-13-700(B), S.C. CODE ANN., 1976, AS AMENDED. That Lancer Shull, Mayor of Batesburg-Leesville, failed to provide a written recusal statement regarding his appointment to the Joint Municipal Water and Sewer Commission at a January 21, 2020 Town Council meeting, in violation of Section 8-13-700(B).

COUNT FIVE ATTEMPT TO INFLUENCE A GOVERNMENTAL DECISION IN WHICH RESPONDENT HAD AN ECONOMIC INTEREST SECTION 8-13-700(B), S.C. CODE ANN., 1976, AS AMENDED. That Lancer Shull, Mayor of Batesburg-Leesville, attempted to influence a governmental decision in which he had an economic interest by voting to appoint himself to the Joint Municipal Water and Sewer Commission at a December 11, 2023 Town Council meeting, in violation of Section 8-13-700(B).

COUNT SIX FAILURE TO RECUSE FROM A GOVERNMENTAL DECISION IN WHICH RESPONDENT HAD AN ECONOMIC INTEREST SECTION 8-13-700(B), S.C. CODE ANN., 1976, AS AMENDED. That Lancer Shull, Mayor of Batesburg-Leesville, failed to provide a written recusal statement regarding his appointment to the Joint Municipal Water and Sewer Commission at a December 11, 2023 Town Council meeting, in violation of Section 8-13-700(B).

On February 20, 2025, the Panel conducted a hearing pursuant to Section 8-13-320(10)(j) of the Ethics Act. The Panel heard testimony from Respondent, the JMSWC's General Manager Jay Nicholson, and Commission Investigator Kevin Hinson. On March 7, 2025, the Panel issued an Order finding Respondent in violation of the Ethics Act as outlined in the Notice of Hearing. This appeal followed.

FACTS

1. Respondent has served as Town Mayor since 2018.
2. The JMWSC is a joint municipal water system that exists, in part, to meet water and wastewater service needs in certain areas of Lexington County. The members of the JMWSC are governmental entities. Each governmental entity is responsible for appointing a representative to the JMWSC. These appointed representatives constitute the board of the JMWSC.
3. The Town is a member of the JMWSC. Town Council initially appointed Respondent to serve as its JMWSC board member in 2018.
4. The JMWSC's meetings are typically held once a month and the JMWSC pays its board members $250.00 each month for their service, for a total of $3,000.00 each year.
5. From 2018 through 2023, the JMWSC met, and Respondent attended meetings as follows:
    a. In 2018, the JMWSC met eight (8) times. Respondent attended eight (8) meetings.
    b. In 2019, the JMWSC met ten (10) times. Respondent attended nine (9) meetings.
    c. In 2020, the JMWSC met six (6) times. Respondent attended six (6) meetings.
    d. In 2021, the JMWSC met eight (8) times. Respondent attended seven (7) meetings.
    e. In 2022, the JMWSC met six (6) times. Respondent attended six (6) meetings.
    f. In 2023, the JMWSC met eight (8) times. Respondent attended eight (8) meetings.

6. From 2018 through 2023, Respondent received $250.00 each month from the JMWSC, for a total of $3,000.00 annually, for a cumulative total of $18,000.00. Respondent was paid regardless of whether the JMWSC held a meeting and regardless of whether Respondent attended those meetings. The JMWSC did not maintain records related to Respondent's mileage or actual expenses. According to the JMWSC General Manager Jay Nicholson, the $250.00 is a "*per diem*" payment issued under a "nonaccountable plan" in accordance with the Internal Revenue Code (IRC).[2] This amount is paid regardless of whether a board member attends a meeting or performs JMWSC-related duties throughout the month.
7. During a January 13, 2020 Council meeting, Council engaged in discussions regarding Respondent's reappointment to the JMWSC. Instead of reappointing Respondent, Council voted to replace Respondent with Councilman Steve Cain. Respondent voted against his removal from the JMWSC. Respondent did not provide a written recusal statement.
8. On January 21, 2020, Council held a meeting to reconsider Respondent's removal from the JMWSC. During the meeting, Respondent voted to reappoint himself to the JMWSC. Respondent did not provide a written recusal statement.
9. During a December 11, 2023 Council meeting, Respondent voted to reappoint himself to the JMWSC. Respondent did not provide a written recusal statement.
10. As outlined in its Order, the Hearing Panel found Respondent in violation of three (3) counts of Section 8-13-700(B) for his attempts to influence a governmental decision in which he had an economic interest by participating in discussions and votes related to his reappointment to

[2] According to Internal Revenue Service Publication 463 (2025), "a nonaccountable plan is a reimbursement or expense allowance arrangement" wherein employees are paid a daily flat rate and are not required to provide detailed accounts of their expenses to their employer.

the JMWSC during Council meetings held on January 13, 2020, January 21, 2020, and December 11, 2023. The Hearing Panel further found Respondent in violation of three (3) counts of Section 8-13-700(B) for failing to provide a written recusal statement with regard to his appointment on the aforementioned dates. The Hearing Panel assessed a $50.00 civil penalty for each violation and an administrative fee of $1,000.00, for a total of $1,300.00.

STANDARD OF REVIEW

Within ten (10) days after service of a Hearing Panel Order, a respondent may apply to the Commission for a full Commission review. Section 8-13-320(10)(m). The review must be made on the record established in the Panel hearing. Id. After reconsidering the evidence, the Commission shall "enter an order amending, affirming or modifying the Panel's decision." Reg. 52-806(A).

DISCUSSION

On appeal, Respondent argues that Section 8-13-700 did not prohibit him from participating in his own appointment because he does not have an economic interest in the JMWSC monthly payments. Specifically, Respondent argues no economic interest exists because (1) the payments do not meet the statutory definition of economic interest under Section 8-13-100(11)(a); (2) the large class exception found in Section 8-13-100(11)(b) applies; (3) construing the monthly payments as an economic interest would lead to an absurd result; (4) the monthly payments are authorized by the Joint Water and Sewer Act; and (5) his JMWSC service is *ex-officio*.[3] These arguments are addressed below, in turn.

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[3] Respondent also argues that Commission staff failed to meet its burden of proof because it did not present the Complainants as witnesses. However, there is no requirement in either the Ethics Act or the Administrative Procedures Act that a party prove its case using specific witnesses or evidence. Accordingly, the Commission finds this argument without merit.

I. Statutory Definition of Economic Interest

Section 8-13-700(B) of the Ethics Act prohibits a public official from participating in any matter in which he, a family member, a business with which he is associated, or an individual with whom he is associated has an economic interest. When a public official is faced with a matter in which he has an economic interest, the public official must recuse himself following the procedures outlined in Section 8-13-700(B) of the Ethics Act:

> 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.

As defined in Section 8-13-100(11)(a) of the Act, "economic interest" means "an interest distinct from that of the general public in a purchase, sale, lease, contract, option, or other transaction or other arrangement involving property or services in which a [public official] may gain" more than $50.00.

Here, Respondent argues that his interest in the monthly JMWSC payments does not meet the statutory definition of economic interest because the payments are only for expense reimbursement. First, it is undisputed that the JMWSC pays its board members $250.00 each month. Second, Respondent admitted during his Panel testimony that the work he does on the JMWSC is a "service." Finally, because the JMWSC pays its board members each month without regard to meeting attendance or the performance of JMWSC-related duties, the payments constitute an arrangement in which Respondent *may* gain more than $50.00. Accordingly, the Commission finds that Respondent's interest in the monthly payments meets the statutory definition of "economic interest" found in Section 8-13-100(11)(a).

II. Applicability of the Large Class Exception

Section 8-13-700(B) requires a public official to recuse himself from any matter in which he, a family member, a business with which he is associated, or an individual with whom he is associated has an economic interest. However, there is an exception to the recusal requirement called the "large class exception" found in Section 8-13-100(11)(b).[4] Under this exception, a public official may participate in a matter in which he has an economic interest if:

> the only economic interest or reasonably foreseeable benefit that may accrue to the [public official] . . . accrues to the [public official] 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.

[4] Section 8-13-100(11)(b) also contains an exception to the recusal requirement when the only benefit that accrues to a public official is "incidental" to the public official's position. In his appeal, Respondent asks the Commission to apply this exception. However, the plain language of Section 8-13-100(11)(b) requires the economic interest to be "incidental to the public official's . . . position" for the exception to apply. In the present case, while the payments may be incidental to JMWSC board members, they are *not* incidental to all Town Councilmembers because not all Town Councilmembers receive the payments – only those who are appointed to the JMWSC. Thus, this argument fails. See Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) (finding a court must abide by the plain meaning of the words in a statute).

In his appeal, Respondent argues he was permitted to participate in his own appointment because his economic interest was no greater than that of any other JMWSC board member and, therefore, the "large class exception" applies. However, Respondent's characterization of the remaining JMWSC board members as the "large class" is flawed. The "large class" consists of the individuals or entities impacted by Respondent's conduct. See SEC AO92-155 (finding a public member could vote on matters affecting his own property as long as all owners of property in the affected area were similarly impacted by the public member's vote).

In the present case, Respondent was the only person who had an economic interest in the discussion and vote that occurred on December 11, 2023 because the question considered by Town Council was limited to Respondent's re-appointment. As to the January 13, 2020 and January 21, 2020 Council meetings, only two (2) people had an economic interest – Respondent, who was the existing appointee to the JMWSC, and the Councilmember who briefly replaced Respondent. However, two (2) people do not constitute a large class. See SEC AO2014-002 (finding 1 out of 9 does *not* constitute a large class); SEC AO2010-004 (finding 1 out of 56 constitutes a large class); SEC AO2008-004 (finding 1 out of 171 constitutes a large class, but 4 out of 19 does *not* constitute a large class). Accordingly, the Commission finds that large class exception does not apply.

III. Absurd Result

Section 8-13-700 prohibits a public official from participating in a matter in which he has a personal economic interest. On appeal, Respondent argues that any interpretation of the Ethics Act finding him in violation of Section 8-13-700 for participating in or voting on his appointment to JMWSC would lead to an absurd result because it would prohibit all Councilmembers from voting on a JMWSC appointment. However, this argument overlooks the specific facts of Respondent's case.

As explained above in Section II, infra, on January 13, 2020 and January 21, 2020, only two (2) people had an economic interest in the specific questions taken up by Council – Respondent and Councilman Cain, who briefly replaced him. On December 11, 2023, only one (1) person had an interest in the specific question taken up by Council – Respondent. The Commission finds that prohibiting a public official from participating in a matter in which he has a specific economic interest is not absurd. It is, in fact, the entire purpose of Section 8-13-700(B).

IV. Joint Water and Sewer Act

Section 6-25-60(C) of the Joint Water and Sewer Act[5] provides, in relevant part:

> . . . no commissioner of a joint system shall receive any compensation solely for the performance of duties as a commissioner, but each commissioner may be paid per diem, mileage, and subsistence expenses . . .

Respondent argues that there can be no economic interest in the JMWSC monthly payments because such payments are permissible under Section 6-25-60(C). However, this provision of the Joint Water and Sewer Act only addresses the *types* of payments the JMWSC may make to its board members. It does not address how Respondent must conduct himself as a member of Town Council when Council is considering his appointment to the JMWSC – this situation is governed by the Ethics Act. Contrary to Respondent's position, the Joint Water and Sewer Act and the Ethics Act are not in conflict - they simply address different aspects of the same scenario. Accordingly, the Commission finds that the permissibility of the payments under Section

[5] In his brief, Respondent asks the Commission to find that the accounting method utilized by the JMWSC "fully complies with the requirements of [S]ection 6-25-60" and the IRC. However, this Commission's jurisdiction is limited to the enforcement and interpretation of the Ethics Act. See Section 8-13-320(9)-(12); SEC AO93-72; Hutto, S.C. Op. Atty. Gen, Dec. 23, 2013 (finding the Commission's jurisdiction is limited to questions involving interpretation and administrative enforcement of the Ethics Act). Therefore, the Commission lacks the authority to make such a finding.

6-25-60(C) is irrelevant for purposes of determining whether Respondent violated Section 8-13-700(B) when he participated in, and failed to recuse from, matters related to his appointment to the JMWSC. See SEC AO2025-001 (distinguishing between the permissibility of a school board member receiving pay and the methodology by which the school board member could participate in receiving such pay).

V. Ex-Officio Service

Section 8-13-700(B) requires a public official to recuse himself from any matter in which he, a family member, a business with which he is associated, or an individual with whom he is associated has an economic interest. The Commission has long held that when a public official's service on a secondary board is *ex-officio* then the public official is "not required to recuse himself on matters that c[o]me before [him] which would affect the economic interest of the board" because the secondary board is not considered a "business with which [Respondent] is associated" for purposes of Section 8-13-700. SEC AO2002-009. For a public official's service on a secondary board to be considered *ex-officio*, the service must (1) arise because of the position held by the public official; (2) involve matters which fall within the official responsibility of the agency or public official; and (3) be a service the agency would normally provide and for which the public official would be subject to expense reimbursement by the agency. See SEC AO2018-002.

On appeal, Respondent argues he was permitted to participate in matters related to his own appointment because the JMWSC is not a "business with which he is associated" for purposes of Section 8-13-700. In that regard, the Commission agrees. However, this fact is immaterial because Respondent did not improperly participate in matters in which the JMWSC had an economic interest. Rather, Respondent improperly participated in matters in which *he* had a personal economic interest. And the Commission has never held that a public official serving *ex-officio* on a secondary board is permitted to participate in matters affecting his own personal economic interest – only that participation in matters affecting the economic interests of the secondary board is permissible. Accordingly, the Commission finds Respondent's argument without merit.

DECISION

In this matter, the Commission is essentially tasked with deciding whether Section 8-13-700(B) of the Ethics Act allows a public official to appoint himself to a position that pays $3,000.00 per year. For the reasons outlined above, the Commission finds that such behavior is prohibited.

NOW, based on the evidence in the record and oral arguments presented, the Commission finds Respondent in violation of six (6) counts of Section 8-13-700(B) as outlined in the Notice of Hearing. Specifically, the Commission finds Respondent was not permitted to participate in discussions and/or votes related to his appointment or removal from the JMWSC. In addition, the Commission finds that Respondent was required to recuse himself pursuant to Section 8-13-700(B)(4) when such matters came before him on Town Council.

THEREFORE, pursuant to Section 8-13-320(10)(l)(i) of the Ethics Act, the Commission hereby issues a Public Reprimand and orders Respondent to pay a reduced civil penalty of $300.00 ($50.00 for each count);

AND, pursuant to Section 8-13-130 of the Ethics Act, and in addition to the civil penalty, the Commission hereby orders Respondent to pay an administrative fee of $1,000.00, making Respondent's total amount owed to the Commission $1,300.00.

AND, pursuant to Section 8-13-320 of the Ethics Act, if the $1,300.00 is not paid within six (6) months from Respondent's receipt of this Order, a judgment in the amount of $1,300.00 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 $1,300.00 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 14 DAY OF October 2025.

STATE ETHICS COMMISSION

F. XAVIER STARKES,
APPELLATE PANEL CHAIR

Columbia, South Carolina

Complaint C2021-078
In the Matter of Lancer Shull

ALLEGATION:

On September 8, 2021, the Commission received a complaint from Shirley Etheredge Mitchell against Respondent, Lancer Shull, mayor of Batesburg-Leesville. The complaint alleged on January 13, 2021, during a Batesburg-Leesville Town Council meeting, Respondent was removed from his position as a commissioner on the Joint Municipal Water and Sewer Commission (Commission) by a 5-4 council vote. Complaint further alleged Respondent participated in the meeting and voted against his removal. Complaint also alleged Respondent pressured two councilmembers to "reverse their vote" at the Special Called Meeting on January 21, 2021, where Respondent voted in favor of his re-appointment to the Commission. Council voted 7-2 to re-appoint Respondent to the Commission.

RELATED CODE SECTIONS:

SECTION 8-13-700: Use of official position or office for financial gain; disclosure of potential conflict of interest.

(A) No public official, public member, or public employee may knowingly use his official office, membership, or employment to obtain an economic interest for himself, a family member, an individual with whom he is associated, or a business with which he is associated. This prohibition does not extend to the incidental use of public materials, personnel, or equipment, subject to or available for a public official's, public member's, or public employee's use that does not result in additional public expense.

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

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

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

which the potential conflict of interest exists and shall cause the disqualification and the reasons for it to be noted in the minutes;

EXECUTIVE DIRECTOR:

On September 10, 2021, the Executive Director reviewed the complaint, determined that it contained facts sufficient, and ordered an investigation.

INVESTIGATION:

The investigation consisted of interviews with witnesses and a review of essential documentation. Respondent did not provide a written response. Respondent was not interviewed. The following is a summary:

1. Respondent was a public official serving as mayor for the Town of Batesburg Leesville since 2018 and was also appointed to the Joint Municipal Water and Sewer Commission in 2018.

2. Investigator Hinson spoke with Steve MacDougall, mayor of the Town of Lexington and chairman of the Joint Municipal Water and Sewer Commission (Commission). Mr. MacDougall explained commissioners usually meet once a month, were paid with a check for serving on the Commission and receive a 1099 tax form.

3. Investigator Bagnall interviewed Jay Nicholson, CEO of the Joint Municipal Water and Sewer Commission (Commission). Mr. Nicholson has been the General Manager/CEO of the Commission since 1992. Mr. Nicholson said the Commission was created by statute as a political subdivision composed of eleven members, to include eight mayors from member towns. Mr. Nicholson said Commissioners receive a per-diem for attending meetings. Commissioners receive a federal tax form 1099 from the Commission. Mr. Nicholson said per-diem covers mileage for Commissioners to attend meetings and meals. Commission Chair receive $400.00 per month, Vice-Chair $300.00 per month, and all other members receive $250.00 per month.

4. Investigator Hinson later spoke with Jay Nicholson, CEO of the Commission. Mr. Nicholson indicated commissioners are paid for their service throughout the month on a non-accountable plan, no receipts required. Mr. Nicholson further indicated Respondent was paid $250.00 per month totaling $3,000.00 per year and provided a 1099 tax form for each year. Mr. Nicholson asserted the money received by commissioners was neither reimbursement nor compensation. Mr. Nicholson explained if a commissioner was unavailable for a meeting an alternate commissioner could serve and would split the amount paid for their service with the primary commissioner. Mr. Nicholson later provided Respondent's 1099 nonemployee compensation forms.

5. Investigator Hinson interviewed Bob Hall, Batesburg-Leesville Town Councilmember since 2019. Mr. Hall knows the Respondent from Respondent's time on council but not personally. Mr. Hall referred to the meeting minutes for January 13 and January 21, 2020.

   Mr. Hall recalled the council meeting from June 13, 2020, when council voted to appoint Councilmember Steve Cain to the Commission instead of re-appointing Respondent. The majority of council believed that someone other than Respondent should represent the Town of Batesburg-Leesville (Town), and that it was in the best interest of the Town. Mr. Hall added that this was very "contentious" within the community with millions of dollars involved regarding a water project. Respondent voted against his removal from the Commission. The vote was 5-4 in favor of Respondent's removal. When asked if Respondent ever contacted him or other councilmembers after the meeting regarding the vote and Respondent's removal, Mr. Hall explained he could not speak for other councilmembers but Respondent "did not speak directly to me."

   According to Hall, between the January 13, 2020, council meeting and the January 21, 2020, special called meeting, he had a conversation with Town Attorney Chris Spradley and Town Manager Ted Luckado. After that conversation and with an "outpouring" from the community against removing Respondent from the Commission and to avoid further controversy, he requested the special called meeting on January 21, 2020. Mr. Hall stated that two councilmembers changed their vote, and council voted 7-2 to re-appoint Respondent to the Commission. When asked why those two councilmembers changed their vote, Mr. Hall did not have any specific reason; however, Mr. Hall asserted he knew two councilmembers, Cynthia Etheredge and Johnnie Mae Speech Lemon, had regular contact with Respondent regarding any issue/topic involving Respondent and agenda items coming before council. Mr. Hall further explained Respondent was known for having meetings with councilmembers to "press his agenda" prior to council meetings.

   When asked if he had any communications with Respondent in any way regarding Respondent's removal from the Commission or being voted back on the Commission, Mr. Hall stated "no, no direct communications." Mr. Hall denied any indirect communications and reiterated that he could not speak for other councilmembers. When asked if Respondent ever threatened, bribed, or coerced councilmembers to take an action or vote in a particular way, Mr. Hall stated "not directly" and that he had "no direct knowledge" of that occurring. Mr. Hall acknowledged that neither Councilmember Etheredge nor Councilmember Lemon ever communicated to him that they were threatened, bribed, or coerced by Respondent to take an action or vote. When asked if Respondent ever used his position to influence a governmental decision for himself, a family member, or an individual or business with which he is associated, Mr. Hall stated, "No." Mr. Hall also indicated he was not aware of any direct affiliation between Respondent and Hazen & Sawyer firm. Mr. Hall asserted Respondent had not benefitted economically from his position other than his salary as mayor and his stipend from the Commission which was never communicated to council although not required by council bylaws.

Investigator: Hinson

6. Investigator Hinson interviewed Johnnie Mae Speech Lemon, Batesburg-Leesville Town Councilmember since 2019. Mrs. Lemon knows the Respondent from her time on council but not personally. Mrs. Lemon recalled the council meeting from June 13, 2020, where council voted to remove Respondent from serving on the Joint Municipal Water & Sewer Commission (Commission). Mrs. Lemon acknowledged she voted to remove Respondent.

   Regarding the January 21, 2020, special called meeting, Mrs. Lemon indicated the meeting was called because Councilmember Bob Hall wanted to change his vote a. Mrs. Lemon acknowledged that council voted to re-appoint Respondent to the Commission. When asked why she changed her vote, Mrs. Lemon indicated it was the right thing to do at the time, Respondent had been there a long time, and he should be on the Commission. Mrs. Lemon was asked if anyone pressured her to change her vote. Mrs. Lemon stated "no one pressured me, that was my decision."

   When asked if Respondent ever threatened, bribed, or coerced her in any way at any time regarding this vote or any other council business, Mrs. Lemon stated "no." Mrs. Lemon was asked if this ever occurred with any other councilmembers and she stated "no." Mrs. Lemon was also asked if Respondent was affiliated in any way with Hazen & Sawyer, Mrs. Lemon indicated she did not know anything about that. When asked if Respondent ever used his position to influence a council meeting decision or discussion in any way, Mrs. Lemon stated "no, never known him to do that." Mrs. Lemon was asked if Respondent was receiving compensation for his appointment to serve on the Commission. Mrs. Lemon indicated she did not know anything about that. When asked if Respondent ever had any private gatherings with councilmembers, individuals, or groups about an agenda item of particular interest to Respondent prior to a council meeting, Mrs. Lemon stated "no."

7. Investigator Hinson reviewed a copy of Respondent's 1099-NEC Nonemployee Compensation forms from 2018 through 2022 with "PAYER'S" information listed as "Joint Municipal Water & Sewer" Lexington, SC and "RECIPIENT'S" information listed as "Lancer Shull." The forms reflected Respondent received $3,000.00 each year.

8. Investigator Hinson reviewed the video from the January 13, 2020, Batesburg-Leesville Town Council meeting. The following was noted:

   - Respondent presided over the meeting.

   - Respondent provided council a report from the January 8, 2020, Commission meeting.

   - Council entered into executive session and returned with possible actions by council.

   - Councilmember Cain made a motion to nominate himself to the Commission. Motion received a second.

Investigator: Hinson

- Brief discussion ensued.

- Respondent then stated, "As part of the discussion, I will say that I have enjoyed serving for two years and I would like to serve again."

- Respondent then listed all the mayors who serve on the Commission with him and then stated, "I can tell you that the manager of the Commission would love to have me serve again. It's been an honor to serve."

- Respondent calls for each councilmember's vote. Respondent then casted his vote "I vote no."

- Motion passed by a vote of 5-4.

Commission consisted of eight commissioners and the mayor (Respondent).

9. Investigator Hinson reviewed the minutes from the January 21, 2020, Batesburg-Leesville Town Council Special Called meeting. The following was noted:

    - "Mayor Shull gave Council Member Hall the floor. Council Member Hall made a motion that we reconsider our previous appointment to the Joint Water & Sewer Commission with a second by Council Member Etheredge. After discussion, a vote was taken. VOTE: 7 Approved 2 Denied - Council Member Cain Council Member Mitchell"

    - "A motion was made by Council Member Prouse that we nominate Mayor Shull to retain his previous position on the Joint Water & Sewer Commission with a second by Council Member Hall. With no discussion, a vote was taken. VOTE: 7 Approved 2 Denied-Council Member Cain, Mitchell"

As of this summary, the video was not available and Investigator Hinson was informed there were issues with the recording and the video was intermittent.

STAFF COMMENTS:

Respondent was a public official serving as mayor for the Town of Batesburg-Leesville and Joint Municipal Water and Sewer Commissioner since 2018. During a town council meeting on January 13, 2020, Respondent participated in the discussion and voted against Councilmember Cain replacing him on the Joint Municipal Water and Sewer Commission. The motion passed 5-4. During a special called council meeting on January 21, 2020, Respondent voted for council to reconsider the previous appointment of Councilmember Cain to the Commission, and the motion passed 7-2. Another motion was made to "nominate Mayor Shull to retain his previous position on the Joint Water & Sewer Commission" and the motion passed 7-2. Respondent's economic

Investigator: Hinson

interest was reflected in his 1099 tax forms where he received $3,000.00 per year for serving on the Commission from 2018 through 2022.

STAFF RECOMMENDATION:

Staff recommends the Commission find probable cause exists and charge Respondent with the following:

> One (1) count of violation of Section 8-13-700(B) for Respondent attempting to influence a governmental decision in which he had an economic interest by participating in the discussion and voting against Councilmember Cain replacing Respondent on the Joint Municipal Water and Sewer Commission at the January 13, 2020, council meeting.
>
> One (1) count of violation of Section 8-13-700(B) for Respondent attempting to influence a governmental decision in which he had an economic interest by participating in the discussion, voting to reconsider the previous appointment of Councilmember Cain to the Joint Municipal Water and Sewer Commission, and voting in favor of his re-appointment to the Commission at the January 21, 2020, special called council meeting.
>
> Two (2) counts of violation of Section 8-13-700(B) for Respondent failing to provide a written recusal statement regarding the appointments to the Commission at the January 13 and January 21, 2020, council meetings

Total: 4 counts

Investigator: Hinson

STATE OF SOUTH CAROLINA	) BEFORE THE STATE ETHICS COMMISSION
COUNTY OF RICHLAND	)
IN THE MATTER OF:	)
Complaint C2023-129	) **RESPONSE OF RESPONDENT TO NOTICE OF HEARING AND COMPLAINT C2021-078**
Stephen D. Cain Complainant.	)
Lancer Shull Respondent,	)

Respondent, Lancer Shull, responding to the allegations of the Notice of Hearing and Complaint C2023-129 in the above captioned matter as follows:

FOR A FIRST DEFENSE

1. Respondent denies the allegations set forth in Count One, Count Two, Count Three and Count Four of the Notice of Hearing and Complaint C2023-129 stating he attempted to influence a governmental decision in which he had an economic interest by participating in discussion or voting in favor of his reappointment to the Joint Municipal Water and Sewer Commission on the dates set forth in said Counts.

FOR A SECOND DEFENSE

2. Respondent denies that he has gained any economic benefit which would be in violation of *SC Code Ann.* §8-13-100(11)(a).

FOR A THIRD DEFENSE

3. Respondent receives no compensation as a Board member of Joint Municipal Water and Sewer Commission but is allowed a per diem which is a reimbursement for expenses incurred by the Respondent in the amount of Two Hundred Fifty and no/100 ($250.00) Dollars per month.

This per diem is allowed by *SC Code Ann.* §6-25-60(c) which reads as follows: "No commissioner of a joint system shall receive any compensation solely for the performance of duties as a commissioner, but each commissioner may be paid per diem, mileage, and substance expenses, as provided by law for state boards, committees, and commissions, incurred while engaged in performance of such duties." Per diem is not an "economic benefit" but rather reimbursement for actual expenditures incurred by the Respondent.

4. Respondent is informed and believes that this reimbursement is allowed by SC Code Ann. §8-13-100(11)(b).

FOR A FOURTH DEFENSE

5. Per diem reimbursement of expenses does not impact the decision making process of public members under the Ethics Statute.

FOR A FIFTH DEFENSE

6. Respondent pleads as a defense in this matter the decision of the Commission in the case of *Complaint C2008-1112* wherein a decision was made that since there was no evidence that indicates that the Commission has participated in any action to provide monies to themselves, no violation was found in that matter.

FOR A SIXTH DEFENSE

7. Respondent pleads the defense of *pari materia* in that the Ethics Statute for the State and the Joint Municipal Water and Sewer Commission's per diem statute must be read in *pari materia* to give effect to both.

WHEREFORE, having fully responded to the allegations contained in the Notice of Hearing and Complaint 2023-129 in this matter, the Respondent requests that this matter be dismissed and for other and further relief as this Commission may deem just and proper.

DAVIS FRAWLEY, LLC
140 East Main Street, P.O. Box 489
Lexington, South Carolina 29071-0489
(803) 359-2512

BY:____________________________
James Randall Davis
Attorneys for the Respondent

Lexington, South Carolina
February 19, 2025

Complaint C2023-129
In the Matter of Lancer Shull

ALLEGATION:

On October 19, 2023, the Commission received a complaint from Stephen D. Cain, Batesburg-Leesville Councilmember, against Lancer Shull, mayor of Batesburg-Leesville and Joint Municipal Water and Sewer Commissioner. The complaint alleged that Respondent "needs to recuse when contracts and financial policy issues that requires Town Batesburg-Leesville's participation and also involves Joint Municipal financially." The complaint also alleged during a Batesburg-Leesville Town Council meeting, Respondent voted on a project involving Joint Municipal Water and Sewer Commission.

RELATED CODE SECTIONS:

SECTION 8-13-700: Use of official position or office for financial gain; disclosure of potential conflict of interest.

(A) No public official, public member, or public employee may knowingly use his official office, membership, or employment to obtain an economic interest for himself, a family member, an individual with whom he is associated, or a business with which he is associated. This prohibition does not extend to the incidental use of public materials, personnel, or equipment, subject to or available for a public official's, public member's, or public employee's use that does not result in additional public expense.

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

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

EXECUTIVE DIRECTOR:

On October 23, 2023, the Executive Director reviewed the complaint, determined that it contained facts sufficient, and ordered an investigation.

INVESTIGATION:

The investigation consisted of a review of essential documentation. Respondent is represented by Attorney James Randall Davis. Respondent was not interviewed. The following is a summary:

1. Respondent was a public official serving as mayor for the Town of Batesburg-Leesville since 2018 and was also appointed to the Joint Municipal Water and Sewer Commission in 2018.

2. Hinson spoke with Jay Nicholson, General Manager/CEO of the Joint Municipal Water and Sewer Commission. Mr. Nicholson indicated commissioners are paid for their service throughout the month on a non-accountable plan, with no receipts required. Mr. Nicholson asserted the money was neither reimbursement nor compensation. Mr. Nicholson considered the money received by commissioners as a per-diem. According to Mr. Nicholson, as the general manager/CEO it was within his discretion to provide this money to commissioners and has been for years. Mr. Nicholson explained if a commissioner was unavailable for a meeting an alternate commissioner could serve and would split the amount paid for their service with the primary commissioner. Mr. Nicholson thought the split amount was $150.00 for the primary commissioner and $100.00 for the alternate. Commissioners receive a federal tax form 1099 from the Commission. Mr. Nicholson later provided Respondent's 1099 nonemployee compensation forms.

3. Hinson reviewed a copy of Respondent's 1099-NEC Nonemployee Compensation forms from 2018 through 2023 with "PAYER'S" information listed as "Joint Municipal Water & Sewer" Lexington, SC and "RECIPIENT'S" information listed as "Lancer Shull." The forms reflected Respondent received $3,000.00 each year.

4. Hinson reviewed an email from Complainant to Rachael O'Bryan, Commission Legal Administrator, and Hinson dated March 18, 2024. The following was noted:

    - "I am writing to once again to amend my complaint about our Mayor, Lancer Shull lobbying and advocating for Joint Municipal Water and Sewer ... he voted again last Monday to move forward with a project that would allow Joint Municipal to sell water across our water district and at the same time, this would max-out our sewer plant ..."
    - Attached to the email thread:

        - On Saturday, November 25, 2023, 11:47:36 AM EST, Steve Cain <stevecain_2000@yahoo.com> wrote:

"Batesburg-Leesville Mayor Lancer Shull has continually lobbied for and shepherded a water contract between Batesburg-Leesville and The Joint Municipal Water & Sewer Commission. It is my understanding that BL Mayor Lancer Shull, who sits on the Joint Municipal Water & Sewer Commission Board-needs to recuse when contracts and financial policy issues that requires Town Batesburg-Leesville's participation and also involves Joint Municipal financially."

- "At the Monday, November 13th BL Council meeting Mayor Shull voted to approve a contract involving the water project with the Joint Municipal Water & Sewer Commission. This may violate SC law."

5. Hinson reviewed Code of Laws Title 6 Chapter 25. The following was noted:

   - Chapter 25. Joint Authority Water and Sewer Systems Act
   - Section 6-25-60: Joint system to be managed and controlled by commission; appointment of commissioners; oath; records; seal; quorum; vacancies; expenses.

   (A) The management and control of a joint system is vested in a commission that may consist of no fewer than five members and no more than eleven members. The governing body of each voting member of a joint system shall appoint a commissioner, pursuant to Section 6-25-50(A), to serve as a commissioner of the joint system. A commissioner has one vote and may have additional votes as a majority of the members of the joint system determines. A commissioner serves at the pleasure of the governing body by which he was appointed. A commissioner, before entering upon his duties, shall take and subscribe to an oath before a person authorized by law to administer oaths to execute the duties of his office faithfully and impartially, and a record of each oath must be filed with the governing body of the appointing authority.

6. Hinson reviewed minutes from the December 11, 2023, Batesburg-Leesville Town Council meeting. The following was noted:

   - Regular Council Meeting December 11, 2023

   "The Regular Council Meeting for the Town of Batesburg-Leesville, held in Building B of the Town Hall Complex, was called to order by Mayor Shull at 7:00 P. M. Members present were Council Member Brown, Bouknight, Cain, Hartley, Wise, Prouse, and Hall. Council Member Mitchell was absent."

   - New Business

   F. Council Appointments for Town Attorney, Central Midlands Council of Governments, Environmental Planning Advisory Committee (EPAC), Joint Municipal Water & Sewer Commission, and The Comet.

   ...

- d. Joint Municipal Water & Sewer Commission
  "A motion was made by Council Member Prouse with a second by Council Member Bouknight to reappoint Mayor Shull to that position. With no discussion, a vote was taken."
  Vote: 6 Approved
  2 Abstained - Council Member Cain, Hartley

7. Hinson reviewed the video from the December 11, 2023, Batesburg-Leesville Town Council meeting. The following was noted:

   - Respondent presided over the meeting.
   - Councilmember Prouse made a motion to reappoint Respondent to the Joint Municipal Water and Sewer Commission.
   - Respondent restated the motion to "reappoint the mayor to Joint Municipal Water and Sewer Commission."
   - Motion received a second by Councilmember Bouknight.
   - Respondent calls for each council member's vote. Respondent then cast his vote "and the Mayor votes, yes"
   - Motion passed by a vote of 6-2 with Councilmembers Cain and Hartley abstaining.

   (Of note, the council consisted of eight councilmembers and the mayor (Respondent).

8. A written response was provided and a copy is attached to the summary.

STAFF COMMENTS:

Respondent was a public official serving as mayor for the Town of Batesburg-Leesville and also a Joint Municipal Water and Sewer Commissioner since 2018. Complaint alleged Respondent has participated and voted on matters involving the Joint Municipal Water and Sewer Commission of which Respondent is a member. The Joint Municipal Water and Sewer Commission is established by statute section 6-25-60, "The governing body of each voting member of a joint system shall appoint a commissioner, pursuant to Section 6-25-50(A), to serve as a commissioner of the joint system." Respondent, as mayor, was appointed by Batesburg-Leesville Town Council. Respondent's participation in matters involving Joint Municipal Water and Sewer Commission while appointed is ex-officio.

During a town council meeting on December 11, 2023, Respondent voted to reappoint himself to the Joint Municipal Water and Sewer Commission. The motion passed 6-2. Respondent's economic interest was reflected in his 1099 tax forms where he received $3,000.00 per year for serving on the Commission from 2018 through 2023.

STAFF RECOMMENDATION:

Staff recommends the Commission find probable cause exists and charge Respondent with the following:

> One (1) count of violation of Section 8-13-700(B) for Respondent attempting to influence a governmental decision in which he had an economic interest by voting to reappointment himself to the Joint Municipal Water and Sewer Commission at the December 11, 2023, council meeting.
>
> One (1) count of violation of Section 8-13-700(B) for Respondent failing to provide a written recusal statement regarding his reappointment to the Commission at the December 11, 2023, council meeting.

Total: 2 counts

STATE OF SOUTH CAROLINA) BEFORE THE STATE ETHICS COMMISSION
COUNTY OF RICHLAND)

IN THE MATTER OF:

Complaint C2023-129

Stephen D. Cain
Complainant.

Lancer Shull
Respondent,

RESPONSE OF RESPONDENT TO NOTICE OF HEARING AND COMPLAINT C2023-129

Respondent, Lancer Shull, responding to the allegations of the Notice of Hearing and Complaint C2023-129 in the above captioned matter as follows:

FOR A FIRST DEFENSE

1. Respondent denies the allegations set forth in Count One, Count Two, Count Three and Count Four of the Notice of Hearing and Complaint C2023-129 stating he attempted to influence a governmental decision in which he had an economic interest by participating in discussion or voting in favor of his reappointment to the Joint Municipal Water and Sewer Commission on the dates set forth in said Counts.

FOR A SECOND DEFENSE

2. Respondent denies that he has gained any economic benefit which would be in violation of *SC Code Ann.* §8-13-100(11)(a).

FOR A THIRD DEFENSE

3. Respondent receives no compensation as a Board member of Joint Municipal Water and Sewer Commission but is allowed a per diem which is a reimbursement for expenses incurred by the Respondent in the amount of Two Hundred Fifty and no/100 ($250.00) Dollars per month.

This per diem is allowed by *SC Code Ann.* §6-25-60(c) which reads as follows: "No commissioner of a joint system shall receive any compensation solely for the performance of duties as a commissioner, but each commissioner may be paid per diem, mileage, and substance expenses, as provided by law for state boards, committees, and commissions, incurred while engaged in performance of such duties." Per diem is not an "economic benefit" but rather reimbursement for actual expenditures incurred by the Respondent.

4. Respondent is informed and believes that this reimbursement is allowed by SC Code Ann. §8-13-100(11)(b).

FOR A FOURTH DEFENSE

5. Per diem reimbursement of expenses does not impact the decision making process of public members under the Ethics Statute.

FOR A FIFTH DEFENSE

6. Respondent pleads as a defense in this matter the decision of the Commission in the case of *Complaint C2008-1112* wherein a decision was made that since there was no evidence that indicates that the Commission has participated in any action to provide monies to themselves, no violation was found in that matter.

FOR A SIXTH DEFENSE

7. Respondent pleads the defense of *pari materia* in that the Ethics Statute for the State and the Joint Municipal Water and Sewer Commission's per diem statute must be read in *pari materia* to give effect to both.

WHEREFORE, having fully responded to the allegations contained in the Notice of Hearing and Complaint 2023-129 in this matter, the Respondent requests that this matter be dismissed and for other and further relief as this Commission may deem just and proper.

DAVIS FRAWLEY, LLC
140 East Main Street, P.O. Box 489
Lexington, South Carolina 29071-0489
(803) 359-2512

BY:______________________________
James Randall Davis
Attorneys for the Respondent

Lexington, South Carolina
February 19, 2025

STATE OF SOUTH CAROLINA

BEFORE THE STATE ETHICS COMMISSION

COUNTY OF RICHLAND

IN THE MATTER OF:
Complaints C2021-078/C2023-129
Shirley Etheredge Mitchell
Stephen D. Cain,

Complainants,

Lancer Shull,
Respondent.

February 20, 2025 Ethics Hearing

Commissioners in Attendance:
Scott E. Frick, Hearing Panel Chair
Brandolyn T. Pinkston (Appearing via Zoom)
A. J. Holloway (Appearing via Zoom)

Representing the Respondent:
James Randall Davis, Esquire

Representing the Commission:
Courtney M. Laster, Esquire

EXHIBITS

(Exhibits Admitted Into Evidence)

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

Witnesses:

Kevin Hinson

John "Jay" Nicholson

Lancer Shull

TRANSCRIPT

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

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

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

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

Scott Frick: Okay. Please proceed.

Courtney Laster: Thank you. Before we begin, opposing counsel and I have entered into some stipulations of fact. I believe that staff has given Commissioner Frick, you, a physical copy of this and then I believe that the commissioners that are attending virtually have also received this copy of the stipulation. In addition, Respondent's counsel did submit an additional reply yesterday afternoon and I believe that, Commissioner Frick, you have a physical copy of that and the commissioners that are appearing virtually both have an electronic copy of that that has been sent to you. Again, this is 2021078 and 2023129 in the matter of Lancer Shull. Mr. Shull is the mayor of the Town of Batesburg-Leesville and he is also a commissioner on the Lexington County Joint Municipal Water and Sewer Commission. The matters that are being presented to the Panel today are the 6-count combined notice of hearing, each of the counts relating to Respondent's participation in votes to place himself on the Joint Water and Sewer Commission during duly-called meetings of the Town Council. So I believe the evidence today will show that the Respondent has served as both mayor of Batesburg-Leesville and also as a commissioner of the Joint Water and Sewer Commission since 2018. I believe the evidence will also show that members or commissioners of the Joint Water and Sewer Commission are placed onto that body by either vote or resolution of their own governmental entity, so in this case, the Town of Batesburg-Leesville Town Council would have done that.

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

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

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

Lancer Shull: 2018.

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

What is under the statute for the Commission, there's a specific statute and that statute indicates this language that, "There shall be no compensation paid to commissioners, comma, but there can be a per diem payment made," and the language says, "per diem, comma, mileage, comma, subsistence". That is a specific provision in our statute which allows a per diem. It is my belief that the complaint here is that for – is that the – that payment of $250 per month is a economic interest under the Ethics Statute, is I believe what the position the complainant is takin' here. And the Commission here is to decide that matter. The – we do not – but we do not believe that per diem set by our statute, which was passed by the legislation and signed by the governor, indi-, it clearly indicates no compensation but it allows specifically a per diem payment, which is being made and is received by each commissioner in the same figure, except for the board chairman and vice chairman get a bigger figure. So our position is that per diem is not a economic interest. He did not vote on anything involvin' any property he owns or any services he renders himself or by business. And we believe that the issue here is that is not a economic benefit to him. That's a per diem, which is an expense or reimbursement for expenses which are allowed by our statute and should not be classified as economic benefit.

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

Scott Frick: Thank you, Mr. Davis. Miss Laster, will you call your first witness, please?

Courtney Laster: Certainly. With the Panel's permission, at this time I would like to call Investigator Kevin Hinson to the stand.

Kevin Hinson: Yes, ma'am.

Scott Frick: Investigator Hinson, please raise your right hand. Do you swear or affirm that the testimony you are about to give is the truth and nothing but the truth, so help you God?

Kevin Hinson: I do.

Scott Frick: Please be seated and state your full name for the record.

Kevin Hinson: Kevin Hinson.

Courtney Laster: Morning, Investigator Hinson.

Kevin Hinson: Morning.

Courtney Laster: Are you currently employed with the Commission?

Kevin Hinson: Yes, ma'am.

Courtney Laster: And what is your job title?

Kevin Hinson: Chief over investigations and enforcement.

Courtney Laster: What is your job as the chief over investigations and enforcement?

Kevin Hinson: To oversee and – the investigations and enforcement division and investigate those matters assigned.

Courtney Laster: And who assigns the matters for you to investigate?

Kevin Hinson: The executive director.

Courtney Laster: Are you familiar with the matters that are currently being presented to the Panel?

Kevin Hinson: Yes, ma'am.

Courtney Laster: And were these matters assigned to you by the executive director for...

Kevin Hinson: Yes...

Courtney Laster: ...investigation?

Kevin Hinson: ...ma'am.

Courtney Laster: Investigator Hinson, to your knowledge, is the Respondent a public official?

Kevin Hinson: Yes, ma'am.

Courtney Laster: And what position does he hold?

Kevin Hinson: Mayor for the Batesburg Town – Town of Batesburg-Leesville.

Courtney Laster: Okay. Do you know when he was first elected as mayor?

Kevin Hinson: I believe that was in November 2017.

Courtney Laster: Okay. To your knowledge, does the Respondent serve in any other government roles?

Kevin Hinson: He also serves as a commissioner for the Lexington Joint Municipal Water and Sewer Commission.

Courtney Laster: And to your knowledge, is that a governmental entity?

Kevin Hinson: Yes, ma'am.

Courtney Laster: Okay. What is your understanding of how the commissioners come to serve on the Joint Municipal Sewer and Water Commission?

Kevin Hinson: They are appointed by their existing body, so they're appointed by the Town Council.

Courtney Laster: Okay. Do you know when the Respondent first began serving on the Commission?

Kevin Hinson: I believe that was January of 2018.

Courtney Laster: As far as these complaints go, what did the first complaint, 2021078, what did it allege as it relates to the charges that are being presented to the Panel?

Kevin Hinson: Improper voting for those two meetings, so January 13 and the January 21.

Courtney Laster: Of what year?

Kevin Hinson: 2020.

Courtney Laster: Okay. Did you happen to review the meeting minutes, those...

Kevin Hinson: Yes...

Courtney Laster: ...meeting...

Kevin Hinson: ...ma'am.

Courtney Laster: ...minutes you just referred...

Kevin Hinson: Yes...

Courtney Laster: ...to...

Kevin Hinson: ...ma'am.

Courtney Laster: ...from January 13, 2020, and January 1, 2020?

Kevin Hinson: Yes, ma'am.

Courtney Laster: Commissioner Frick, at this time and with the Panel's permission, I would like to move what has been marked as Commission Exhibit 2 and 3 into the record. These are the meeting minutes from the dates just described by Investigator Hinson and they have been shared with opposing counsel and I don't believe he has any objection to them, so I...

Scott Frick: Okay.

Courtney Laster: ...would [inaudible 14:43].

Scott Frick: They'll be admitted without objection.

James Davis: No objection.

Courtney Laster: Thank you. Investigator Hinson, if we could look at Commission Exhibit 2, that would be the January 13, 2020, town meeting minutes, can you describe what occurred during that meeting as it relates to Respondent in his appointment to the Joint Water and Sewer Commission? And if you could refer us by page, please.

Kevin Hinson: Let me get to that page. I believe it's on Page 7. A motion was made by Councilman Cain with a second by Council Member Mitchell to place Council Member Cain on the Commission.

Courtney Laster: You said that was on Page 7?

Kevin Hinson: Yes, ma'am.

Courtney Laster: Okay. As of the date of this meeting, what...

James Davis: Mr. Chairman, excuse me, what – which exhibit was that? I'm sorry.

Courtney Laster: This is C2.

James Davis: Okay. Very good.

Courtney Laster: Investigator Hinson, at this time on January 13, 2020, was the Respondent serving on the Commission and on Town Council?

Kevin Hinson: Yes, ma'am.

Courtney Laster: Okay. So can you again restate what was going on in this meeting?

Kevin Hinson: So Council Member Cain nominated himself to be on the Commission and then a vote ensued and the Respondent voted in the negative.

Courtney Laster: What was the effect of Respondent's vote?

Kevin Hinson: The effect of the Respondent's vote is he voted to object to the removal of himself from the Commission in lieu of Council Member Cain bein' appointed to it.

Courtney Laster: Okay. Did the vote to replace the Respondent pass?

Kevin Hinson: Yes, ma'am.

Courtney Laster: What was the vote total?

Kevin Hinson: I believe that was 5 to 4.

Courtney Laster: Okay. Did you find any evidence that Respondent submitted any kind of written recusal in conjunction with this agenda item?

Kevin Hinson: No, ma'am.

Courtney Laster: Thank you. If we could also, Investigator Hinson, turn to Commission Exhibit 3, this is the January 21, 2020, meeting minutes. Can you describe what occurred herein as it relates to the Respondent and his appointment to the Joint Water and Sewer Commission? By page number, if possible.

Kevin Hinson: It's Page 1 and 2. At the bottom of Page 1, the Respondent gave Councilman Hall the floor. Councilman Hall made a motion that would reconsider a previous appointment to the Joint Municipal Water and Sewer Commission and executed by Council Member Etheredge. And a vote ensued and it was a vote of 7 to 2.

Courtney Laster: Okay. So was this a reconsideration of the vote they took in the previous meeting?

Kevin Hinson: Yes, ma'am.

Courtney Laster: And what was the effect of this vote?

Kevin Hinson: That the Respondent was reappointed to the Commission.

Courtney Laster: And did the motion pass?

Kevin Hinson: Yes, ma'am.

Courtney Laster: What was the count?

Kevin Hinson: It was 7 to 2.

Courtney Laster: And how did Respondent vote again?

Kevin Hinson: He voted in the affirmative.

Courtney Laster: Okay. Did you find any evidence that there was a written statement of recusal in conjunction with this agenda item?

Kevin Hinson: No, ma'am.

Courtney Laster: Thank you, Investigator Hinson. Turning to the second complaint, 2023129, what were the allegations in that complaint as it relates to what's being presented to the Panel?

Kevin Hinson: I'm sorry. Restate the question?

Courtney Laster: Yeah. What did you find in the 2023129 complaint? What were those – the allegations contained therein as they relate to what's being presented today?

Kevin Hinson: It was improper voting. He voted to reappoint himself, the Respondent did, back to the Commission, which...

Courtney Laster: Okay.

Kevin Hinson: ...he was currently holding.

Courtney Laster: And the allegations were it was a separate meeting, not these two we've just discussed.

Kevin Hinson: Correct.

Courtney Laster: Okay. Do you know the date that was alleged to have occurred?

Kevin Hinson: December 11, I believe, 2023.

Courtney Laster: Okay. And did you review the meeting minutes from December 11, 2023, the...

Kevin Hinson: Yes...

Courtney Laster: ...Town...

Kevin Hinson: ...ma'am.

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

James Davis: [Inaudible 19:02].

Scott Frick: Without objection.

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

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

Courtney Laster: And did Respondent participate in that vote?

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

Courtney Laster: [Inaudible 19:39].

Kevin Hinson: ...in the affirmative.

Courtney Laster: I'm sorry?

Kevin Hinson: He voted in the affirmative.

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

Kevin Hinson: No, ma'am.

Courtney Laster: Investigator Hinson, did your investigation reveal whether or not the Joint Water and Sewer Commissioners receive payment?

Kevin Hinson: Yes.

Courtney Laster: And how much payment do they receive?

Kevin Hinson: Well, in the Respondent's case, they receive $250 per month.

Courtney Laster: I'm sorry, can you repeat that?

Kevin Hinson: They receive $250 per month...

Courtney Laster: Okay.

Kevin Hinson: ...for the year.

Courtney Laster: Investigator Hinson, is there an administrative fee associated with these complaints?

Kevin Hinson: Yes, ma'am.

Courtney Laster: What is that?

Kevin Hinson: It's $1,000 in cumulus for both a these matters and that involves investigative hours, prep hours and the work done to arrive here today.

Courtney Laster: Okay. I don't believe I have any additional question for Investigator Hinson.

Scott Frick: Any questions, Mr. Davis?

James Davis: Yes, Mr. Chairman. Mr. Hinson?

Kevin Hinson: Yes, sir.

James Davis: Okay. The first vote on the – January 20 – January 13...

Kevin Hinson: Yes, sir.

James Davis: ...that's the one that was a 5 to 4 vote.

Kevin Hinson: I believe so. Yes, sir.

James Davis: Okay. And the – Mr. Shull did not vote – he voted – he did not vote for the person who was nominated. Is that correct?

Kevin Hinson: Yes. He voted against Mr. Cain.

James Davis: Okay. All right. On the – but Mr. Cain voted for himself.

Kevin Hinson: Yes, sir.

James Davis: Okay. All right. On the January 21 vote, was there any discussion at the time that vote was taken on the January 21 meeting? It – do the minutes reflect any discussion?

Kevin Hinson: It doesn't appear to. No...

James Davis: Okay.

Kevin Hinson: ...sir.

James Davis: On the December vote in 2023, I...

Kevin Hinson: Yes...

James Davis: ...ask...

Kevin Hinson: ...sir.

James Davis: ...the same question. Is there any evidence of any discussion at that time?

Kevin Hinson: I don't believe so.

James Davis: Would you check and see?

Kevin Hinson: Yeah, sure. No, sir.

James Davis: None. Okay. And the vote on January 21 was – what was the total vote, the count?

Kevin Hinson: It was 7 to 2.

James Davis: For Mr. Shull?

Kevin Hinson: Yes, sir.

James Davis: Okay. And the December 11, 2023, what was the count there?

Kevin Hinson: I believe that was a 6 to 2.

James Davis: For Mr. Shull...

Kevin Hinson: Yep.

James Davis: ...to be reappointed.

Kevin Hinson: Yes, sir.

James Davis: Okay. All right. You – on your direct testimony for Miss Laster, you indicated that there was improper voting by Mr. Shull at these meetings. What is the improper nature of that voting?

Courtney Laster: Oh.

Kevin Hinson: That was the allegation.

Courtney Laster: Commissioner, I'm sorry, I would object to that. I believe on the direct it was what were the allegations in the...

James Davis: Okay.

Courtney Laster: ...complaint.

James Davis: What...

Scott Frick: Yeah. I'll sustain...

James Davis: And...

Scott Frick: ...that.

James Davis: ...you testified that there was improper voting by Mr. Shull. Am I correct about that?

Courtney Laster: Objection.

Kevin Hinson: Not...

Courtney Laster: Objection. I think that's a mischaracterization of the testimony.

James Davis: All right. Well...

Scott Frick: Sustained.

James Davis: ...let me rephrase it so we'll have it. What was the – what – in reference, was there any improper voting by Mr. Shull, you think?

Courtney Laster: Objection. Calls for a legal conclusion. I think that's the province of the Panel to determine.

Scott Frick: [Inaudible 23:44] sustained.

James Davis: Okay. If you'd give me just a second, Mr. Chairman. You indicated that a payment was being received by Mr. Shull for $250.

Kevin Hinson: Yes, sir.

James Davis: All right. Are you in any way familiar with the statute that involves the Joint Water and Sewer Commission where a per diem can be paid to the board members?

Kevin Hinson: That language is – appears to be in the statute.

James Davis: Okay.

Kevin Hinson: Yes.

James Davis: Do you know what the definition is of per diem?

Kevin Hinson: That's a per...

Courtney Laster: Objection...

Kevin Hinson: ...day...

Courtney Laster: ...as to relevance.

Scott Frick: I'll overrule the objection.

James Davis: Yeah. [Inaudible 24:29].

Kevin Hinson: Per diem is per day.

James Davis: Excuse me. I'm sorry. [Inaudible 24:31].

Kevin Hinson: Okay.

James Davis: Do you know what the definition is of per diem?

Kevin Hinson: It's – per diem is per day and it's money, compensation given for travel – generally for travel and food expenses.

James Davis: Okay. So are – so you're classifying it for travel expenses and things of that nature. Is that correct?

Kevin Hinson: In regards to this matter and how it's – you're d-, you're bringing it to me, per diem and what the statute says is per day.

James Davis: Okay.

Kevin Hinson: That's what it's typically used for.

James Davis: Yeah.

Kevin Hinson: Travel expenses and food.

James Davis: Would it be fair to say it is a reimbursement of expenses that a board member incurs in his capacity as a public official?

Kevin Hinson: I don't think I can answer that because that would be speculative. I can't determine what someone's intention is about whether it's per diem or whether it's not, how they intended it. What I looked at was this was money, income received by the Respondent for the meetings.

James Davis: Okay. The specific language in the statute refers to the words "per diem, comma, mileage and subsistence". Using that language, I ask the question again. Do you feel like that language as to the per diem is referring to reimbursement of expenses for that board member – he incurs in his public capacity?

Courtney Laster: Objection as to relevance.

Scott Frick: I'll sustain that objection.

James Davis: Thank you, Your Honor – Mr. Chairman.

Scott Frick: Thank you. Any further questions, Miss Laster?

Courtney Laster: No, sir.

Scott Frick: Okay. Investigator Hinson, for the first vote, which I believe was January 13, 2020. Correct?

Kevin Hinson: Yes, sir.

Scott Frick: Was the Respondent's term on the Water and Sewer Commission, was it coming to a close? Was that term ending or was he just simply being replaced in that first vote?

Kevin Hinson: I believe they run on 2-year cycles but in this particular matter, it was – 'cause it uses the language, "Motion was made for – to place Council Member Cain on the Commission," which means it would be to replace the Respondent.

Scott Frick: Right. And what I'm trying to figure out is whether that term was ending for the Respondent at that point anyway or whether he was actually being removed and replaced with somebody else in the middle of a term, if you know.

Kevin Hinson: I didn't dive into that in terms of whether it was a replacement or it was a reappointment to it. What I looked at was it was an action taken by Councilman Cain and the Respondent at the time.

Scott Frick: Okay. Thank you. Any questions from the other commissioners on the Panel?

Brandolyn Pinkston: I have one, Mr. Chair.

Scott Frick: Please go ahead, Commissioner Pinkston.

Brandolyn Pinkston: I'd like to understand the – how often does the – that Commission meet? Do they meet monthly or are they meeting weekly? How often do they meet?

Kevin Hinson: It appears they would meet monthly, if that question was for me.

Brandolyn Pinkston: Yes. And most of the persons affiliated with the Water and Sewer Commission live in the Batesburg-Leesville area?

Kevin Hinson: I wouldn't be able to speak to that, Commissioner Pinkston. I just know it's from a broad area of ones that are appointed to those roles.

Brandolyn Pinkston: Oh, because I was trying to understand the amount set for per diem regarding travel, lodging and food expenses, so I will – I wasn't – as I reviewed this the other day, I was looking for an answer to that because I was trying to understand the basic workings of that Water Commission and how they were reimbursed for food, travel and lodging expenses. So I'll continue to listen. Thank you, Investigator Hinson.

Kevin Hinson: Yes, ma'am.

Scott Frick: Any questions, Commissioner Holloway?

A.J. Holloway: Yes. If I can get just a little bit of clarification, along the same lines of Commissioner Pinkston. As far as my understanding of looking at the information here and the testimony, is that the – or as far as the per diems go, there's just a – is there a level for the chairman and then like – it was like $300 and something below $250 or something along those lines? I need to see what those numbers were. But were there two different levels of per diems?

Kevin Hinson: Yes. The chair would – as I understand it from Mr. Nicholson, the general manager/CEO for the Joint Municipal Water and Sewer Commission, the chair would receive X amount, commissioners would receive a lower amount and then if there was an alternate or someone that couldn't be there and an alternate went into that place, then the alternate would receive a split amount with the existing commissioner that was supposed to be there.

A.J. Holloway: All right. And there's, from what I've seen, no explanation as in why there'd be a higher expense for food for a chairman versus a commissioner, anything like that?

Kevin Hinson: I don't have any. No, sir.

A.J. Holloway: Okay. I just wanted to make sure. I'm just trying to understand, again, if this is reimbursements for just travel, for mileage and food, why there would be different levels for that, if they're not basing it off of the distance that someone's traveling and it's just off of the position that they have. So I was just tryin' to get clarification on that.

Kevin Hinson: Yes, sir.

A.J. Holloway: And that's it for me. Sorry. Thank you.

Scott Frick: Thank you, Commissioner Holloway. Thank you, Investigator Hinson. Miss Laster, are you calling any additional witnesses?

Courtney Laster: Yes, sir. At this time, with the Panel's permission, I would like to call Jay Nicholson to the stand.

Scott Frick: Yes, ma'am. If you could please raise your right hand. Do you swear or affirm that the testimony you are about to give is the truth and nothing but the truth, so help you God?

Jay Nicholson: I do.

Scott Frick: Please be seated and state your full name for the record.

Jay Nicholson: John Clark Nicholson.

Scott Frick: Go ahead, Miss Laster.

Courtney Laster: Thank you. Mr. Nicholson, good morning.

Jay Nicholson: Good morning.

Courtney Laster: Mr. Nicholson, can you tell the pel-, the Panel where you are currently employed?

Jay Nicholson: Joint Municipal Water and Sewer Commission in Lexington County.

Courtney Laster: And what do you do there?

Jay Nicholson: I'm the general manager and chief executive officer.

Courtney Laster: Okay. Oh. Mr. Chair, i-, with your permission, can the investigator be excused from the proceedings?

Scott Frick: Yes, absolutely.

Courtney Laster: Thank you.

James Davis: No objection.

Courtney Laster: Mr. Nicholson, how long have you been employed with the Commission?

Jay Nicholson: Twenty seven years and 1½ months.

Courtney Laster: Know – who's counting, though?

Jay Nicholson: Nope.

Courtney Laster: Have you always been the general manager?

Jay Nicholson: No.

Courtney Laster: What other titles have you held there?

Jay Nicholson: Engineering and construction technician and operations manager.

Courtney Laster: Okay. How long have you been the general manager?

Jay Nicholson: Eleven years.

Courtney Laster: Eleven years. Can you briefly describe to the Panel what the Commission does – what your Commission does?

Jay Nicholson: We were established under the – if you'll give me just a little bit of leeway here – under the Joint Municipal Water Systems Act, there are a lot – there are about 10 or 12 of these type of organizations in the State of South Carolina. All of us are – have a very similar charge. None of us are exactly the same. In our case, we took over assets of what was Lexington County Public Works, the utility division under the Public Works Department. There were some financial challenges because of public bonding abilities and some a those constraints. It was identified as a separate entity. A public entity needed to be established. The Commission was established under the statute. The assets were transferred in the early 90s. We began operation in the summer of '93. The idea at the time was the public entities, municipalities within Lexington County that had an interest in the unincorporated areas of Lexington County and a water and sewer service interest, could apply for membership, appoint a representative where you could have a collective board where those decisions could be made so that everyone's interests are protected. And so that's the charge. We've since evolved a little bit where we are actually a wholesale provider of water to several of our members and we actually contract operate for a couple of our members.

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

Jay Nicholson: Eleven. That's statutorily limited.

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

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

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

Jay Nicholson: Yes, ma'am.

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

Jay Nicholson: Since January of '18.

Courtney Laster: How do the Commissioners get to the Commission?

Jay Nicholson: The member body votes by resolution to appoint their member.

Courtney Laster: Okay. So if it was a town, is it safe to say that the town would get together and vote to appoint whoever they wanted their representative...

Jay Nicholson: Correct.

Courtney Laster: ...to be? Okay. How often does your commission meet?

Jay Nicholson: Monthly.

Courtney Laster: Monthly.

Jay Nicholson: Typically. We don't always meet monthly but for the most part, we do.

Courtney Laster: Okay. And how do commissioners attend meetings, meaning virtually or physically or a combination, perhaps?

Jay Nicholson: Physically, exce-, with exception of the COVID period. Those were emergency protocols. But yeah. In person at our main office.

Courtney Laster: And where is your office located?

Jay Nicholson: 2546 Two Notch Road in Lexington.

Courtney Laster: Okay. Thank you. In terms of money, what do the commissioners receive?

Jay Nicholson: The commissioners receive a per diem as prescribed by the Ethics Commission, $250 per month for all commissioners with exception of the vice chair and the chair. The vice chair gets $350, the chair gets $400. And that's because they tend – those positions, those leadership positions, excuse me, tend to be more of a command performance and they do more travel during the month for s-, different events to represent the Commission.

Courtney Laster: Thank you. If a commi-, well, let me back up. So when you say they're paid monthly, is that a check they're receiving monthly...

Jay Nicholson: It is...

Courtney Laster: ...from...

Jay Nicholson: ...a check.

Courtney Laster: ...the Commission?

Jay Nicholson: Mm-hm.

Courtney Laster: Okay. Is there a certain date that the check is issued every month?

Jay Nicholson: I thi-, in my brain, it's just the first check [inaudible 36:22] because it's – the second Wednesday of the month is our designated meeting time...

Courtney Laster: Okay.

Jay Nicholson: ...so whenever that is.

Courtney Laster: Thank you.

Jay Nicholson: It's handed out at the meeting.

Courtney Laster: And are there tax forms that the Commission issues at the end of each year to the commissioners?

Jay Nicholson: The ta-, well, there's a 1099 because it is – because that's IRS required.

Courtney Laster: Sure.

Jay Nicholson: Correct.

Courtney Laster: Okay. With the Panel's permission, I'd like to show Mr. Nicholson what has been pre-marked as Commission Exhibit 1. Opposing counsel has stated no objection to these. These are the 1099s we're referencing.

Scott Frick: Without objection.

James Davis: No objection.

Jay Nicholson: You're not gonna make me do math, are ya?

Courtney Laster: No. Certainly not. Mr. Nicholson, can you look through those documents and just give me a general description of what they appear to be or what they are?

Jay Nicholson: This is the cumulative annual non-employee compensation marker for 1099 Miscellaneous Income.

Courtney Laster: And who are those 1099s issued to?

Jay Nicholson: Commissioners.

Courtney Laster: Those specific ones.

Jay Nicholson: These specific – oh, this stack here is to Lancer Shull.

Courtney Laster: Okay. Can you tell the Panel, based on those forms, how much Mr. Shull received each year?

Jay Nicholson: $3,000...

Courtney Laster: Okay.

Jay Nicholson: ...with exception – yeah. Well, yes. For these, $3,000.

Courtney Laster: Okay. And that's 2018 through 2023.

Jay Nicholson: Correct.

Courtney Laster: I don't have any additional questions for Mr. Nicholson.

Scott Frick: Any questions?

James Davis: Yes, Mr. Chairman. One of the commissioners on Zoom asked the question about what areas do the commissioners come from. If you would explain that – we have the number of board members and they come specific towns in their location as – in reference to where the headquarters is in Lexington...

Jay Nicholson: Okay.

James Davis: ...if I'm stating that properly.

Jay Nicholson: Yes. So most of this, it would be if you – just to help explain this, if you understand the geography of Lexington County, the bulk of the land part of Lexington County is south of Lake Murray. You do have a municipality that's north. You have Irmo that sort of bridges Lexington and Richland and some on the north side of Lake Murray. We're dealin' primarily with public entities south of Lake Murray, what I would call the bulk of the land part a the county. Almost – most a the larger municipalities are members. There are a few minor exceptions. But the – our members are currently – and again, statutorily limited at 11 but they are the Town of Pelion, the Town of Swansea, the County of Lexington, the City of Cayce, the City of West Columbia, the Town of Lexington, the Town a Springdale, the Town of South Congaree, the Gilbert-Summit Rural Water District, the Town a Gaston and of course the Town of Batesburg-Leesville. So it's a broad swath that represents the entire southern region of Lexington County south of Lake Murray.

James Davis: What would be the distance, say, from Batesburg-Leesville, where the mayor comes from, to the headquarters? What's that distance?

Jay Nicholson: Greater than 10 miles. I couldn't – I know that the...

James Davis: Just...

Jay Nicholson: Roughly...

James Davis: ...roughly.

Jay Nicholson: ...10 to 12 miles.

James Davis: How 'bout the commissioner from the Swansea area?

Jay Nicholson: Oh, 15 to 20 miles.

James Davis: How 'bout West Columbia and Cayce?

Jay Nicholson: Probably another 10 to 15 miles.

James Davis: This is an active board as to participation?

Jay Nicholson: Very active.

James Davis: The – and the purpose, the main purpose of the Commission is what?

Jay Nicholson: Is to serve safe drinkin' water and clean, sanitary sewer services to the d-, to the citizens of Lexington County.

James Davis: Is there a constant flow of matters that come up involvin' that particular purpose?

Jay Nicholson: Yes.

James Davis: Okay. And the board participates – besides board meetings, participates in those resolution in those matters?

Jay Nicholson: Yes.

James Davis: And you consider it an active board?

Jay Nicholson: Yes.

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

Jay Nicholson: That is my...

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

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

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

Jay Nicholson: Yes, sir.

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

Jay Nicholson: Th-...

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

Jay Nicholson: That is correct. They...

James Davis: Okay.

Jay Nicholson: ...are also signatories at – on the bank and so there are some other activities that do involve those official positions. We have since tried to adjust some policies to relieve that but it's – I would – it is absolutely the truth that the vice chair and the chair are by designation more active than the rest a the board.

James Davis: Okay. Let me ask you this question. In regards to – I use the word a class of commissioners. Is it a correct statement in this case that there is a class of commissioners that receive the same figure of $250 a month and that's all the commissioners for the board except the board chairman and the vice chairman?

Jay Nicholson: That's correct.

James Davis: Okay. And durin' the time that Mr. Shull, the mayor, has received his check, that – what I just said is a true statement?

Jay Nicholson: That is correct.

James Davis: Okay. You testified to the fact that the board members by statute come from the cities that you named and the county.

Jay Nicholson: The member entity. That's correct.

James Davis: That's the only place the commissioners can come from. The statute may say public works or whatever but the appointment for those commissioners would be from those cities and the county. Is that correct?

Jay Nicholson: That is correct.

James Davis: All right.

Jay Nicholson: That could be a l-, that elected body can appoint whomever they want to represent them on the Commission.

James Davis: So the individual members of the Commission solely resolve the issue of who gets appointed to the Water and Sewer Commission.

Jay Nicholson: That is correct.

James Davis: If there was a dissolution of that Water and Sewer Commission where it was closed down for some reason, the vote would have to be by the commissioners and by the town and the county involved.

Jay Nicholson: That is correct.

James Davis: So if there's any relationship here between the towns, the County and the Commission.

Jay Nicholson: That is correct. [Inaudible 43:52].

James Davis: [Okay 43:52]. And that's by statute.

Jay Nicholson: That is correct.

James Davis: Is it a fair statement that the Commission hired a law firm in Columbia, Nexsen Pruet, what are called Nexsen Pruet law firm or an accou-, an attorney there named – I believe the last name is Brittingham – that had a – the Commission got an IRS ruling, which is a qualified per diem ruling, which says that the expenses that you have would be excluded from any income because of what was obtained from the IRS. Is that a true statement?

Jay Nicholson: That is...

Courtney Laster: Objection...

Jay Nicholson: ...true.

Courtney Laster: ...as to relevance and also hearsay.

Scott Frick: I'll overrule the objection.

James Davis: Just one second, Mr. Chairman. Do you have knowledge of the attendance record of Mr. Shull at board meetings?

Jay Nicholson: I do.

James Davis: And what is that?

Jay Nicholson: Since de-, for all the called meetings since his appointment in January of 2018, Mr. Shull has perfect attendance with the exception of two meetings.

James Davis: And do you know the reason for those two non-attended...

Jay Nicholson: Those were family-related...

James Davis: Health issues.

Jay Nicholson: ...health issues and fatherly duties, the things that rank higher than all the things that we try to do.

James Davis: That's all I have, Mr. Chairman.

Scott Frick: Any redirect, Ms. Laster?

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

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

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

Jay Nicholson: That is correct.

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

Jay Nicholson: That's correct.

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

Jay Nicholson: Yes.

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

Jay Nicholson: That's correct.

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

Scott Frick: Okay. Thank you, Miss Laster. I think I have a few. Mr. Nicholson, the documents we see in Exhibit 1, it looks like all of them that I've scrolled through here look like they are in the amount of $3,000. Is that correct?

Jay Nicholson: That's correct.

Scott Frick: Okay. And that would seem to be a straightforward application of the $250 per monthly meeting times 12 months. Is...

Jay Nicholson: That...

Scott Frick: ...that right?

Jay Nicholson: That is correct.

Scott Frick: You were just asked by Miss Laster about payments being made even if there was no meeting.

Jay Nicholson: Mm-hm.

Scott Frick: Can you explain why payments are made if a commissioner does not attend the meeting?

Jay Nicholson: The per diem, as we were advised by an investigator at Ethics in 2008...

Scott Frick: Objection as to hearsay.

Jay Nicholson: ...I believe...

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

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

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

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

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

Jay Nicholson: Those two meetings?

Scott Frick: Right.

Jay Nicholson: Yes.

Scott Frick: Okay.

Jay Nicholson: I don't have it in front of me but I'm certain there were. I don't know – well, you know what? That's not fair. I don't know what – those dates off the top of my head. I know what the record is, so if you told me the dates, I could tell you probably based on projects that we've got goin' on the extent of what his travel was.

Scott Frick: Okay. If I understand you correctly, you're not able to tell me the specific months he missed, sitting here right now.

Jay Nicholson: Not right now. I didn't write that down. I just know he missed two.

Scott Frick: I don't have any further questions. Do any of the...

Brandolyn Pinkston: I have...

Scott Frick: ...commissioners...

Brandolyn Pinkston: ...one.

Scott Frick: Please go ahead, Commissioner Pinkston.

Brandolyn Pinkston: Yes. I'm a little confused. I'm sorry. The person that's testifying, please state your name. I'd like to call you by name. Would...

Jay Nicholson: Jay Nicholson.

Brandolyn Pinkston: Mr. Nicholson, are you familiar with the General Services Administration for the State a South Carolina?

Jay Nicholson: Vaguely. I can't say I'm an expert by any stretch.

Brandolyn Pinkston: Okay. And to follow up on a question asked by Attorney Laster, your commissioners were p-, received reimbursement during COVID, when they were attending virtually. Is that correct?

Jay Nicholson: That's correct.

Brandolyn Pinkston: And they were not – well and do you have a record of any lodging for any of the commissioners? Because per diem is based on lodging, meals and travel, so I'm having a little trouble understanding why people were given payment on a monthly basis when they were meeting virtually. Can you explain that, please?

Jay Nicholson: Because in my mind, this is not a – just the one [meeting 52:12].

Brandolyn Pinkston: No. I don't wanna know your mind. I wanna know what did you – what was that based on?

Jay Nicholson: Well, because as the general manager discretion, it is my mind that this is more than just a one-meeting per diem. This is a monthly [inaudible 52:27].

Brandolyn Pinkston: So it wasn't based on a statute or any – this is something that you did.

Jay Nicholson: No. We're – I'm tryin' to follow the statute but it's a nonaccountable plan, so we're not asking for receipts for lodging or travel. We are providing a per diem to cover expenses.

Brandolyn Pinkston: Okay. Expenses virtually? What virtual expense was there?

Jay Nicholson: I can't speak to what each commissioner's virtual expense was.

Brandolyn Pinkston: But they still received the $250.

Jay Nicholson: That's correct.

Brandolyn Pinkston: And so there was no form that listed the breakout of – when [inaudible 53:11] there was a form and you listed where you stayed with receipts, your travel was set by the General Services Administration and your per diem for meals. So do you have an accounting of those, a record or documentation or you just pay the $250, $150?

Jay Nicholson: You're talk – yes. What you're referrin' to is an accountable plan. Thi-, the Commission oper-, is issuing these per diems on an unaccountable plan, which is provided...

Brandolyn Pinkston: Please explain an unaccountable – I believe in accountability, so I'm not familiar with unaccountable.

Jay Nicholson: That – I'm not an IRS expert. I know that tho-, that is available through the IRS as a designation and that's the way we handle this.

Brandolyn Pinkston: And so that designation, under your testimony, in your testimony, that in an unaccountable plan, funds can be allocated whether you attend virtually or in-person.

Jay Nicholson: Well, the virtual meetings were only an emergency protocol but yes. The – on – in an unaccountable plan, we have issued the monthly per diem of $250 for that class of commissioner.

Brandolyn Pinkston: I'm just surprised that the IRS has a provision in that manner and I'll check on that. But Mr. Chair, those are my questions for right now 'cause I'm a little confused as to what's happening with the per diem.

Scott Frick: Thank you, Commissioner Pinkston. Commissioner Holloway, do you have any questions?

A.J. Holloway: Yes. I know we've talked a little bit here about the lack of meeting in person during – for example, during COVID. Do you have with you the information today of when you stopped meeting in person? Say it was March 2020 until – and didn't go back to meeting in person until March of 2021 or anything like that?

Jay Nicholson: I did – if I'd have known this was gonna be about COVID per diem, I would've been more prepared. I do not have that in front of me. I'm sorry.

A.J. Holloway: And I'm not sayin' this is about just COVID per diem. I just thought that would be an easy example...

Jay Nicholson: Yeah.

A.J. Holloway: ...when you have the tax statement from 2020...

Jay Nicholson: I...

A.J. Holloway: ...of receiving $3,000 and – what was that?

Jay Nicholson: I'm sorry. I didn't mean to r-, I – it wasn't every meeting but it was the bulk a the meetings in 2020 and I wanna say that – anything I tell you, I can't confirm but it was not – I don't think it lasted the entire year but I cannot say for certain exactly how many of those were.

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

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

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

Jay Nicholson: Oh.

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

Jay Nicholson: No. We wouldn't – I don't have records of those. I do – I see what you mean, though. We would have records if there was – if it was an official called meeting or a work session or if you had the commensurate number of commissioners there that required the majority type a thing. Anything that would ha-, that would need to be publicly posted, we would certainly have records of and have minutes of. But if it's not an official meeting, I wouldn't have that. Maybe some follow-up correspondence on what the results a those meetings. And if it's specific to a project, we would have project notes and we would have the people that were in attendance but not as a function of tracking the per diem.

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

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

Scott Frick: Please go ahead, Commissioner Pinkston.

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

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

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

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

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

Jay Nicholson: Correct.

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

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

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

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

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

Jay Nicholson: Not...

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

Jay Nicholson: We...

Brandolyn Pinkston: But I wanna know if you spoke with someone from GSA or the Ethics Commission or asked for an opinion from either of those entities?

Jay Nicholson: We did have an opinion from an investigator from the Ethics Commission that advised us to refer to the payment as a per diem. And then we had a legal opinion that advised us on how to handle it from a tax standpoint. So the effort was made to make sure that we were doin' things the right way and the way that would not be viewed as compensation because that is not allowed by law or the statute.

Brandolyn Pinkston: So each commission member received a 1099. Correct?

Jay Nicholson: That's correct.

Brandolyn Pinkston: And as you testified, you left it up to them as to how they handled that. Correct?

Jay Nicholson: That's correct.

Brandolyn Pinkston: Thank you.

James Davis: Follow-up? Or...

Scott Frick: Okay. I'll allow it. Go ahead, please.

James Davis: Would it be fair to say that the contact the Commission made with the Ethics Commission was in the year 2008, 2009, with a Mr. Choate...

Jay Nicholson: Yes.

James Davis: ...on this issue? So they should have the internal records of that particular matter as to the per diem plan.

Jay Nicholson: That's correct. That was an investigation from another complaint about...

James Davis: Okay.

Jay Nicholson: ...the per diem.

James Davis: All right. And the – but last question is this. In regards to the Commissioner's questions about the per diem, the – that was – that per diem issue was reviewed with the tax attorney or CPA to get approval from IRS as to it being a qualified per diem plan that excludes any income.

Jay Nicholson: That is correct.

James Davis: Thank you. Thank you, Mr. Chairman.

Scott Frick: Miss Laster, any follow-up?

Courtney Laster: Commissioner Frick, I think this might be appropriate. There is a complaint in the Commission's files, Mr. Davis is correct, from – it's a complaint from 2008 against the Lexington County Joint Municipal Water and Sewer Commission. I believe that is what they are referring to and I would enter that into the record if Mr. Davis believes it's appropriate.

James Davis: [Inaudible 1:04:03]. Mr. Chairman, may I speak on that matter?

Scott Frick: You wanna speak with Miss Laster?

James Davis: No. Just – I can speak publicly...

Scott Frick: Okay.

James Davis: ...in...

Scott Frick: Go...

James Davis: ...response...

Scott Frick: ...ahead.

James Davis: ...to...

Scott Frick: Go ahead.

James Davis: That particular matter deals with – oh, yeah. That particular matter deals with a matter that was dismissed against the Commission, dealing with authorization of payments and that was the matter dis-, as I read that order, there was a dismissal where whatever was brought against the Commission was dismissed by the Commission, where there was no violation.

Scott Frick: Is that the matter that you've been referring to?

James Davis: No, sir.

Scott Frick: You're – okay. So...

James Davis: No, sir.

Scott Frick: ...your questions have been premised on something that you...

James Davis: That's...

Scott Frick: ...say...

James Davis: ...something...

Scott Frick: ...is a...

James Davis: ...else.

Scott Frick: ...different...

James Davis: Yeah.

Scott Frick: ...a different matter.

James Davis: Yes. Yes, Your Honor. I mean yes, Mr. Chairman. Yes. A different – it is not that order that I've been talkin' about as to the contact between the Joint Water and Sewer Commission at this commission. That [there 1:05:22] was a Mr. Choate, who was employed here in 2008 or '09, dealing with per diem.

Scott Frick: Do you have any response to that, Miss Laster?

Courtney Laster: Other than to say that Mr. Choate was the assigned investigator of record in this case, which is why I think it is what they have been referring to. But if it's not, then that's fine.

Scott Frick: Okay. This is what I would suggest. I think we should take a break and allow the two of you to confer.

James Davis: Okay.

Scott Frick: If you can't come to any sort of agreement, then I will take a look at...

James Davis: Okay.

Scott Frick: ...the complaint and we'll figure out where to go from there. But why don't we take a break so that [you all 1:06:01] can...

James Davis: Okay.

Scott Frick: ...confer.

James Davis: Okay.

Courtney Laster: Thank you.

Scott Frick: All right.

James Davis: Mm-hm.

Scott Frick: Thank you.

Male: Do you ha-, Mr. Chairman, can I s-...

Scott Frick: Commissioner Holloway, do we have you here?

Brandolyn Pinkston: Can you hear me?

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

Female: He should be joining shortly.

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

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

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

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

Scott Frick: Miss Laster, can you give me a sense of what these com-, what types of communications we're talking about here?

Courtney Laster: No, sir. I cannot. As I said, this complaint is from 2008 and so the only public documents that w-, are left from this complaint would be the complaint, the notice of hearing and the disposition.

Scott Frick: Okay.

Courtney Laster: Because it's more than 5 years old, I don't believe the Commission retains any of those things.

Scott Frick: Okay. But as to those specific documents, there's no objectionable language in those particular documents?

Courtney Laster: In this decision and order?

Scott Frick: In the decision and order.

Courtney Laster: Not to me. No, sir.

Scott Frick: Okay. You're just saying that anything broader than the decision and order, you would...

Courtney Laster: Yes...

Scott Frick: ...object...

Courtney Laster: ...sir.

Scott Frick: ...to. But I don't hear you, Mr. Davis, saying you want to ob-, enter into evidence anything else. Is there – do we need to decide that?

James Davis: Your Honor, I'm s-, not – what I'm saying is the – her objections for the other matters that were discussed I think can be made part of the record because there would be internal records of the Commission. Now if you don't have'm, then we can provide if the Court – I mean if the Commission will allow me to pro-, to give those to the Commission and to her, we'll do so, since they now say they don't have those records goin' back more than five years [inaudible 1:09:52].

Scott Frick: Okay. I don't think that I can make any determinations as to whether to admit...

James Davis: Okay.

Scott Frick: ...a document that is not in front of the Commission right now. So I would suggest that if you want to introduce anything else into evidence, I think that would need to be done by some sort of briefing after we are finished here...

James Davis: Okay.

Scott Frick: ...today.

James Davis: Okay.

Scott Frick: I'm not inclined to try to make any ruling on a document that I can't see.

James Davis: Okay.

Scott Frick: So I would – without anything in front of me, I would not allow anything else into the record. But as to the agreed-upon complaint, I would go ahead and enter that into evidence.

Courtney Laster: Okay.

James Davis: All right. [Inaudible 1:10:40].

Jay Nicholson: Mr. Chairman, can I make one comment to that?

Scott Frick: Well, there's no pending question right now. Okay. Now that – what exhibit number is that?

Courtney Laster: That would be C5.

Scott Frick: Okay. That is admitted. Is there a copy of that that can be provided to the commissioners now that that's in the record?

Courtney Laster: Yes, sir.

Scott Frick: Is that something we could do now or...

Courtney Laster: Yes, sir.

Scott Frick: Okay. I'm sorry but I think we just need to wait until we have the documents circulated before proceeding. Commissioners Pinkston and Holloway, we are in the process of emailing this document to you.

Brandolyn Pinkston: Thank you.

Scott Frick: Have the commissioners received the document?

A.J. Holloway: Received it. Thank you.

Brandolyn Pinkston: Mm, yes. Thank you.

Scott Frick: All right. Thank you. Okay. I think we can move ahead with that. That document has now been admitted as C5 and I think it is fair at this point to allow the parties to ask the witness any questions that may arise out of this document.

James Davis: [Inaudible 1:14:57]. Mr...

Scott Frick: Go ahead.

James Davis: ...Chairman.

Scott Frick: Go ahead.

James Davis: Mr. Nicholson, let me show you this. You said the evidence number is C5?

Scott Frick: C5. That's correct.

James Davis: Give you a chance to look at that.

Scott Frick: Hold on one second. Miss Laster, you're the one that introduced this document, right? Is – wasn't this your...

Courtney Laster: I think we just both agreed that it would be admitted given...

Scott Frick: Okay.

Courtney Laster: ...the questioning that has arisen about 2008 communication with the Commission.

Scott Frick: Yeah. If it's your exhibit, I would think you would be entitled to ask the questions first but if you're happy with Mr. Davis [inaudible 1:15:31].

Courtney Laster: Yeah. I am.

Scott Frick: Okay. Please proceed, Mr. Davis.

James Davis: You had a chance to review it or you're still lookin' at it?

Jay Nicholson: I'm still looking at it.

James Davis: Okay.

Jay Nicholson: I'm a slow reader. I'm sorry. Yes.

James Davis: All right. You've read that. Do you have any comments in regards to that document as to the discussions that were held with the Co-, Ethics Commission back in 2008 or 2009?

Courtney Laster: Objection as to hearsay.

Scott Frick: That's sustained. If you can answer the question without repeating a – what someone said to you, you may.

Jay Nicholson: I'm familiar in the context – I was not general manager at this time. I was operations manager. I'm familiar with the fact that it occurred. And then in my capacity as a general manager and CEO, I reviewed the record. And during the investigation, I sent Investigator Hinson all documentation that we have, including this – that was relative to the per diem discussion, including the attorney's opinion in the previous Ethics ruling or dismissal and the advice of Investigator Choate. So I gave all that information to Mr. Hinson at that time.

James Davis: That's the only question I have.

Scott Frick: Miss Laster?

Courtney Laster: I don't have any questions.

Scott Frick: Do any of the other commissioners have any questions?

Brandolyn Pinkston: I have one question and I wanna thank Mr. Nicholson for making reference to an accountable – nonaccountable plan because I think with the accountable plan, receipts are required. But with the nonaccountable plan – and now I understand why a 1099 is issued because that – those funds are taxable. So that becomes income and that becomes an economic interest.

Scott Frick: Do you have any further questions, Commissioner Pinkston?

Brandolyn Pinkston: No. That – I wanted to – him to – Mr. Nicholson to just clarify what I stated, is that – if that's the correct assessment of what I stated.

Jay Nicholson: I'm not qualified as a tax specialist on that. My understanding would be that expenses can be deducted and anything not deducted may become taxable. But that's for a tax specialist to answer how that 1099 is handled. That's my general understanding.

Brandolyn Pinkston: But you do issue a 1099. Correct?

Jay Nicholson: Correct.

Brandolyn Pinkston: And you stated that it's up to the commissioners to deal with that tax issue, whether they report it or pay taxes on that or they submit that on their IRS 1040 or whatever they're submitting.

Jay Nicholson: [Inaudible 1:18:50].

Brandolyn Pinkston: Correct?

Jay Nicholson: That is correct.

Brandolyn Pinkston: Yeah. Mm-hm. So would think, say that that becomes income if it's a nonaccountable?

Jay Nicholson: I...

James Davis: Objection as to the question in regards to the – you've got – you're dealing with a – you need a tax attorney or CPA...

Jay Nicholson: I...

James Davis: ...to answer that question...

Jay Nicholson: Yeah. I...

James Davis: ...clearly.

Jay Nicholson: ...can only – yeah. I can only...

Brandolyn Pinkston: Well, I'm a layperson and I understand it, so – but you move right on.

Scott Frick: Okay. Commissioner Holloway, any questions?

A.J. Holloway: No, sir.

Scott Frick: Let me ask this follow-up, Mr. Nicholson. The amounts in Exhibit 1, that are including in Exhibit 1, those are required to be reported on a statement of economic interests. Correct?

Jay Nicholson: My understanding, yes, by each commissioner. That's correct.

Scott Frick: Okay. I do not have anything further. Thank you for your testimony, Mr. Nicholson.

Jay Nicholson: Thank you. [Inaudible 1:20:00].

Scott Frick: You may sit down.

Jay Nicholson: Okay.

Scott Frick: Miss Laster, do you have any additional witnesses?

Courtney Laster: Commissioner Frick, I do not have any additional witnesses in this matter.

Scott Frick: Thank you. Okay. Mr. Davis, do you have any witnesses?

James Davis: One witness, Mr. Shull.

Scott Frick: Okay, Mr. Shull. Please raise your right hand. Do you swear or affirm that the testimony you're about to give is the truth and nothing but the truth, so help you God?

Lancer Shull: Yes, sir.

Scott Frick: Okay. Please be seated right there and state your full name for the record.

Lancer Shull: Good morning. My name is Lancer Dean Shull.

James Davis: And your present address is what?

Lancer Shull: 533 East Columbia Avenue, Batesburg-Leesville, South Carolina, 29070.

James Davis: How long have you lived there?

Lancer Shull: July 2009.

James Davis: Okay. And you – are you presently the mayor of the Town of Batesburg-Leesville?

Lancer Shull: Yes, sir.

James Davis: And how long have you held that particular position?

Lancer Shull: This would be since December – I was sworn in December 2017.

James Davis: 2017?

Lancer Shull: Yes, sir.

James Davis: All right. And are you presently a member of the Lexington County Joint Water and Sewer Commission?

Lancer Shull: Yes. I am a commissioner.

James Davis: Okay. And how long have you been on that commission?

Lancer Shull: I was – that would be either December or January. It was January 2018 when we took the vote. Yes, sir.

James Davis: Okay. And you've served on that commission since that date?

Lancer Shull: Yeah. There was a brief 7-day period where I was not on there.

James Davis: All right. And your appointment to that commission would've been appointment by vote from the Town Council of Batesburg-Leesville. Is that correct?

Lancer Shull: Yes, sir.

James Davis: Okay. You heard the testimony today through Mr. C-, Hinson about the votes that were taken in January of 2020...

Lancer Shull: Mm-hm.

James Davis: ...and the vote in December of 2023. Is that correct?

Lancer Shull: Mm-hm.

James Davis: Okay. And the...

Lancer Shull: Yes, sir.

James Davis: ...way the vote was taken as to the number of votes and the count was accurate?

Lancer Shull: Yes, sir.

James Davis: Okay. And you do indicate or would be testifyin' that you did vote as those minutes reflect. Is that correct?

Lancer Shull: Absolutely.

James Davis: Okay. And why did you vote in those particular matters and the issue before you at that time was reappointment – the issue before you on that vote was the reappointment by you to the board, the Joint Water and Sewer Commission Board. Is that correct?

Lancer Shull: That's correct, sir.

James Davis: That's the specific language in the motion that was made, the reappointment to the Joint Water and Sewer Commission Board, without usin' the exact words but essence of the motion was reappointment.

Lancer Shull: That was – I believe that was in the January 21, yes.

James Davis: Okay. And...

Lancer Shull: Twenty...

James Davis: ...2013?

Lancer Shull: 2020.

James Davis: 2013 was reappointment.

Lancer Shull: 2020 – January 21, 2020, was a reappointment...

James Davis: Yep.

Lancer Shull: ...motion. But either way, the result is the same.

James Davis: Okay. My point is, the actual matter before the Town Council at the time was the reappointment to the Commission Board on the vote.

Lancer Shull: Yeah. It would be a reappointment because I was appointed in January 2018.

James Davis: Okay.

Lancer Shull: So anything after that would be a reappointment.

James Davis: Why did you vote on those matters?

Courtney Laster: Objection as to relevance.

Scott Frick: I'll overrule the objection.

Lancer Shull: Okay. When I became mayor of Batesburg-Leesville, the Town of Batesburg-Leesville was under a DHEC Consent Order to find a new source of water, so that is my number one objective in being mayor. And so in taking that on, we looked at – we did a study. We looked at several different directions to go to find a new source of water for our town. Being appointed to Joint Municipal first year mayor, I took the appointment. I had no idea really what the Commission was about or that it – we would end up being in a contract with the Commission for water for the Town of Batesburg-Leesville. So I went to serve. After being on there for some time, after doing a study where we looked at several different methods of removing this DHEC consent order, the Council voted that we would go with Joint Municipal Water and Sewer Commission. So that was my number one drive. Now I have – not everybody votes for this. Mr. Cain, who notarized this first complaint and filed the second complaint, who also ran against me for mayor, voted no on almost everything to do with this water project. It's incredibly important and I would vote it again and again and again to put myself on there because it's the most important thing to this town, was to get rid of this DHEC Consent Order. So I had no idea – when Mr. Cain filed this complaint against me, he sent the same complaint to SLED that he sent to you guys. SLED pulled me in immediately and interviewed me and...

Courtney Laster: Mr...

Lancer Shull: ...then...

Courtney Laster: ...Chair...

Lancer Shull: ...they...

Courtney Laster: ...I...

Lancer Shull: ...they...

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

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

Courtney Laster: ...as to relevance.

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

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

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

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

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

Lancer Shull: Absolutely.

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

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

James Davis: All right.

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

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

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

Scott Frick: Yeah. That objection is sustained.

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

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

James Davis: Okay.

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

James Davis: Okay.

Scott Frick: ...that question.

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

Lancer Shull: No, sir.

James Davis: Have you voted for any public body to use your business or yourself in a capacity for that public body?

Lancer Shull: No, sir.

James Davis: Okay. All right. Have you served on other public bodies? I [Inaudible 1:28:37] just a question. Have you served on other public bodies?

Lancer Shull: Well, since moving to Batesburg-Leesville in 2009, I've served on the Rotary Club. I was president two times. I've served on the – for Lexington School Board District 3. I've served on the Accommodations Tax Board for Lexington County. I have served and I currently serve on the Municipal Association of South Carolina's Board and have – and am actually sitting in the executive committee at this time. I'm serving on both of those.

James Davis: [Inaudible 1:29:13].

Lancer Shull: And the Chamber of Commerce, I've served on that board and I deliver a report to them monthly. I've served on there since 2011 and chaired those meetings as well. I've served my community thoroughly since July 2009, moving to the State of South Carolina.

James Davis: All right. Have you accepted a reduced dollar figure as mayor of your town?

Lancer Shull: There was a period in time where yes, my council members wanted $400 and I disagreed with them and so they set – the vote was mine would be $200 and they would make $400.

James Davis: Okay. What's been stipulated to is that you have attended all of the Joint Water and Sewer Commission board meetings except two...

Lancer Shull: Mm-hm.

James Davis: ...since 2018. And the reason for the nonattendance on those two was what reason?

Lancer Shull: Well, the first one was my son had a concert. He's a clarinetist and so he had his concert in – when he – his junior year. And the second one was recently as my sister is...

James Davis: You had a health problem. She had a health problem. All right. Otherwise, you've been in attendance at the board meetings...

Lancer Shull: Yes, sir.

James Davis: ...and have been – have participated in those board meetings.

Lancer Shull: Yes, sir. Before meetings, after meetings, during meetings. All through the month. Yes, sir.

James Davis: Presently, how much time are you spending in regard, do you think, on issues that are before the Commission on a weekly or monthly basis?

Lancer Shull: Probably 3 to 4 hours a week. During the height of negotiations on the water contract with Joint Municipal, I would spend upwards of 15 hours per week driving to various – either meeting with architects, meeting with engineers, meeting with Mr. Nicholson, meeting with other mayors. So there was a lot of time spent, sir.

James Davis: Okay. All right. Did Mr. Hinson interview you on these?

Lancer Shull: No. No, sir.

James Davis: Okay. Mr. Chairman, just give me a second here. Thank you. Answer any questions that Miss Laster may have.

Scott Frick: Miss Laster.

Courtney Laster: Thank you. Mr. Shull, you would agree that you are paid $250 per month.

Lancer Shull: Yes, ma'am.

Courtney Laster: Okay. And you would agree that you are paid that regardless of whether you attend the meeting.

Lancer Shull: Yeah. My understanding is as it was described, that it was a per diem to tr-, not just for meetings but travels anywhere during the month.

Courtney Laster: Okay.

Lancer Shull: Yeah.

Courtney Laster: And I understood your testimony to be and the stipulations to reflect that when a meeting has been held by the Commission, you have been in attendance in all but two of those meetings.

Lancer Shull: Yes, ma'am.

Courtney Laster: But you would also agree – and the stipulations would reflect – that the Commission does not hold meetings every month.

Lancer Shull: Yeah. Not – yeah. For sure. There's been months when – I don't know which ones but there have been months when we didn't have a meeting but still business is conducted by commissioners.

Courtney Laster: Okay. So for instance, if I told you that the stipulations agreed to by myself and your counsel showed that in 2020, the Commission only met six times?

Lancer Shull: I don't know.

Courtney Laster: Okay.

Lancer Shull: Maybe. In person.

Courtney Laster: Okay.

Lancer Shull: During pandemic?

Courtney Laster: Yes.

Lancer Shull: In person, probably. But we still conducted business.

Courtney Laster: Okay.

Lancer Shull: Yeah.

Courtney Laster: And you don't dispute that you voted in each of these instances.

Lancer Shull: No, ma'am. I had to be on that commission.

Courtney Laster: Okay. Do you consider what you do for the Commission to be a service?

Lancer Shull: Certainly. I would do it for free.

Courtney Laster: Okay. Are you doing it for free?

Lancer Shull: Currently, yes.

Courtney Laster: Okay. But you didn't during 2018 to 2023.

Lancer Shull: Yeah. No. I mean, it was a per diem that I understood that there was no issue with. And when SLED threw it out, I understood that – I just assumed that there was no problem.

Courtney Laster: Okay.

Scott Frick: I'm sorry. Could you clarify that answer. I heard a yeah and I heard a no in there. If you could just please answer that question again.

James Davis. What was the [question 1:33:58]?

Lancer Shull: Yeah. Give me the question again.

Courtney Laster: I asked if you were doing it for free and you said you currently are. And then...

Lancer Shull: Yes.

Courtney Laster: ...the second question was but you did not do it for free from 2018 to 2023. I was looking for a clarification as to whether you were paid for those years.

Lancer Shull: Yeah. For – yeah. As far as I know, yes. Yeah.

Courtney Laster: Okay. You testified that you spend roughly 15 hours per week. Is that what you said?

Lancer Shull: Not currently but during the height of the water project, yes, ma'am. Probably that much.

Courtney Laster: Okay.

Lancer Shull: Maybe a little less, a little more. I do not have an accounting of that.

Courtney Laster: Okay.

Lancer Shull: It wasn't required.

Courtney Laster: And if you spent 0 hours per week, what would your monthly payment have been?

Lancer Shull: I'm assuming it is -- the per diem is the per diem. That's the way that the -- it's at their discretion. I don't -- I didn't ask for it. I didn't vote for it.

Courtney Laster: Okay. Thank you, Mr. Shull.

Lancer Shull: Thank you.

Scott Frick: Any redirect?

James Davis: No, Your Honor. No, Mr. Chairman.

Scott Frick: Mr. Shull, thank you for being here today.

Lancer Shull: You're welcome.

Scott Frick: Let me ask you a question I asked Investigator Hinson early on. At the first meeting, the first vote, I should say. Let me make sure I've got the date correct here. The January 13, 2020, meeting.

Lancer Shull: Yes, sir.

Scott Frick: I wanna understand how your terms worked at that point. Was your term coming to an end at that point or were you being – was your – were you being replaced by someone else, Mr. Cain I think, to fill out the remainder of your term?

Lancer Shull: No. What happens is there's an election – the election cycle's every two years for Batesburg-Leesville. We're on a odd year cycle, so on the odd years, you have the odd districts and the mayor being elected in the election. And then in two more years, you have the evens. That way, you don't have a full swap-out of your council at any given time. So with new potential council members coming on every two years, those appointments are voted on every two years. So there is an opportunity for someone else to be voted onto the Commission or any of the other committees that we have.

Scott Frick: Okay. So...

Lancer Shull: Yeah.

Scott Frick: ...in that January 13 meeting, you were voting for the term that began in early 2020 to 2022? Is that correct?

Lancer Shull: Yes, sir.

Scott Frick: Okay. That – the vote at the first meeting, were you – let me see if I understand this correctly. You voted against Mr. Cain.

Lancer Shull: Sh-, yes, sir.

Scott Frick: Is that the only vote you took at that particular meeting?

Lancer Shull: To my recollection – you mean – I think we just voted one time at that meeting for [inaudible 1:37:07].

Scott Frick: That's what I was [inaudible 1:37:07].

Lancer Shull: Yes, sir. Yes...

Scott Frick: So...

Lancer Shull: ...sir.

Scott Frick: ...at the January 13, 2020, meeting, you had one vote and that was against Mr. Cain.

Lancer Shull: Yes, sir.

Scott Frick: Is that right? Okay. [Inaudible 1:37:17].

Lancer Shull: And he voted for himself.

Scott Frick: I understand that.

Lancer Shull: Correct.

Scott Frick: You took no other...

Lancer Shull: He...

Scott Frick: ...votes at that meeting.

Lancer Shull: No other votes for...

Scott Frick: At that particular meeting on...

Lancer Shull: You mean the other business on the agenda?

Scott Frick: No. For this position on the Joint Water and Sewer Commission.

Lancer Shull: No, sir. Because the vote passed. Yeah. Yes, sir.

Scott Frick: All right. Any questions by Commissioners Pinkston or Holloway?

Brandolyn Pinkston: I have one for Mr. Shull. What – why – I wanna understand why did DHEC place the...

Lancer Shull: Consent...

Brandolyn Pinkston: ...issue...

Lancer Shull: ...Order.

Brandolyn Pinkston: ...with your...

Lancer Shull: Yes.

Brandolyn Pinkston: I can't hear – say – please say that again, please?

Lancer Shull: Yes, ma'am. It's a Consent Order.

Brandolyn Pinkston: Mm-hm.

Lancer Shull: Yes, ma'am. It was placed on in 2012 because there was a capacity issue. At that time, we also provided and made the water for Ridge Spring and we were having a capacity issue with addition of several large farms that moved into the area of Ridge Spring, so we were put under a DHEC Consent Order – again, this is 2012, before my time as mayor – to get a new source of water besides – right now, we process water out of a reservoir, a town reservoir. And that's what we've done since 80-some years as long as that plant's been there, our current water plant.

Brandolyn Pinkston: And you have a local Batesburg-Leesville water source. Correct?

Lancer Shull: Yes, ma'am.

Brandolyn Pinkston: Okay. And then how many complaints come to you, whether citizen complaints or DHEC or this was a random visit to your water source and they saw that there was something that was insufficient there or unsafe?

Lancer Shull: I'm not – because this was before my time as mayor, I'm not 100 percent sure how the DHEC consent order but I think there were more than one violation. Most of it had to do s-, part of it was capacity and the other part of it is the water plant looks like a 1941 submarine movie.

Brandolyn Pinkston: Mm-hm.

Lancer Shull: It's just – it's time is – was coming to an end.

Brandolyn Pinkston: Okay. Thank you.

Lancer Shull: Yes, ma'am.

Scott Frick: Mr. Holloway?

A.J. Holloway: No questions from me. Thank you.

Scott Frick: All right. just one more follow-up from me.

Lancer Shull: Yes, sir.

Scott Frick: The Exhibit 1 documents there, the $3,000 that we've seen...

Lancer Shull: Yes, sir.

Scott Frick: ...did you report that in your statement of economic interests?

Lancer Shull: Yes, sir. I did.

Scott Frick: Okay.

Lancer Shull: Yeah.

Scott Frick: Nothing further from me.

Lancer Shull: Mm-hm.

Scott Frick: Thank you very much for being here, Mr. Shull.

Lancer Shull: Thank you, Commission. I appreciate it.

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

James Davis: Yes, Your Honor.

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

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

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

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

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

Scott Frick: Thank you, Miss Laster.

Courtney Laster: Thank you.

Scott Frick: Mr. Davis.

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

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

Reimbursement of expenses is not an economic gain and that's what per diem is, so it's not really a direct issue as to economic gain situation. The other matter is this. I re-, we could – we have researched – I submit to you I don't know of any case in South Carolina that says that per diem is an economic gain. I submit to you I don't know of a case that says that. But we have looked in every state in the United States that has a ethics statute. We find no case law, no advisory opinion, saying that per diem is a economic gain. And we have three states, Kentucky, Indiana and Kansas, that have a statute similar to us. There were no cases there. This is based on research that I've looked at and we – obviously, mistakes can be made. But we find nothing that says by law, that a per diem is a economic gain, I submit to you. Finally, they – the Commission has exclusions from refusal. One of'm is class – a larger class. Y'all have a case that y'all decided years ago, dealing with the school board. There were people on the County Council that either on the school board or the spouses were. And they – what the Commission said was that what those councilmen were getting or their spouses were getting was nor-, what all of those people in that class. Where I would disagree with Miss Laster is the class is not the Town of Batesburg Council.

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

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

Courtney Laster: Thank you.

James Davis: Thank you.

/es

STATE OF SOUTH CAROLINA

BEFORE THE STATE ETHICS COMMISSION

COUNTY OF RICHLAND

IN THE MATTER OF:
Complaints C2021-078/C2023-12
Shirley Etheredge Mitchell
Stephen D. Cain,
Complainants,

Lancer Shull,
Respondent.

July 17, 2025 Ethics Hearing

Commissioners in Attendance:
F. Xavier Starkes, Appellate Panel Chair
Neal D. Truslow
Bryant S. Caldwell (Appearing via Zoom)
Helen Munnerlyn
Sara Parrish (Appearing via Zoom)
Mary Hunter B. Tomlinson (Appearing via Zoom)
Matthew N. Tyler (Appearing via Zoom)

Representing the Respondent:
James Randall Davis, Esquire

Representing the Commission:
Courtney M. Laster, Esquire

TRANSCRIPT

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

Meghan Dayson: Yes, sir.

F. Xavier Starkes: Okay.

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

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

Male: Are we good?

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

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

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

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

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

James Davis: Yes, Mr. Chairman.

Courney Laster: Yes, sir.

F. Xavier Starkes: Please proceed.

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

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

We appealed that decision with a notice of appeal, filed a brief on that and so we're before you today on that appeal. The mayor's position is this. The town – the c-, the Water and Sewer Commission has a per diem payment that's made to the members on the board or the commission of $250 per month and it's been that way for years. It's an administrative decision that was made there at the Water and Sewer Commission. We do not believe that that per diem is an economic interest and our belief is this. Ethics statutes originally were based on common law in this state before the legislature formed statutes but I think our statutes – ethics statutes follow the common law and the common law deals with a public official should not be voting on something that involves his private interest, like you were – if he were – if the commission was buying a piece of property he has interest, they shouldn't be voting. Or if he had a business where they were gonna – business was gonna do something for the commission, he shouldn't – should not be voting. Or if he personally was gonna do something with the business – with a business, you shouldn't vote but that deals with public officials not being in a conflict where something would influence his job and his duties to the public.

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

F. Xavier Starkes: Mr. Davis, may I ask you a question?

James Davis: Sure.

F. Xavier Starkes: The way I read the statute, it talks about an economic interest, not a private interest.

James Davis: Yes.

F. Xavier Starkes: How do you distinguish between the two?

James Davis: I distinguish the – it says it – did you say economic interest?

F. Xavier Starkes: Yes.

James Davis: The statute does...

F. Xavier Starkes: Yes, sir.

James Davis: ...say economic interest. When you look – your s-, ethics statute, my belief is obviously it was passed by the legislature. The ethics statutes in this state, in my opinion, were based on what the common law was and the common law was the public official could not vote on something that involved his private interest, not his public interest, which was to be on this board to help his town. That's a – that's where I draw the distinction. I also draw the distinction – on your statute it says it has to be an economic benefit. To me, that means there has to be something in his pocket that's money for him. There was a per diem but a per diem by legal definition is not money or compensation. It is reimbursement for expenses and also has been defined as a daily figure to him for reimbursement for work – for his time he spends with the agency, so we – I do not think that, under the statute, it has to be an economic benefit and I do not think – it is not an economic benefit because it wa-, by the very definition of per diem. Furthermore, our statute passed by the very same legislature that passed your statute said in our statute you can't get compensation. They protected the Ethics Commission. They said you can't get compensation but in the same sentence they say, "But you can get a per diem mileage and subsistence pay." To me, that means yeah, you can – the – no compensation. That's what our law is supposed to be for public officials but you can get a per diem. So even when you look at our st-, our separate statute, it allows that per diem.

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

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

Town that serve on that board and they – and nobody can dissolve that Water and Sewer Commission unless there is...

Helen Munnerlyn: I've got a question.

James Davis: This...

Helen Munnerlyn I'm sorry. I just have a quick question.

James Davis: Sure.

Helen Munnerlyn: Do I need to hit my thing?

Meghan Dayson: It's on.

F. Xavier Starkes: It's on.

Helen Munnerlyn: Okay.

Meghan Dayson: It's on. Your light's on.

Helen Munnerlyn: My question is this. Does the mayor actually live in the service area of this Water and Sewer Commission?

James Davis: He li-...

Helen Munnerlyn: Does he not? Does he or does he not? I – see, I'm thinking if you're gonna be benefitting from the actions of this Water and Sewer and you live in that particular area where you'll benefit, you may actually have a personal benefit in this action and so I just wanna know...

Lancer Shull: Would you like me to...

Helen Munnerlyn: ...if...

Lancer Shull: ...answer that, ma'am?

Helen Munnerlyn: Yes. Uh-huh.

Lancer Shull: Okay. We have our own water utility and we have our own [inaudible 13:59].

Courney Laster: Commissioner Starkes.

F. Xavier Starkes: Hold on. Hold on a sec. Yes?

Courney Laster: I have an objection to additional testimony being brought in. At this point, it's just an appellate argument on the record.

Helen Munnerlyn: Okay.

F. Xavier Starkes: That's sustained. If Mr. Davis can answer the question, that's fine. If not, we can proceed.

James Davis: Would you say the question again?

Helen Munnerlyn: I just wanted to know if he lives in that service area for the Water and Sewer district. That's all.

James Davis: The water – let me answer. The Water and Sewer district serves – is represented by entities in the c-, inside the boundaries of the County of Lexington. Batesburg-Leesville...

Female: Okay.

James Davis: ...is inside that boundary and he's the mayor of Batesburg-Leesville. He has the...

Female: [Inaudible 14:36].

James Davis: This...

Helen Munnerlyn: Okay.

James Davis: ...is my answer.

Helen Munnerlyn: Okay. Thanks.

Lancer Shull: I don't.

James Davis: Don't what?

Lancer Shull: I don't live in the [inaudible 14:41].

Male: Was that a yes?

Lancer Shull: I do not pay the Joint Municipal [inaudible 14:43].

Male: [Inaudible 14:43].

F. Xavier Starkes: Hold on. Hold on a second, Mr. Shull.

James Davis: All right. Okay. I'm confused on the question, I'll be honest. Is – if you're saying that – is the – how is he personally involved? He's been personally involved because he's been elected mayor of the Town of Batesburg-Leesville.

Helen Munnerlyn: No. I just wanted to know if he gets his water from the s-...

James Davis: Oh, I...

Helen Munnerlyn: ...this...

James Davis: ...see.

Helen Munnerlyn: ...entity.

James Davis: From the...

Helen Munnerlyn: That's all.

James Davis: I don't – you do not. You did not.

Helen Munnerlyn: So yeah.

James Davis: No.

Helen Munnerlyn: Okay.

James Davis: No.

Helen Munnerlyn: Thank you.

James Davis: Okay.

F. Xavier Starkes: How are we on time?

James Davis: Time?

Meghan Dayson: If this – 10 minutes has been allotted but if you request, he can give – you are free to give him additional time just to wrap [up 15:22].

F. Xavier Starkes: Mr. Davis, please proceed.

James Davis: Okay. Okay. I was on the issue of...

Female: I just wanted [inaudible 15:30].

James Davis: ...the exception to the alleged violation dealing with the agencies being interrelated. Again, I think where I was is that both of them are governmental entities. The County and the Town appoints the board members or commission members of the Water and Sewer Commission and do so and serve based on the fact that they are appointed by the County and the Town and that the Water and Sewer Commission only – can only be dissolved based on the commission voting and the towns and county involved to dissolve the agency, so they're interrelated and we think based on your own cases – the cases that I've read, it indicates that because of that, they're not independent entities. They are one and the same and you can't have a conflict when it's – when the entity is treated, for y'all's purposes on your exception as one entity, so that he could vote on matters involving that entity, being the Water and Sewer Commission.

F. Xavier Starkes: Thank you.

James Davis: If I'm – if I can have one more minute, I will be finished.

F. Xavier Starkes: Yes, sir. Please proceed.

James Davis: The fi-, my final thought is this. When you're a public official, one of the most important things that you have a right to do is to vote. Here he voted because he's the mayor and his town needed some help that this agency could provide. And what is the counterargument to that, why he shouldn't vote? It is because you have a per diem, which is not income, by what we say for the various reasons I've stated where it's not income. It's an expense and you're talking about $12.50 per day for 250 for 30 days, what is more important here in regards to what we're trying to do. The second thing is this. If this is a problem, why has the legislature not repealed our statute and said, "You can't have a per diem"? They haven't done that. They've said you can't have compensation but you can have a per diem. They haven't changed the law because of our ethics statute. The ethics statute deals with what it deals with but they haven't changed it, so courts look at – looking at what the legislature intended to do when they created these laws and again, it's been on the books for some time. The last thing is on the precedent situation, you look for guidance as to what's happened before. And I know what we had found on guidance, that it doesn't seem positive that the per diem is an economic interest or an economic benefit. Thank you for your time. I appreciate your service to the commission.

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

Courtney Laster: Thank you. Members of the Commission, if I could just back up just a little bit and go over some of the basic facts. So it is – the respondent does serve as mayor of the Town of Batesburg-Leesville. He also serves on the Water and Sewer Commission, as opposing counsel stating. In service of that position, he receives $250 per month. They all do, excepting the chairman, who I believe ser-, receives a little bit more. Respondent started serving on the Water and Sewer Commission in 2018. Using basic math, we know that there are 72 months between 2018 and 2023, and based on the stipulations entered into by the parties prior to the hearing, we know that respondent attended a Water and Sewer Commission meeting in 44 of those 72 months but he was paid all of the 72 months, $250. I think it's undisputed about the votes he took and the failures to provide a written statement of recusal January 13, 2020, January 21, 2020, and December 11, 2023. I'd also like to point out that the December 11, 2023, vote occurred after probable cause was found in the first complaint and after a notice of hearing had been issued. So those are kind of the basic facts. I agree with respondent that a public official should not vote on matters in which they have a personal economic interest. However, I think where we disagree is whether this vote to appoint himself to a board where he gets $3,000 a year constitutes an economic interest.

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

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

F. Xavier Starkes: Miss Laster?

Courtney Laster: Yes.

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

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

F. Xavier Starkes: Okay. Thank you.

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

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

So in sum, the commission staff is asking that the appellate panel find the respondent in violation of each count outlined in the notice of hearing. Staff would urge the panel to consider the facts of this case carefully with specific attention to the fact that the respondent took the third vote after a finding of probable cause and after issuance of a notice of hearing in the first matter and when asked why he voted, he said, "I had to be on that commission." That's on page 74. It's clear that what we have here is another public official who believes that he is the only one capable enough to do a specific task and not only is that demonstrably false because time and time again, we see that this kind of thinking leads to precisely why we are here today, which is public officials acting in contravention of the Ethics Act because of their own ego. And in this instance, that happens to be accompanied by a $3,000 payment a year for a total of $18,000 since respondent began serving on the Water and Sewer Commission. The motivation, which was raised a few moments ago, is really irrelevant, although it is interesting in this case, when there is money attached. Staff is asking that because this appellate panel can review the record anew – you are not bound to any deference to the panel below – staff is asking that appellate – the appellate panel increase the respondent's civil penalties to the maximum of $2,000 per count for a $6,000 total fine and an administrative fee. Staff has also put in its brief a request that opposing parties be permitted to submit competing orders on some kind of timeline that is mutually agreeable both to this panel and to the parties. Thank you.

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

Courtney Laster: Sure.

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

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

F. Xavier Starkes: All right. Thank you.

Sara Parrish: May I ask a clarifying question?

F. Xavier Starkes: Sure.

Sara Parrish: Would that position change if it was purely for reimbursement for costs of service versus receiving the money whether he was there or not? Do we tip the scale into economic interest because he's getting the money no matter what?

Courtney Laster: Yes. I believe so. I think...

Sara Parrish: Okay.

Courtney Laster: ...because there's not – because we know, based on the evidence – the testimony received at the panel hearing that even when there's no meeting attendance, even when there's no work done, this money is received.

Sara Parrish: Okay.

Courtney Laster: Yes.

Sara Parrish: Thank you.

F. Xavier Starkes: Any additional questions from commissioners?

Neal Truslow: I have one.

F. Xavier Starkes: Sure.

Neal Truslow: Good morning.

Courtney Laster: Good morning.

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

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

Neal Truslow: Thank you.

Courtney Laster: Thank you, Commissioner Truslow. Staff's position on that is that the incidental nature of the payment must be in relation to the position that is making the decision to get the payment. So of course it is incidental to the Joint Water and Sewer commissioners but it is not incidental to all the members of Town Council because not all the members of Town Council receive the payment.

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

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

Neal Truslow: Okay.

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

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

Courtney Laster: Certainly.

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

James Davis: I...

Neal Truslow: ...you.

James Davis: ...I've – if I've got five minutes, I'm gonna respond to various things if I may.

Neal Truslow: You gotta ask him for the time. I don't keep – I'm not the timekeeper.

James Davis: Mr. Chairman...

F. Xavier Starkes: Yes. [Inaudible 34:16]...

James Davis: ...we got five...

F. Xavier Starkes: ...for...

James Davis: ...minutes?

F. Xavier Starkes: ...rebuttal – you do have five minutes...

James Davis: Yes...

F. Xavier Starkes: ...for...

James Davis: ...sir.

F. Xavier Starkes: ...rebuttal. [Yes 34:19].

James Davis: Thank you. I'm hearing from the comi-, from the counsel from the commission, this man – the mayor here has served on the town – as mayor of that town, taken a reduced pay as mayor. He's been involved with the school district, his chamber of commerce, his civic club. He's not in it for the 250. And a lot of public officials – and I've been one myself. I was on a board for nine years. We serve and we serve and we don't get paid. Here, he's looking for – what he's entitled to is what the statute of this legislature gave to him and everybody who came on that Water and Sewer Commission and that is that per diem. And when you look at – when asked – Mr. Chairman, you asked the question, "What is a per diem?" That per – the stat-, the – when you look at the legal definition in Black's Law Dictionary, it say – one says it's a payment per day to take care of what you're doing timewise. Another definition is actual reimbursement. Look at what the legislature did. They said, "No compensa-," our statute says, "No compensation." In the same sentence, it says – it says that. Then it says, "However, you get a per diem, mileage, and subsistence pay."

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

F. Xavier Starkes: Ms. Laster.

Courtney Laster: Thank you.

F. Xavier Starkes: Five minutes, please.

Courtney Laster: Thank you, commissioners. Again, motivation is interesting but it's not necessary for the analysis of 700. And again, what he's entitled to is not the issue. It's how he came to receive it. A public official cannot appoint themselves to a position where $3,000 accompanies the position. Opposing counsel says per diem is payment for what you're doing per day but we know in this case, based on the testimony received at the hearing, it's also given for what you're not doing in a day. It's given if you don't do anything. And as to the 10 states that say you can pay $250, staff's position is not that they cannot receive $250 and it's not that they cannot be paid the $250 on this secondary board, the Joint Water and Sewer Commission. Staff's position is that the public official who serves on that board cannot take part in appointing himself to the board. That is a clear violation of 8-13-700 in p-, staff's opinion. Thank you.

F. Xavier Starkes: Any questions from any other commissioners? Thank you. Mr. Davis.

James Davis: Thank you, Mr. Chairman.

F. Xavier Starkes: Miss Laster.

Courtney Laster: Thank you.

F. Xavier Starkes: Thank you again for your arguments and your presentation today. We'll take the matter under advisement and we'll issue an order within the next 60 days.

Male: Do you wanna...

Courtney Laster: Thank you so much.

Male: Do you wanna talk to them about [inaudible 39:00]...

Matt Tyler: Mr. Chairman.

Male: ...timeline.

Male: I'm not sure.

F. Xavier Starkes: Yes.

Matt Tyler: This is Matt Tyler. Am I to understand that Ms. Laster, she had proposed that competing orders be submitted? Is that what we're going to entertain?

F. Xavier Starkes: Yes. I think that's correct.

Meghan Dayson: I guess we would need to understand how much time did both parties need to submit those competing orders.

Male: Thirty.

Female: [Okay 39:23].

James Davis: Thirty days.

Courtney Laster: Thirty days.

F. Xavier Starkes: So you'll get orders to the commission within 30 days.

Courtney Laster: Yes...

F. Xavier Starkes: Okay.

Courtney Laster: ...sir.

James Davis: Yes sir.

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

Courtney Laster: Thank you.

/es

STATE OF SOUTH CAROLINA	)	BEFORE THE STATE ETHICS COMMISSION
COUNTY OF RICHLAND	)	
IN THE MATTER OF:	)	
Complaint C2021-078	)	**BRIEF OF RESPONDENT**
Shirley Etheredge Mitchell Complainant.	)	
Lancer Shull Respondent,	)	

Statement of Facts

The Joint Water and Sewer Commission (hereinafter "the Joint Commission") is comprised of representatives from towns in the County of Lexington and also a representative of the County of Lexington. The elected county and town governing bodies appoint their own representative from among their own elected officials to the Joint Commission.

Each Commissioner receives a *per diem* ($250.00 per month) to reimburse them for expenses incurred while serving on the Joint Commission.

Lancer Shull is the mayor of the Town of Batesburg-Leesville. He was appointed to be the Commissioner for Batesburg-Leesville by vote of Town Council. He participated in the vote for his appointment to the Joint Commission.

Discussion

I. Receipt of a Per Diem Pursuant to State Law Is Not An "Economic Interest" and Therefore Not a Violation of Section 8-13-700 of the South Carolina Code.

Section 8-13-700, provides, in part:

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

> (B) No public official, public member, or public employee may make, participate in making, or in any way attempt to use his office, membership, or employment to influence a governmental decision in which he, a family member, an individual with whom he is associated, or a business with which he is associated has an ***economic interest...*** S.C. Code Ann. § 8-13-700 (2023). S.C. Code Ann. § 8-13-700 (2023). (emphasis added)

> "Economic Interest" is defined by section 8-13-100(11)(a) as:

> an interest distinct from that of the general public ***in a purchase, sale, lease, contract, option, or other transaction or arrangement involving property or services*** in which a public official, public member, or public employee may gain an ***economic benefit*** of fifty dollars or more." S.C. Code Ann. § 8-13-100(11)(a) (2023).

A ***per diem*** is not considered to be "compensation" for services rendered. Section 8-13-60 of the South Carolina Code allows for the payment of a ***per diem*** to Commissioners, providing:

> ***No commissioner of a joint system shall receive any compensation solely for the performance of duties as a commissioner***, but each commissioner may be paid per diem, mileage, and subsistence expenses, as provided by law for state boards, committees, and commissions, incurred while engaged in the performance of such duties." S.C. Code Ann. § 8-13-60(B) (2023).

"According to the doctrine of *noscitur a sociis*, the meaning of particular terms in a statute may be ascertained by reference to words associated with them in the statute... We have previously stated that '[t]he Court may not, in order to give affect to particular words, virtually destroy the meaning of the entire context; that is, give the particular words a significance which would be clearly repugnant to the statute, looked at as a whole, and destructive of its obvious intent." Southern Mut. Church Ins. Co. v. South Carolina Windstorm and Hail Underwriting Assoc., 306 S.C. 339, 342, 412 S.E.2d 377 (S.C. 1991).

The phrase "per diem" has two distinct means, one of which relates to reimbursement for expenses. "Per diem," according to BLACK'S LAW DICTIONARY, means: "1. A monetary daily allowance, usu. to cover expenses. 2. A daily fee." BLACK'S LAW DICTIONARY 523 (2nd Pocket Ed. 2001)

The "new" 1991 Ethics Act "clearly states the legislative intent is to amend the 'old' Act rather than to repeal it." State v. Thrift, 312 S.C. 282, 440 S.E.2d 341, 1994 S.C. LEXIS 25 at *38-39 (S.C. Jan. 17, 1994). Other states have similarly held that their version of the Ethics Act simply codifies common law, and is not in derogation of it. *See* Lexin v. Superior Court, 47 Cal. 4th 1050, 1072, 222 P.3d 214, 228, 103 Cal. Rptr. 3d 767, 784 (Ca. 2010) (the statute "codifies the long-standing common law rule that barred public officials from being personally financially interested in the contracts they formed in their official capacities.") The California Act and the South Carolina Act have similar purposes. Thrift, 1994 S.C. LEXIS 25 at *40 ("the purposes of the Act include the fostering of public trust and confidence in government, and the promotion of the integrity of government through openness."); Lexin, 222 P.3d at 229 ("The evil to be thwarted by section 1090 is easily identified: If a public official is pulled in one direction by his financial interest and in another direction by his official duties, his judgment cannot and should not be trusted, even if he attempts impartiality."). *See, e.g* 63C Am.Jur.2d Public Officers and Employees § 262 (2018)("Furthermore, the view has been followed that any interest which a public officer acquires which is adverse to those of the public, without a full disclosure, is a betrayal of trust and a breach of confidence.")

"[A] statute is not to be construed in derogation of common law rights if another interpretation is reasonable." Doe v. Marion, 361 S.C. 463, 473, 605 S.E.2d 556 (S.C. 2004). In general, under the common law:

> A public official may not use his official power to further his own interest and is not permitted to place himself in a position that will subject him to conflicting duties -- that is in a position where the official's private interest conflicts with his public duty -- or cause the official to act, or expose the official to the temptation of acting, in any manner other than in the best interests of the public
>
> ********
>
> Under the principle prohibiting conflicts of interest, public officers may not contract with the public agency which they represent or have a private interest in its contracts. Also, an officer cannot lawfully act as the agent of one person

where the private agency will come in conflict with his or her official duties; to act for one of the parties implies an interest adverse to the other. 63C Am.Jur.2d *Public Officers and Employees* § 262 (2018)

The Ethics Commission should find that a *per diem* is not an "economic interest" under the Ethics Act, and that therefore Respondent did not violate the Ethics Act by participating in a town council vote that resulted in his being appointed as the representative of the town on the Joint Commission. A violation of section 8-13-700(A) requires the violator to obtain, through his position, an "economic interest" in property or services. Respondent did not obtain an "economic interest" in a contract for property or services.

The definition of "economic interest" in section 8-13-100 clearly distinguishes between "compensation" on the one hand and "per diem, mileage, and subsistence expenses" on the other. Under the canon of construction *noscitur a sociis* the meaning of a word is influenced by the words around it. *Per diem* is grouped with the words "mileage" and "subsistence expenses," both of which clearly relate to ***reimbursement*** of expenses incurred; reimbursement is not an "economic gain" or "economic benefit."[1]

Federal IRS rules exclude a qualifying per diem, paid for the reimbursement of travel related expenses, from income. South Carolina's *per diem* qualifies as a *per diem* under Federal IRS rules. It is clearly for the ***reimbursement*** of travel related expenses.

This interpretation is in accord with the plain meaning of the phrase "*per diem.*" *Per diem*, according to BLACK'S LAW DICTIONARY, means: "[a] monetary daily allowance, usu. to cover expenses." A payment to "cover expenses" is not an "economic benefit."

1 While the amount of the "reimbursement" does not precisely match on a dollar to dollar basis the amount of expenses incurred, it is within the discretion of the legislature to provide a general amount to cover expenses. The Indiana Ethics Commission, for example, has found that "if the amount of the *per diem* was small and intended to cover food that was not furnished, it felt the amount could be accepted." See Indiana Ethics Opinion 91-I-3 (March 14, 1991).

Section 8-13-700 of the South Carolina Code is a codification of the common law rule barring public officials from being personally financially interested in the contracts they form in their official capacities. One of its purposes is to foster public trust and confidence in government, and to promote the integrity of government through "openness." Respondent did not use his position as Mayor to obtain gain the benefits of a contract ***for property or services.*** The law granting *per diem* reimbursement was passed by the legislature, signed into law by the governor, and recorded in a Code of Laws which is available to every citizen of South Carolina. The payment of a *per die m* pursuant to law is ***beyond*** the definition of openness. It fosters integrity as well as public trust and confidence in government.

II. No Other State With A Similar Definition of "Economic Benefit," Has Found That A *Per Diem* for Travel Related Expenses Is an "Economic Benefit; South Carolina Should Not Be the First.

State Ethics Laws vary widely from state to state. Minnesota, for example, has a list of activities that must be reported. Minn. Stat. Ann. § 10A.09 *et seq.* (West 2023). Alabama's statute uses the term "economic interest," but does not define it. Ala. Code § 36-25-1 *et seq.* (West 2023). West Virginia's statute uses the term "thing of value." W.Va. Code Ann. § 6B-2-5 *et seq.* (West 2023). Alaska uses the term "financial interest." Alaska Stat. Ann. § 24.60.010 *et seq.* (West 2023). *See* Colo. Rev. Stat. § 24-18-102 *et seq.* (West 2023); Conn. Gen. Stat. § 1-79 *et seq.* (West 2023); Del. Code Ann. Tit. 29 § 5901 *et seq.* (West 2023); Fla. Stat. Ann. § 112.312 *et seq.* (West 2023); Ga. Code Ann. § 45-10-1 *et seq.* (West 2023); Haw. Rev. Stat. § 84-3 *et seq.* (West 2023); Iowa Code Ann. § 68B.2 *et seq.* (West 2023); Me. Rev. Stat. Ann. Tit. 1 § 1012 *et seq.* (West 2023); Md. Code Ann. General Provisions § 5-101 *et seq.* (West 2023); Mass. Gen. Laws. Ann. ch. 268B § 1 *et seq.* (West 2023); Miss. Code Ann. § 25-4-103 *et seq.* (2023); Mo. Re. Stat. § 105.452 *et seq.* (2023); N.M. Stat. Ann. § 10-16-2 *et seq.* (West

2023); N.C. Gen. Stat. Ann. § 138A-3 *et seq.* (West 2023); 65 Pa. Stat. Ann. § 1102 *et seq.* (West 2023); Va. Code Ann. § 2.2-3101 *et seq.* (West 2023).

Three states employ similar definitions the definition of "economic benefit" in South Carolina's statute. Kentucky's statute uses the term "Economic Interest," which is defined as "an interest distinct from that of the general public in a state purchase, sale, lease, contract, option, or other transaction or arrangement involving property or services in which a legislator may gain an economic benefit of fifty dollars ($50) or more." Ky. Rev. Stat. Ann. § 6.611(11) (West 2023). Indiana's statute defines "Financial Interest" as "an interest: (A) in a purchase, sale, lease, contract, option, or other transaction between an agency and any person; or (B) involving property or services." Ind. Code Ann. § 4-2-6-1 (West 2023). Kansas' statute defines "Economic Opportunity" as "any purchase, sale, lease, contract, option, or other transaction or arrangement involving property or services wherein a state officer or employee or candidate for state office may gain a personal economic benefit, but not including any gift." Kan. Stat. Ann. § 46-217 (West 2023).

No court in any of these states has found that a *per diem* is an "economic interest," a "financial interest," or an "economic opportunity" under their state's ethics law, or that participating in an election to a state board or commission that reimburses its members for travel expenses through a *per diem* is an ethical violation. No Ethics Commission in any of these states has issued any Advisory Opinion or Order finding an ethical violation. Under these circumstances, it would be unfair and unjust for this Ethics Commission to sanction respondent for voting at a council meeting. This Ethics Commission should not find that respondent violated the South Carolina Ethics Code.

III. Since the Joint Water and Sewer Commission Is Not a "Business" With Which Respondent Is "Affiliated," Respondent Did Not Violate Section 8-13-700 (B) of the South Carolina Code.

As noted above, section 8-13-700(B) of the South Carolina Code prohibits any "public official, public member, or public employee [from] may mak[ing], participat[ing] in making, or in any way attempt[ing] to use his office, membership, or employment to influence a governmental decision in which he... or a business with which he is associated has an economic interest..." S.C. Code Ann. § 8-13-700 (2023).

The Joint Commission is not a business; it is a "government entity." The "Joint Authority Water and Sewer System is "a ***government entity*** organized under this chapter to undertake or acquire a water or sewer project." S.C. Code Ann. § 6-25-10(1) (2023).

Section 8-13-700(B) also prohibits a public official from using or attempting to use his office to influence a governmental decision in which "a ***business*** with which he is associated" has an economic interest. The Joint Commission is not a "business;" by statute it is a "governmental entity." The Ethics Commission should find section 8-13-700(B) whenever a council person votes to appoint himself or another councilman as a Commissioner to the Joint Commission.

IV. The Joint Commission Is Not "Separate and Distinct" from the Governing Bodies of the Towns and Counties Which Appoint Its Commissioners; Therefore There Has Been No Violation of Section 8-13-700 of the South Carolina Code.

In Bacon v. Cooper, No. 2000-049 (S.C. Ethics Comm'n Marc 23, 2000), the governing bodies of three counties joined together to form the Tri-County Economic Alliance (TCA), a private, non-profit corporation, the purpose of which was to promote the economic development in Barnwell, Allendale, and Bamberg County. The TCA owned 1400 acres in Allendale County. Respondent was on the Board of the TCA as well as a member of the

Allendale County Council. As a Council Member he voted on an ordinance zoning the 1400 acres for industrial use.

The Articles of Incorporation provided that it was "independent" and could only be dissolved upon vote of the Board of Directors or the TCA. The County Councils, however, appointed all members of the Board of Directors of the TCA

The Ethics Commission found no violation, but ***recommended*** abstention in the future. Specifically, the Commission found that the TCA was not "separate and distinct" from the Counties of Barnwell, Allendale, and Bamberg because the County councils appointed members of the Board of Directors and the TCA was organized to exclusively benefit Barnwell, Allendale, and Bamberg Counties.

Similarly, in State Ethics Comm'n v. Wiseman, No. C2000-14 (S.C. Ethics Comm'n Dec. 14, 1999), the Newberry Opera House Foundation was a 501(c)(3) corporation that owned and operated, together with the City of Newberry, an opera house. The Respondent was the chair of the board of the Foundation as well as a City Council Member. As a Council member, he voted to authorize the Foundation to obtain a loan to renovate the opera house.

The Ethics Commission found no violation of section 8-13-700(B). The Commission found "The Newberry Opera House Foundation is clearly a creation of Newberry City Council and all its board members are appointed by Council. Since the Foundations not an independent body, and has no assets, Dr. Wiseman would not have a conflict of interest when voting as a Councilman on matters affecting the Foundation." *See also* 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) ("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.")

This case presents an even stronger case for finding no violation of Section 8-13-700(B) than Cooper or Wisemen. First, as discussed above in Section III, this case does not involve a business, non-profit or otherwise. It involves a "public entity" created by the participating towns and counties. The Commissioners are appointed by the Councils of participating towns and Counties. Further, the Joint Commission is only dissolved through a vote of both the Commission and the Councils of participating towns and counties. *See* S.C. Code Ann. § 6-25-80 (2023). The Joint Commission is clearly an "arm or child" of the counties and towns that created it.

As an "arm or child" or "alter ego" of the participating counties, and decision of the Commission is effectively a decision of the participating counties. The Ethics Commission should find there is no violation of section 8-13-700 of the South Carolina Code.

Conclusion

For the reasons stated above, the Ethics Commission should find there has been no violation of section 8-13-700 of the South Carolina Code and dismiss the complaint.

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Lexington, South Carolina
December 4, 2023

State of South Carolina
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June 5, 2023

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533 E. Columbia Ave.
Batesburg-Leesville, SC 29070

Certified Mail: 9214896900099790l423534575

RE: COMPLAINT C2021-078

In the Matter of Lancer Shull

Dear Mr. Shull:

The State Ethics Commission has considered the above captioned complaint and has determined that probable cause exists to support the alleged violation. As a result of the Commission's determination, you are hereby provided with the Notice of Hearing. In accordance with 8-13-320 (10)(g), South Carolina Code of Laws, 1976, as amended, all complaint matters are now public upon the issuance of the Notice of Hearing.

Please be aware that under recent General Assembly amendments to the Ethics Reform Act in 2016 Act. No. 282, effective April 1, 2017, this and all other Ethics Commission hearings are now open to the public. The Ethics Commission will provide timely notice of Commission hearings to the public pursuant to the requirement of the South Carolina Freedom of Information Act.

In accordance with S.C. Code Ann. Section 1-23-320(F), in lieu of a hearing, the Commission may be agreeable to resolve this matter through an informal disposition by Consent Order. Please contact Courtney M. Laster, Esq., General Counsel, at 803-253-4192 or claster@ethics.sc.gov as soon as possible to:

- Confirm receipt of this Notice of Hearing and notify the Commission whether you will or will not attend the scheduled hearing at 9:30am, Thursday, February 15, 2024 *at the State Ethics Commission Hearing Room located at: 201 Executive Center Drive, Suite 150 Columbia, SC 29210.*
- Confirm address, telephone number and email address.
- Notify the Commission if an attorney will be representing you.
- Discuss the option of a Consent Order

If you do not attend the hearing, a judgment by default will be rendered.

Sincerely,

Meghan Walker Dayson
Meghan Walker Dayson
Executive Director

MWD:ro
Enclosure: Notice of Hearing

803) 253-4192 https://ethics.sc.gov/ FAX (803) 253-7539

State of South Carolina
State Ethics Commission

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

MEGHAN WALKER DAYSON
EXECUTIVE DIRECTOR

October 25, 2023

Lancer Shull
533 E Columbia Ave.
Batesburg-Leesville, SC 29070

Certified Mail: 92148969009997901424264280

RE: Complaint C2023-129 — In the Matter of Lancer Shull

Dear Mr. Shull:

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. The Ethics Reform Act, which is the applicable law, may be found here: https://www.scstatehouse.gov/code/t08c013.php.

On October 23, 2023, in accordance with Section 8-13-320(10) Code of Laws for S.C., 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), this complaint is not considered a public record unless or until there is a finding of probable cause by the Commission or unless the Respondent waives the right to confidentiality in writing to the Commission, or the Commission issues a public disposition.

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

Sincerely,

Meghan Walker Dayson

Meghan Walker Dayson
Executive Director

MWD:ro
Enclosure: Complaint

State of South Carolina
State Ethics Commission

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

MEGHAN WALKER DAYSON
EXECUTIVE DIRECTOR

September 23, 2024

James Randall Davis
Davis Frawley
P.O. Box 489
Lexington, SC 29071

Certified Mail: 9214 8969 0099 9790 1425 7735 52

RE: COMPLAINT C2021-078/C2023-129

In the Matter of Lancer Shull

Dear Mr. Davis:

The State Ethics Commission has considered the above captioned complaint and has determined that probable cause exists to support the alleged violation. As a result of the Commission's determination, you are hereby provided with the Notice of Hearing. In accordance with 8-13-320 (10)(g), South Carolina Code of Laws, 1976, as amended, all complaint matters are now public upon the issuance of the Notice of Hearing.

Please be aware that under recent General Assembly amendments to the Ethics Reform Act in 2016 Act. No. 282, effective April 1, 2017, this and all other Ethics Commission hearings are now open to the public. The Ethics Commission will provide timely notice of Commission hearings to the public pursuant to the requirement of the South Carolina Freedom of Information Act.

In accordance with S.C. Code Ann. Section 1-23-320(F), in lieu of a hearing, the Commission may be agreeable to resolve this matter through an informal disposition by Consent Order. Please contact Courtney M. Laster, Esq., General Counsel, at 803-253-4192 or claster@ethics.sc.gov as soon as possible to:

- Confirm receipt of this Notice of Hearing and notify the Commission whether you will or will not attend the scheduled hearing at **9:30am, Thursday, February 20, 2025** *at the State Ethics Commission Hearing Room located at: 201 Executive Center Drive, Suite 150 Columbia, SC 29210.*
- Confirm address, telephone number and email address.
- Discuss the option of a Consent Order

If you do not attend the hearing, a judgment by default will be rendered.

Sincerely,

Meghan Walker Dayson

Meghan Walker Dayson
Executive Director

MWD:ro
Enclosure: Notice of Hearing

STATE OF SOUTH CAROLINA	)	
COUNTY OF RICHLAND	)	BEFORE THE STATE ETHICS COMMISSION
	)	
	)	
IN THE MATTER OF:	)	
	)	
Complaints C2021-078 C2023-129	)	
	)	
Shirley Etheredge Mitchell Stephen D. Cain Complainants.	)	**NOTICE OF HEARING**
	)	
Lancer Shull Respondent.	)	
	)	

The State Ethics Commission has determined that there is probable cause pursuant to Section 8-13-320(10)(i), Code of Laws, South Carolina, 1976, as amended, in the above-captioned complaint. The State Ethics Commission will, therefore, convene a formal hearing into the matters, in accordance with Section 8-13-320(10)(i) & (j), Code of Laws, South Carolina, 1976, as amended, and State Ethics Commission Regulations, S.C. Code Ann. Regs. 52-707 (1997 Cum. Supp.) on Thursday, February 20, 2025 at 9:30 a.m. at the State Ethics Commission Hearing Room located at: 201 Executive Center Drive, Suite 150, Columbia, South Carolina 29210.

The following allegations will be heard:

COUNT ONE
ATTEMPT TO INFLUENCE A GOVERNMENTAL DECISION IN WHICH RESPONDENT HAD AN ECONOMIC INTERESTS
SECTION 8-13-700(B), S.C. CODE ANN., 1976, AS AMENDED

That Lancer Shull, Mayor of Batesburg-Leesville, attempted to influence a governmental decision in which he had an economic interest by participating in discussions regarding his appointment to the Joint Municipal Water and Sewer Commission at a January 13, 2020 Town Council meeting, in violation of Section 8-13-700(B).

COUNT TWO
ATTEMPT TO INFLUENCE A GOVERNMENTAL DECISION IN WHICH RESPONDENT HAD AN ECONOMIC INTERESTS SECTION 8-13-700(B), S.C. CODE ANN., 1976, AS AMENDED

That Lancer Shull, Mayor of Batesburg-Leesville, attempted to influence a governmental decision in which he had an economic interest by voting to appoint himself to the Joint Municipal Water and Sewer Commission at a January 21, 2020 Town Council meeting, in violation of Section 8-13-700(B).

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

That Lancer Shull, Mayor of Batesburg-Leesville, failed to provide a written recusal statement regarding his appointment to the Joint Municipal Water and Sewer Commission at a January 13, 2020 Town Council meeting, in violation of Section 8-13-700(B).

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

That Lancer Shull, Mayor of Batesburg-Leesville, failed to provide a written recusal statement regarding his appointment to the Joint Municipal Water and Sewer Commission at a January 21, 2020 Town Council meeting, in violation of Section 8-13-700(B).

COUNT FIVE
ATTEMPT TO INFLUENCE A GOVERNMENTAL DECISION IN WHICH RESPONDENT HAD AN ECONOMIC INTERESTS SECTION 8-13-700(B), S.C. CODE ANN., 1976, AS AMENDED

That Lancer Shull, Mayor of Batesburg-Leesville, attempted to influence a governmental decision in which he had an economic interest by participating in discussions regarding his appointment to the Joint Municipal Water and Sewer Commission at a December 11, 2023 Town

Council meeting, in violation of Section 8-13-700(B).

COUNT SIX
FAILURE TO RECUSE FROM A GOVERNMENTAL DECISION IN WHICH RESPONDENT HAD AN ECONOMIC INTERESTS
SECTION 8-13-700(B), S.C. CODE ANN., 1976, AS AMENDED

That Lancer Shull, Mayor of Batesburg-Leesville, failed to provide a written recusal statement regarding his appointment to the Joint Municipal Water and Sewer Commission at a December 11, 2023 Town Council meeting, in violation of Section 8-13-700(B).

You have the right to be represented by counsel, the right to call and examine witnesses, the right to introduce exhibits, and the right to cross-examine opposing witnesses. This hearing will be open to the public as required by Section 8-13-320(10)(j), Code of Laws, South Carolina, 1976, as amended. The procedures to be followed are set forth in the Administrative Procedures Act, Section 1-23-10, et seq., Code of Laws, South Carolina, 1976 as amended the State Ethics Act, Section 8-13-100, et seq., Code of Laws, South Carolina, 1976, as amended, and State Ethics Commission Regulations S.C. Code Ann. Regs. 52-707 (1997 Cum. Supp.).

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

Meghan Walker Dayson, Executive Director
State Ethics Commission

Dated this 19th day,
of September 2024.

Certificate of Service by Certified Mail

I hereby certify that a copy of this **NOTICE OF HEARING** was duly served on RESPONDENT'S ATTORNEY James Randall Davis, PO Box 489, Lexington, SC 29071 by depositing said **NOTICE OF HEARING** in the United States mail, Columbia, South Carolina on this 23rd day of September 2024, by CERTIFIED MAIL, E-RETURN RECEIPT REQUESTED, appropriate postage affixed, and a return address clearly indicated on said envelope.

Rachael O'Bryan

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

Columbia, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND IN THE MATTER OF: Complaints C2021-078 C2023-129 Shirley Etheredge Mitchell, Stephen D. Cain Complainants. Lancer Shull, Respondent.	BEFORE THE STATE ETHICS COMMISSION **STIPULATIONS**

The State Ethics Commission (Commission) and Lancer Shull (Respondent), through their undersigned counsel, stipulate to the following facts and agree that the attachments are admissible:

1. At all times relevant, Respondent served as Mayor in the Town of Batesburg-Leesville.
2. At all relevant times, Respondent has served on the Lexington County Joint Municipal Water and Sewer Commission (JMWSC). Respondent attended his first JMWSC meeting on January 10, 2018.
3. The JMWSC meets monthly for regular business and holds special meetings as needed.
4. In 2018, JMWSC convened as follows:

January 10, 2018	Meeting Held
February 14, 2018	Meeting Held
March 14, 2018	Meeting Held
April 2018	Meeting Not Held
May 9, 2018	Meeting Held
June 2018	Meeting Not Held
July 2018	Meeting Not Held
August 8, 2018	Meeting Held
September 12, 2018	Meeting Held
October 10, 2018	Meeting Held
November 14, 2018	Meeting Held
December 2018	Meeting Not Held

5. In 2018, Respondent attended all meetings held by JMWSC.

6. In 2019, JMWSC convened as follows:

January 9, 2019	Meeting Held
February 13, 2019	Meeting Held
March 2019	Meeting Not Held
April 10, 2019	Meeting Held
May 8, 2019	Meeting Held
June 12, 2019	Meeting Held
July 2019	Meeting Not Held
August 14, 2019	Meeting Held
September 11, 2019	Meeting Held
October 9, 2019	Meeting Held
November 13, 2019	Meeting Held
December 19, 2019	Meeting Held

7. In 2019, Respondent did not attend the April 10, 2019 JMWSC meeting.

8. In 2020, JMWSC convened as follows:

January 8, 2020	Meeting Held
February 12, 2020	Meeting Held
March 2020	Meeting Not Held
April 2020	Meeting Not Held
May 13, 2020	Meeting Held
June 2020	Meeting Not Held
July 2020	Meeting Not Held
August 19, 2020	Meeting Held
September 2020	Meeting Not Held
October 14, 2020	Meeting Held
November 18, 2020	Meeting Held
December 2020	Meeting Not Held

9. In 2020, Respondent attended all meetings held by JMWSC.

10. In 2021, JMWSC convened as follows:

January 13, 2021	Meeting Held
February 10, 2021	Meeting Held
March 10, 2021	Meeting Held
April 2021	Meeting Not Held
May 12, 2021	Meeting Held
June 2021	Meeting Not Held
July 2021	Meeting Not Held
August 18, 2021	Meeting Held
September 8, 2021	Meeting Held

October 13, 2021	Meeting Held
November 10, 2021	Meeting Held
December 2021	Meeting Not Held

11. In 2021, Respondent did not attend the August 18, 2021 JMWSC meeting.

12. In 2022, JMWSC convened as follows:

January 12, 2022	Meeting Held
February 9, 2022	Meeting Held
March 2022	Meeting Not Held
April 2022	Meeting Not Held
May 18, 2022	Meeting Held
June 2022	Meeting Not Held
July 2022	Meeting Not Held
August 10, 2022	Meeting Held
September 14, 2022	Meeting Held
October 2022	Meeting Not Held
November 9, 2022	Meeting Held
December 2022	Meeting Not Held

13. In 2022, Respondent attended all meetings held by JMWSC.

14. In 2023, JMWSC convened as follows:

January 11, 2023	Meeting Held
February 8, 2023	Meeting Held
March 8, 2023	Meeting Held
April 2023	Meeting Not Held
May 10, 2023	Meeting Held
June 2023	Meeting Not Held
July 12, 2023	Meeting Held
August 2023	Meeting Not Held
September 13, 2023	Meeting Held
October 11, 2023	Meeting Held
November 15, 2023	Meeting Held
December 2023	Meeting Not Held

15. In 2023, Respondent attended all meetings held by JMWSC.

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Respectfully submitted,

Courtney M. Laster

Courtney M. Laster
State Ethics Commission
201 Executive Center Drive, Suite 150
Columbia, SC 29210
803-253-4192
claster@ethics.sc.gov

James Randall Davis
Attorney for Respondent
P.O. Box 489, Lexington, SC 29071
803-359-2512
randy@oldcourthouse.com

February 20, 2025
Columbia, SC

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	BEFORE THE STATE ETHICS COMMISSION
IN THE MATTER OF: Complaints C2021-078 C2023-129	
Shirley Etheredge Mitchell Stephen D. Cain APPELLATES.	**NOTICE OF APPELLATE HEARING**
Lancer Shull APPELLANT.	

James Randall Davis, Attorney for Appellant Lancer Shull, served an Appeal of Decision and Order on the State Ethics Commission on March 24, 2025. The State Ethics Commission will, therefore, convene a formal appellate hearing into the matter, in accordance with State Ethics Commission Regulations, 52 S.C. Code Ann. Regs. 802 (2013 Cum. Supp.) on July 17, 2025 at 9:30 a.m. at the State Ethics Commission Hearing Room located at: 201 Executive Center Drive Suite 150, Columbia, South Carolina 29210.

Pursuant to 52 S.C. Code Ann. Regs. 803, the Appellant shall file any additional briefs within ten (10) days of the date of service of this notice. In the event the Appellant fails to appear, he will have waived his hearing and judgment will stand.

Meghan W. Dayson

Meghan Walker Dayson
Executive Director

Dated this 26th day,
of March 2025.

COPY

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)))	BEFORE THE STATE ETHICS COMMISSION
IN THE MATTER OF: Complaints C2021-078 C2023-129 Shirley Etheredge Mitchell Stephen D. Cain Complainants. Lancer Shull, Respondent.	)))))))))))	BRIEF OF RESPONDENT

Facts

The Lexington County Joint Municipal Water and Sewer Commission (hereinafter "JMWSC") is comprised of representatives from the surrounding towns and counties. The elected county and town governing bodies appoint their own representatives, overwhelmingly from among their own elected officials to the Joint Commission.

Respondent Lancer Shull is the mayor of the Town of Batesburg-Leesville, South Carolina. He was appointed to be the Commissioner for the Town of Batesburg-Leesville by vote of town council in 2018. He participated in the vote for his reappointment to the JMWSC on January 13, 2020 and again on January 21, 2020, when he was reappointed by a margin of 7 to 2. He again participated in voting for his reappointment in December of 2023, when he was reappointed by a margin of 6 to 2.

The meetings of the JMWSC begin at 5:30 pm on the second Wednesday of the month in Lexington and require Commissioners to travel from different areas.

In 2018, Respondent attended all regular meetings of the JMWSC. In 2019, Respondent attended 9 regular meetings; the meetings for March and July were not held and Respondent did not attend the April meeting. In 2020, during COVID, six meetings were held, many virtually; Respondent attended all meetings. In 2021, eight meetings were held; the

April, June, July, and December meetings were not held and Respondent did not attend the August meeting. In 2022, the March, April, June, July, October, and December meetings were not held; Respondent attended all meetings that were held. In 2023, the April, June, August, and December meetings were not held; Respondent attended all meetings.

In addition to the monthly meetings of the JMWSC, Commissioners have other duties during the month that require travel, according to John "Jay" Nicholson, the General Manager and Chief Executive Officer of the JMWSC. These duties ***include*** traveling to the offices of attorneys and consulting firms. He stated that the ***monthly per diem*** was intended to cover all expenses – mileage, lodging, food and incidentals. Lancer Shull stated that when he first joined the JMWSC, during the height of negotiations on the water contract with Joint Municipal, he spent upwards of 15 hours per week meeting with architects, meeting with engineers, meeting with Mr. Nicholson, meeting with other mayors. He currently spends 3 to 4 hours per week in addition to the regular monthly meetings.

According to Jay Nicholson (based on legal advice), two types of *per diem* plans are permitted by the IRS (1) an accountable plan under which an employee submits receipts to his employer and is reimbursed; and (2) an unaccountable or n:onaccountable *per diem* plan, under which an employee is paid a ***flat rate*** per day set by the IRS, and is accountable only to the IRS. He stated that after consulting with an attorney and talking to an Ethics Investigator informally who was investigating another matter, the JMWSC administration opted for an unaccountable or nonaccountable *per diem* plan.

Commissioners receive a *per diem* of $250 ***per month*** to reimburse them for expenses incurred while serving on the JMWSC. The *per diem* for Commissioners is paid on the same basis as other state officials; it is not paid according to standards set by the JMWSC.

These rates are in compliance with Federal per diem rules, which exclude qualifying *per diem* payments from income. Under Federal regulations, the car allowance or ***per diem itself*** can generally be used as ***"proof"*** of the amount of expenses incurred. IRS Pub. 463 at

43 (2024) ("Per Diem and Car Allowances"). From 2018 and through September 2024 per diem rate for lodging, meals and incidentals increased from $191 ***per day*** of travel to $214 ***per day*** of travel. *See* I.R.B. 2017-42 (2017) and I.R.B. 2023-41 (2023) ("Section 5. High-Low Substantiation Method"). The ***monthly per diem*** of $250 was adopted before Respondent Lancer Shull was appointed as Commissioner for the Town of Batesburg-Leesville and was sufficient to fully cover one day of travel.

Argument

I. The Complainant Failed To Carry Its Burden Of Proof Where The Complainant Did Not Testify And The Three Member Ethics Panel's Opinion Contained No Reasoned "Conclusions Of Law," But Only The Verdict On Each Count.

South Carolina regulation 52-714 governs hearings before the Ethics Commission. It provides:

> 52-714. Burden of Proof.
>
> A. The Commission panel shall consider the evidence and testimony presented at the hearing and enter their decision with a statement of the findings of fact, conclusions of law and other matters pertinent to the questions at issue. The decision and order shall be filed with the record and copy served on the parties.
>
> B. The burden is on the Complainant to establish by the preponderance of evidence the facts required to find a violation of the Act. S.C. Code Ann. Regs. 52-714 (2025)

A "conclusion" is "[a] judgment arrived at by reasoning." BLACK'S LAW DICTIONARY 122 (2nd Pocket Ed. 2001). Similarly, a "conclusion of law" is "[a]n inference on a question of law, made as a result of a factual showing, no further evidence being required; a legal inference." BLACK'S LAW DICTIONARY 122 (2nd Pocket Ed. 2001).

An order is sufficient if it makes findings and conclusions that allow for "meaningful appellate review." Brown v. SC DHEC, 348 S.C. 507, 521, 560 SE 2d 410 (S.C. 2002). *See* 75B Am.Jur.2d *Trial* § 1971 n. 85 (1992) (*citing* Colorado law). Not every issue needs to be addressed in an order; only those issues which are ultimate or controlling. 75B Am.Jur.2d *Trial* § 1971 n. 85 (1992) (*citing* Colorado law).

This Court should find that the Order of the three Commissioner panel is insufficient. The Order is required to have BOTH Findings of Fact and Conclusions of Law. The Conclusions of Law are simply a verbatim recitation of the statute without any reasoning whatsoever. The definition of Conclusion of Law states that it is a "legal inference," implying some reasoning beyond simply quoting a statute. The Conclusions of Law make no inferences and contain no reasoning; they are not Conclusions of Law.

To be a valid order, the order must be detailed enough to permit "meaningful appellate review." Respondent raised several legal issues that would have resulted in a dismissal of the charges, but the three Commissioner panel did not address them in its Conclusions of Law. These issues include: (1) whether, in general, a *per diem* which reimburses expenses an "economic interest" under Section 8-13-100(11) that would give rise to an ethical violation under section 8-13-700(B); (2) whether an unaccountable $250 monthly *per diem* plan, under which a recipient is accountable only to the IRS and which over-reimburses some months and under-reimburses on others can be an "economic interest" on those months where a recipient is over-reimbursed; (3) whether section 6-25-60, the section authorizing payment of expenses and *per diems*, distinguishes between accountable an unaccountable plans; (4) whether compliance with IRS regulations regarding *per diem* plans is sufficient to insulate a *per diem* from being considered an "economic interest" under section 8-13-100(11); and (5) whether section 8-13-100(11) requires and economic benefit of $50 or more to be in "a purchase, sale, lease, contract, option, or other transaction or arrangement involving property or services," or is *any* economic benefit of $50 or more sufficient to qualify as an "economic interest" under section 8-13-100(11).

These issues revolve around the relationship between a *per diem* and "economic interest" under section 8-13-100(11). The three Commissioner panel failed to address any of these dispositive issues. In so doing, the panel prevented meaningful review. The Order of the three Commissioner panel of the Ethics Committee is clearly insufficient and does not satisfy regulation 52-714 of the Ethics Commission.

Further, the three Commissioner panel was required to consider all of the testimony and evidence. Regulation 52-712 requires the panel to consider all available evidence. S.C. Code Ann. Regs. 52-712(A) (2025) ("All available evidence and testimony shall be presented at the scheduled hearing or a party must move for adjournment."). If a required witness is not available, adjournment may be granted to allow the parties to depose the witness. S.C. Code Ann. Regs. 52-712(B) (2025). This procedure was not followed.

The Complainants in this case, Shirley Etheredge Mitchell and Stephen D. Cain, did not testify. Both, as members of the Town of Batesburg-Leesville, had voted against Respondent as to his reappointment and their reasons would have been relevant and they had "available evidence" or they would not be complainants. The three Commissioner panel was required to consider their testimony, since, as complaining parties, they have voluntarily and intentionally made themselves available to the Court. Perhaps more importantly, Respondent had the right to cross examine these complaining, available witnesses.

The Full Commission should find that the Order of the three Commissioner panel is insufficient as it does not allow for a meaningful review. The Full Commission should find that the three Commissioner panel did not consider all available evidence as the complainants made themselves available by filing the complaint and subjecting themselves to the jurisdiction of the panel and did not testify. In not testifying, respondent was denied the right to cross examine the complainants. The Full Commission should find that complainants failed to carry their burden of proof under regulation 52-714 of the Ethics Commission.

II. <u>The *Per Diem* Of The Joint Municipal Water And Sewer Commission Is Allowed Under Section 6-25-60(C) Of The South Carolina Code, The Specific Provision Governing The Jmwsc, And The Per Diem Plan Can Be Either An Accountable Or Unaccountable Plan, So Long As It Complies With IRS Regulations.</u>

Section 6-25-60(C) of the South Carolina Code specifically applies to reimbursement of the Commissioners of the JMWSC for their expenses, providing, in part:

> No commissioner of a joint system shall receive any compensation solely for the performance of duties as a commissioner, ***but each commissioner may be paid per diem, mileage, and subsistence expenses,*** as provided by law for state boards, committees, and commissions, incurred while engaged in the performance of such duties." S.C. Code Ann. §6-25-60(C) (2025).

Section 8-13-700(B) generally prohibits a "public official" from using his office to influence a government decision in which he has an "economic interest." Section 8-13-700(B) of the South Carolina Code provides, in part:

> (B) No public official, public member, or public employee may make, participate in making, or in any way attempt to use his office, membership, or employment to influence a governmental decision in which he, a family member, an individual with whom he is associated, or a business with which he is associated has an ***economic interest...*** S.C. Code Ann. § 8-13-700 (2023). S.C. Code Ann. § 8-13-700 (2023). (emphasis added)

"Economic Interest" is defined by section 8-13-100(11)(a) as:

> an interest distinct from that of the general public ***in a purchase, sale, lease, contract, option, or other transaction or arrangement involving property or services*** in which a public official, public member, or public employee may gain an ***economic benefit*** of fifty dollars or more. S.C. Code Ann. § 8-13-100(11)(a) (2025).

"Generally, specific laws prevail over general laws..." *Langley v. Pierce*, 438 S.E.2d 242, 249 (S.C. 1993). "[S]tatutes dealing with the same subject matter are *in pari materia* and must be construed together, if possible, to produce a single, harmonious result." *Joiner v. Rivas*, 342 S.C. 102, 109, 536 S.E.2d 372 (S.C. 2000).

A court is "not at liberty, under the guise of construction, to alter the plain language of the statute by adding words which the Legislature saw fit not to include. *Cf.* Creech v. South Carolina Public Service Authority, 200 S.C. 127, 20 S.E. (2d) 645 (1942). [The Court's] duty is to apply the statute according to its own terms." Shelley Const. Co. v. Sea Garden Homes, Inc., 287 S.C. 24, 28-29, 336 SE 2d 488 (S.C. Ct. App. 1985).

The Full Commission should find that section 6-25-60(C) specifically applies to a per diem of the Joint Municipal Water and Sewer Commission and that a per diem cannot be used to find a violation of the more general provisions of section 8-13-700(B). Specific provisions control over more general provisions. Further, reading the two sections together, the intent of the legislature is clear. A per diem, mileage, and subsistence expenses are all allowed to Commissioners of the JMWSC. By statute, a *per diem* is not considered "compensation."

During the hearing, the members of the three member Ethics Panel focused much of their questioning on whether Commissioners of the JMWSC were required to submit receipts and mileage to justify the $250 per month *per diem*. The JMWSC is allowed, ***by statute***, to provide mileage and subsistence expenses ***in addition to*** a ***per diem***. Jay Nicholson testified that the JMWSC provides the $250 per month per diem to cover ***all expenses***. He further testified that the JMWSC has an unaccountable or "nonaccountable" plan under which the commissioners are responsible for ***accounting for*** their expenses with the IRS but not with the JMWSC. He stated he was aware there were also *accountable per diem* plans under which employees submit receipts to their employer to be reimbursed. Jay Nicholson stated that both types of plans were permitted by the IRS.

The three member Ethics Panel, by the focus of their questions, were erroneously under the impression that all *per diem* plans were ***required*** to be accountable plans. No such requirement is in 6-25-60(C); the three member panel improperly inserted into the statute words that were not there. It is not the Ethics Commission's role to insert language into statutes as it sees fit.

The JMWSC clearly has the discretion to utilize an ***unaccountable*** plan. A Commissioner's expenses very widely from month to month due to their wide range of responsibilities; according to Jay Nicholson, some months the $250 per diem is sufficient and other months it is not. It is only common sense that the statute would grant the JMWSC discretion to adopt the type of *per diem* plan it wants, so long as the plan complies with IRS regulations.

Under a federal nonaccountable or unaccountable *per diem* plan, an employee is entitled to the accountable rate ***each and every day he travels.*** There is no upper limit, and the payment of the *per diem* under IRS regulations, serves as proof of expenses; receipts are not necessary, While the federal *per diem* rate has increased from $191 to $214 ***per day of travel*** from 2018 to 2024, the ***monthly per diem*** of $250 is enough to cover only one day and part of another, even in 2018. If a Commissioner travels ***only two days during a month***, he would be entitled to $382 dollars in 2018 under federal rates, but only $250 under the JMWSC *per diem.* If a Commissioner travels only three days during a month, he would be entitled to $573 under the federal *per diem* rate, but only $250 under the JMWSC monthly *per diem.* Jay Nicholson stated that Commissioners had multiple other responsibilities beyond attending regularly scheduled meetings that require travel.

While it could theoretically be argued that section 6-25-60(C) prohibits a *per diem* which exceeds actual expenses incurred, thereby ***requiring*** an accountable *per diem* plan, the Full Commission should reject this argument. Section 6-25-60(C) provides, in part "No commissioner of a joint system shall receive any compensation ***solely*** for the performance of duties as a commissioner..." S.C. Code Ann. § 6-25-60(C) (2025). The word "solely" means just that; any payment to a JMWSC Commissioner that is ***exclusively*** for compensation of ***duties*** is prohibited. The *per diem* in this case covers mileage and subsistence, items which may be reimbursed separately under section 6-25-60(C) and are not considered compensation. Jay Nicholson testified that the per diem was intended to cover all expenses incurred. The ***per diem*** was not ***solely*** given as compensation for performance of duties; in fact, it was not for compensation ***at all.***

The use of the word "solely" contemplates the situation in this case. In an unaccountable *per diem* plan where the Commissioner is not required to submit receipts, but is only ***accountable*** to the IRS, on some months the *per diem* is insufficient to cover expenses, whereas on other months the *per diem* is greater than expenses incurred. In those months when the *per diem* is greater than expenses, the Commissioner receives an excess payment, but the *per diem* cannot ***solely*** be considered to be income or compensation. The word ***solely*** takes into account unaccountable *per diem* plans.

Furthermore, as noted above, section 6-25-60 provides an express exclusion for a *per diem.* The statute expressly permits a *per diem,* and does not limit the *per diem* to an accountable plan.. The Full Commission should find that the unaccountable *per diem* in this case fully complies with the requirements of section 6-25-60.

III. Even If The Full Commission Finds That Both Section 8-13-700(B) And The More Specific Section 6-25-60 Apply, Section 8-13-700(B) Does Not Apply To A Per Diem Which Does Not Grant An "Economic Interest" In A Purchase, Sale, Lease, Contract, Option, Or Other Arrangement Involving Property Or Services.

As noted above, section 8-13-700(B) generally forbids a public official from using his office to influence a decision in which he has an "economic interest." "Economic Interest" is in turn defined as:

> an interest distinct from that of the general public ***in a purchase, sale, lease, contract, option, or other transaction or arrangement involving property or services*** in which a public official, public member, or public employee may gain an ***economic benefit*** of fifty dollars or more. S.C. Code Ann. § 8-13-100(11)(a) (2025).

Section 8-13-100(11)(a) is consistent with the common law rule regarding an officials use of his position for personal advantage. In general, under the common law:

> A public official may not use his official power to further his own interest and is not permitted to place himself in a position that will subject him to conflicting duties -- that is in a position where the official's private interest conflicts with his public duty -- or cause the official to act, or expose the official to the temptation of acting, in any manner other than in the best interests of the public
>
> ********

> Under the principle prohibiting conflicts of interest, public officers may not contract with the public agency which they represent or have a private interest in its contracts. Also, an officer cannot lawfully act as the agent of one person where the private agency will come in conflict with his or her official duties; to act for one of the parties implies an interest adverse to the other. 63C Am.Jur.2d *Public Officers and Employees* § 262 (2018)

"[A] statute is not to be construed in derogation of common law rights if another interpretation is reasonable." Doe v. Marion, 361 S.C. 463, 473, 605 S.E.2d 556 (S.C. 2004). Other jurisdictions have found that their state ethic laws are a codification of the common law rule. *See* Lexin v. Superior Court, 47 Cal. 4th 1050, 1072, 222 P.3d 214, 228, 103 Cal. Rptr. 3d 767, 784 (Ca. 2010) (the statute "codifies the long-standing common law rule that barred public officials from being personally financially interested in the contracts they formed in their official capacities.") The California Act and the South Carolina Act have similar purposes. State v. Thrift, 312 S.C. 282, 440 S.E.2d 341, 1994 S.C. LEXIS 25 at *40 (S.C. Jan. 17, 1994) ("the purposes of the Act include the fostering of public trust and confidence in government, and the promotion of the integrity of government through openness."); Lexin, 222 P.3d at 229 ("The evil to be thwarted by section 1090 is easily identified: If a public official is pulled in one direction by his financial interest and in another direction by his official duties, his judgment cannot and should not be trusted, even if he attempts impartiality.").

"According to the doctrine of *noscitur a sociis*, the meaning of particular terms in a statute may be ascertained by reference to words associated with them in the statute... We have previously stated that '[t]he Court may not, in order to give affect to particular words, virtually destroy the meaning of the entire context; that is, give the particular words a significance which would be clearly repugnant to the statute, looked at as a whole, and destructive of its obvious intent." Southern Mut. Church Ins. Co. v. South Carolina Windstorm and Hail Underwriting Assoc., 306 S.C. 339, 342, 412 S.E.2d 377 (S.C. 1991).

The phrase *"per diem"* has two distinct means, one of which relates to reimbursement for expenses. *"Per diem,"* according to BLACK'S LAW DICTIONARY, means: "1. A monetary daily allowance, usu. to cover expenses. 2. A daily fee." BLACK'S LAW DICTIONARY 523 (2nd Pocket Ed. 2001). A *per diem* is typically paid daily; the phrase literally means "per day".

The Full Commission should find that the $250 *per diem* is not an "economic interest" barred by sections 8-13-700(B) and 8-13-100 of the South Carolina Code, First, the phrase "per diem" appears in section 6-25-60(C) among the words "mileage" and "subsistence" which are clearly words relating to reimbursement of expenses incurred and paid for by the JMWSC Commissioner, and not any economic gain, benefit, or interest. Under the doctrine of ***noscitur a sociis***, the phrase "per diem" draws its meaning from the words around it, and cannot be viewed in isolation. *Per diem* clearly means "A monetary daily allowance, usu. to cover expenses."

Statutes must be read together to produce a harmonious result, a result that does not invalidate one of the statutes. Implied repeal is not favored. Any ruling by the Full Commission that an unaccountable *per diem* plan results in an "economic interest" to the receiver either impliedly repeals section 6-25-60 or impermissibly inserts in section 6-25-60 limiting language that simply does not exist. If the legislature had intended such a limitation, it could have easily inserted such language into the statute.

Second, the definition of "economic interest" clearly excludes a per diem. To be an economic interest, a Commissioner of the JMWSC must reap an "economic benefit" of fifty (50) dollars or more "in a purchase, sale, lease, contract, option, or other transaction or arrangement involving property or services." S.C. Code Ann § 8-13-100(11) (2025). A unaccountable *per diem* does not, under any circumstances, grant an interest ***"in a purchase, sale, lease, contract, option, or other transaction or arrangement involving property or services."***

This interpretation is consistent with ethical responsibilities under common law. Under the common law, public officials were barred "from being personally financially interested in the contracts they formed in their official capacities." Lexin, 103 Cal. Rptr. 3d at 784. "[P]ublic officers may not contract with the public agency which they represent *or* have a private interest in its contracts." 63C Am.Jur.2d *Public Officers and Employees* § 262 (2018). A statutory interpretation is not to be construed as inconsistent with the common law if another interpretation is reasonable. Both the common law and sections 8-13-100(11) and 8-13-700 bar a Commissioner from obtaining an economic benefit of more than fifty dollars ***"in a purchase, sale, lease, contract, option, or other transaction or arrangement involving property or services."*** An interpretation finding there is an ethical violation for a using his office to receive an money under an unaccountable *per diem* plan clearly abrogates the common law. This Court should adopt an interpretation which is consistent with the common law.

Any other interpretation of section 8-13-100(11) strikes out of the definition of "economic interest" the phrase "in a purchase, sale, lease, contract, option, or other transaction or arrangement involving property or services," leaving section 8-13-100(11) to define "economic interest" as "an interest distinct from that of the general public… in which a public official, public member, or public employee may gain an ***economic benefit*** of fifty dollars or more." It is almost axiomatic that a Court or the Ethics Commission may neither insert language into a statute nor remove language from a statute; the job of the Full Commission is to interpret the law as written. The Full Commission should find that a unaccountable *per diem* does not meet the definition of "economic interest," at least where the *per diem* fully complies with IRS regulations

IV. The Per Diem Is Not An "Economic Interest" Under The Exceptions Of Section 8-13-100(11)(B).

Section 8-13-100(11) of the South Carolina provides two exceptions to the definition of "economic interest." Section 8-13-100(11)(B) provides:

> 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. S.C. Code Ann § 8-13-100(11)(b) (2025) (emphasis added).

The "incidental benefit" and the "large class" exceptions have not been defined in the regulations promulgated by the Ethics Commission, its advisory opinions, or in case law. The term "incidental" has been defined as "subordinate to something of greater importance; having a minor role." BLACK'S LAW DICTIONARY 338 (2nd Pocket Ed. 2001). In an Advisory Opinion, the Ethics Commission ruled that a public official at a speaking engagement could accept a free meal, so long as all others members of the professional association at the meeting received a meal as well. Advisory Opinion, "Acceptance Of Meals From Professional Associations" No. AO92-032 (S.C. Ethics Comm'n Jan.27, 1992).

The Full Commission should find that a *per diem* which over-reimburses some months and does not cover expenses others is a benefit which is incidental. Due to its erratic nature, it is clearly of minor importance. Due the fact that it was designed to cover all expenses, including those section 6-25-60 list as separate items to be reimbursed, it is of minor importance. The Full Commission should find that the benefit is "incidental" under section 8-13-100(11)(b).

The Full Commission should also find that the "large class" exception applies and that the *per diem* is not an "economic interest." The *per diem* is given to all Commissioners of the JMWSC, who comprise the large class. The Full Commission should find that the *per diem* is not an "economic interest" under section 8-13-100(11).

V. No Other Jurisdiction Has Found That An IRS Approved Unaccountable Per Diem Of Two Hundred Fifty Dollars Is an Economic Interest That Can Serve As The Basis For An Ethical Violation.

State Ethics Laws vary widely from state to state. Minnesota, for example, has a list of activities that must be reported. Minn. Stat. Ann. § 10A.09 *et seq.* (West 2023). Alabama's statute uses the term "economic interest," but does not define it. Ala. Code § 36-25-1 *et seq.* (West 2023). West Virginia's statute uses the term "thing of value." W.Va. Code Ann. § 6B-2-5 *et seq.* (West 2023). Alaska uses the term "financial interest." Alaska Stat. Ann. § 24.60.010 *et seq.* (West 2023). *See* Colo. Rev. Stat. § 24-18-102 *et seq.* (West 2023); Conn. Gen. Stat. § 1-79 *et seq.* (West 2023); Del. Code Ann. Tit. 29 § 5901 *et seq.* (West 2023); Fla. Stat. Ann. § 112.312 *et seq.* (West 2023); Ga. Code Ann. § 45-10-1 *et seq.* (West 2023); Haw. Rev. Stat. § 84-3 *et seq.* (West 2023); Iowa Code Ann. § 68B.2 *et seq.* (West 2023); Me. Rev. Stat. Ann. Tit. 1 § 1012 *et seq.* (West 2023); Md. Code Ann. General Provisions § 5-101 *et seq.* (West 2023); Mass. Gen. Laws. Ann. ch. 268B § 1 *et seq.* (West 2023); Miss. Code Ann. § 25-4-103 *et seq.* (2023); Mo. Re. Stat. § 105.452 *et seq.* (2023); N.M. Stat. Ann. § 10-16-2 *et seq.* (West 2023); N.C. Gen. Stat. Ann. § 138A-3 *et seq.* (West 2023); 65 Pa. Stat. Ann. § 1102 *et seq.* (West 2023); Va. Code Ann. § 2.2-3101 *et seq.* (West 2023).

Three states employ similar definitions the definition of "economic interest" in South Carolina's statute. Kentucky's statute uses the term "Economic Interest," which is defined as "an interest distinct from that of the general public in a state purchase, sale, lease, contract, option, or other transaction or arrangement involving property or services in which a legislator may gain an economic benefit of fifty dollars ($50) or more." Ky. Rev. Stat. Ann. § 6.611(11) (West 2023). Indiana's statute defines "Financial Interest" as "an interest: (A) in a purchase, sale, lease, contract, option, or other transaction between an agency and any person; or (B) involving property or services." Ind. Code Ann. § 4-2-6-1 (West 2023). Kansas' statute defines "Economic Opportunity" as "any purchase, sale, lease, contract, option, or other transaction or arrangement involving property or services wherein a state officer or employee or candidate for state office may gain a personal economic benefit, but not including any gift." Kan. Stat. Ann. § 46-217 (West 2023).

No court in any of these states has found that a *per diem* is an "economic interest," a "financial interest," or an "economic opportunity" under their state's ethics law, or that participating in an election to a state board or commission that reimburses its members for travel expenses through a *per diem* is an ethical violation. No Ethics Commission is any of these states has issued any Advisory Opinion or Order finding an ethical violation. Under these circumstances, it would be unfair and unjust for this Ethics Commission to sanction respondent for voting at a council meeting.

One state ethics opinion, in dicta, has addressed the issue of whether a *per diem* can serve as the basis of an ethical violation in situations where a private party offers to pay a Commissioner's expenses. In a 1991 Indiana Ethics Commission Advisory opinion, a private party wanted to reimburse the Commissioner of Motor Vehicles for his expenses. "The per diem that was offered was felt to be an amount sufficient for meals and not compensation for a day of being there (like what the state calls subsistence)." In issuing its advisory opinion, the Ethics Commission placed emphasis on the ***intent*** of the private party in its offer to pay expenses. The Commission found:

> If a sponsor is desirous of reimbursing the State for any part or all of the expenses incurred by the State on behalf of its state officer, employee or their official representatives, such sponsor should remit to the Treasurer of the State any such amounts. The Treasurer of the State shall quietus such funds into the general fund.
>
> The Commission discussed that if the amount of the per diem was small ***and intended to cover food that was not furnished***, it felt the amount could be accepted. However, if the amount was larger than the cost of food, or meals were provided, then it could not be considered part of actual travel expenses. Indiana Ethics Opinion 91-I-3 (March 14, 1991) (emphasis added).

Other states have adopted a $250 *per diem* for the daily expenses of its officials. New Jersey, Delaware, Iowa, Mississippi, Missouri, Nevada Ohio, Pennsylvania, and Rhode Island all use a $250 *per diem* or per meeting. 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

The Full Commission should find that monthly *per diem* of $250 cannot serve as a basis for a violation of section 8-13-700(B). Many states have adopted either a per day or per meeting *per diem* of $250 in accordance with IRS regulations. The JMWSC administration has adopted a ***monthly*** per diem of $250 to cover meetings and other duties. Jay Nicholson stated at the hearing before the three Commissioner Ethics Panel that these other duties include going to the offices of attorneys and consulting firms. Compared to the $250 *per diem* of other states, awarded either on a per day or per meeting basis, the $250 ***monthly per diem*** of the JMWSC is modest and in line with the *per diem* of other states.

Further, while the Indiana Ethics Commission's Advisory Opinion is not on point, the dicta of the Commission is instructive. In a situation where a private party wanted to cover the expenses of the Commissioner of Motor Vehicles with a flat fee, the Commission opined that if the intent of the private party was to pay for expenses, and the amount was small, the payment could be accepted and turned over to Treasurer. The ethical concerns are far greater when private parties are involved, since gifts by private parties create the appearance of impropriety, if not bribery.

Even applying the understandably strict standard of the Indiana Ethics Committee for private gifts of expenses, the South Carolina *per diem* passes muster. The capped $250 *per diem* amounts to roughly $12.50 per business day or $62.50 per week. These are small amounts. It is uncontroverted that the monthly *per diem* was intended to reimburse members of the JMWSC for mileage and other expenses. Jay Nicholson testified that was the intent when the *per diem* was adopted.

It should be noted that Respondent had no role in adopting the *per diem*. The *per diem* was adopted *before* Respondent was ever a member of the JMWSC. It was adopted after consultation with legal counsel and the informal opinion of a member of the Ethics Commission who was investigating the JMWSC on another matter. The *per diem* has been paid to Commission members for years without question. It is manifestly unreasonable to find Respondent violated the South Carolina Rules of Ethics for public officials under these circumstances.

VI. Section 8-13-700(B) Of The South Carolina Code Does Not Apply To The Vote Of A Town Council Appointing A Council Member to Serve On A Water And Sewer Commission With A Per Diem Where The Sewer Commission Was Not An Affiliated Business And Barring Council Members From Voting Would Produce An Absurd Result.

Section 8-13-700(B) of the South Carolina Code provides, in part:

> (B) No public official, public member, or public employee may make, participate in making, or in any way attempt to use his office, membership, or employment to influence a governmental decision in which he, a family member, an individual with whom he is associated, or a business with which he is associated has an ***economic interest...*** S.C. Code Ann. § 8-13-700 (2023). S.C. Code Ann. § 8-13-700 (2023). (emphasis added)

Section 8-13-700(B) prohibits a public official from using or attempting to use his office to influence a governmental decision in which "a ***business*** with which he is associated" has an economic interest. The Joint Municipal Water and Sewer Commission is not a business; it is a "government entity." The "Joint Authority Water and Sewer System is "a ***government entity*** organized under this chapter to undertake or acquire a water or sewer project." S.C. Code Ann. § 6-25-10(1) (2023).

Section 8-13-700(B) also prohibits a public official from using or attempting to use his office to influence a governmental decision in which "he" has an "economic interest." As discussed more fully above, a *per diem* is specifically authorized by statute, exists for the purpose of reimbursing expenses incurred, and therefore cannot be considered an "economic interest" under section 8-13-100(11). Further, if voting on the appointment of a representative

VII. The Joint Commission Is Not "Separate and Distinct" from the Governing Bodies of the Towns and Counties Which Appoint Its Commissioners; Therefore There Has Been No Violation of Section 8-13-700(B) of the South Carolina Code.

In Bacon v. Cooper, No. 2000-049 (S.C. Ethics Comm'n Marc 23, 2000), the governing bodies of three counties joined together to form the Tri-County Economic Alliance (TCA), a private, non-profit corporation, the purpose of which was to promote the economic development in Barnwell, Allendale, and Bamberg County. The TCA owned 1400 acres in Allendale County. Respondent was on the Board of the TCA as well as a member of the Allendale County Council. As a Council Member he voted on an ordinance zoning the 1400 acres for industrial use.

The Articles of Incorporation provided that it was "independent" and could only be dissolved upon vote of the Board of Directors or the TCA. The County Councils, however, appointed all members of the Board of Directors of the TCA

The Ethics Commission found no violation, but *recommended* abstention in the future. Specifically, the Commission found that the TCA was not "separate and distinct" from the Counties of Barnwell, Allendale, and Bamberg because the County councils appointed members of the Board of Directors and the TCA was organized to exclusively benefit Barnwell, Allendale, and Bamberg Counties.

Similarly, in State Ethics Comm'n v. Wiseman, No. C2000-14 (S.C. Ethics Comm'n Dec. 14, 1999), the Newberry Opera House Foundation was a 501(c)(3) corporation that owned and operated, together with the City of Newberry, an opera house. The Respondent was the chair of the board of the Foundation as well as a City Council Member. As a Council member, he voted to authorize the Foundation to obtain a loan to renovate the opera house.

The Ethics Commission found no violation of section 8-13-700(B). The Commission found "The Newberry Opera House Foundation is clearly a creation of Newberry City Council and all its board members are appointed by Council. Since the Foundations is not an independent body, and has no assets, Dr. Wiseman would not have a conflict of interest when voting as a Councilman on matters affecting the Foundation." *See also* 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) ("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.")

This case presents an even stronger case for finding no violation of Section 8-13-700(B) than Cooper or Wisemen. First, as discussed above, this case does not involve a business, non-profit or otherwise. It involves a "public entity" created by the participating towns and counties. The Commissioners are appointed only by the Councils of participating towns and Counties. Further, the Joint Commission is only dissolved through a vote of both the Commission and the Councils of participating towns and counties. *See* S.C. Code Ann. § 6-25-80 (2023). The Joint Commission is clearly an "arm or child" of the counties and towns that created it.

As an "arm or child" or "alter ego" of the participating counties, and decision of the Commission is effectively a decision of the participating counties. The Ethics Commission should find there is no violation of section 8-13-700 of the South Carolina Code.

Conclusion

For the reasons set above, Respondent, through counsel, respectfully requests the Full Commission to dismiss the Complaint.

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BY:______________________
James Randall Davis
Attorneys for the Respondent

June 2, 2025
Lexington, South Carolina

STATE OF SOUTH CAROLINA	)	
COUNTY OF RICHLAND	)	BEFORE THE STATE ETHICS COMMISSION
	)	
IN THE MATTER OF:	)	
Complaints C2021-078	)	
C2023-129	)	
	)	
Shirley Etheredge Mitchell	)	**COMMISSION STAFF'S RESPONSE TO APPELLATE BRIEF**
Stephen D. Cain,	)	
Complainants/Appellees	)	
	)	
Lancer Shull,	)	
Respondent/Appellant	)	
	)	

This brief is submitted in response to Lancer Shull's (Respondent/Appellant) Appeal from the State Ethics Commission (Commission) Hearing Panel's (Panel) Decision and Order (Decision), which found Respondent, Mayor of the Town of Batesburg-Leesville (Town), in violation of six (6) counts of Section 8-13-700(B) of the South Carolina Ethics, Government Accountability, and Campaign Reform Act (Ethics Act or Act). For the reasons discussed herein, the Panel's Decision should be affirmed.

RELEVANT PROCEDURAL HISTORY

The above-referenced Complaints were filed on September 8, 2021 (C2021-078) and October 19, 2023 (C2023-129) alleging, among other things, that Respondent improperly participated in matters in which he had an economic interest by discussing, voting on, and failing to properly recuse from discussions and votes related to his appointment to the Lexington County Joint Municipal Water and Sewer Commission (JMWSC) during Town Council meetings held on January 13, 2020, January 21, 2020, and December 11, 2023. The Commission subsequently found probable cause to believe Respondent violated the Ethics Act as follows:

<u>COUNT ONE</u> ATTEMPT TO INFLUENCE A GOVERNMENTAL DECISION IN WHICH RESPONDENT HAD AN ECONOMIC INTEREST SECTION 8-13-700(B), S.C. CODE ANN., 1976, AS AMENDED. That Lancer Shull, Mayor of Batesburg-Leesville, attempted to influence a governmental decision in which he had an economic interest by participating in discussions regarding his appointment to the Joint Municipal Water and Sewer Commission at a January 13, 2020 Town Council meeting, in violation of Section 8-13-700(B).

<u>COUNT TWO</u> ATTEMPT TO INFLUENCE A GOVERNMENTAL DECISION IN WHICH RESPONDENT HAD AN ECONOMIC INTEREST SECTION 8-13-700(B), S.C. CODE ANN., 1976, AS AMENDED. That Lancer Shull, Mayor of Batesburg-Leesville, attempted to influence a governmental decision in which he had an economic interest by voting to appoint himself to the Joint Municipal Water and Sewer Commission at a January 21, 2020 Town Council meeting, in violation of Section 8-13-700(B).

<u>COUNT THREE</u> FAILURE TO RECUSE FROM A GOVERNMENTAL DECISION IN WHICH RESPONDENT HAD AN ECONOMIC INTEREST SECTION 8-13-700(B), S.C. CODE ANN., 1976, AS AMENDED. That Lancer Shull, Mayor of Batesburg-Leesville, failed to provide a written recusal statement regarding his appointment to the Joint Municipal Water and Sewer Commission at a January 13, 2020 Town Council meeting, in violation of Section 8-13-700(B).

<u>COUNT FOUR</u> FAILURE TO RECUSE FROM A GOVERNMENTAL DECISION IN WHICH RESPONDENT HAD AN ECONOMIC INTEREST SECTION 8-13-700(B), S.C. CODE ANN., 1976, AS AMENDED. That Lancer Shull, Mayor of Batesburg-Leesville, failed to provide a written recusal statement regarding his appointment to the Joint Municipal Water and Sewer Commission at a January 21, 2020 Town Council meeting, in violation of Section 8-13-700(B).

<u>COUNT FIVE</u> ATTEMPT TO INFLUENCE A GOVERNMENTAL DECISION IN WHICH RESPONDENT HAD AN ECONOMIC INTEREST SECTION 8-13-700(B), S.C. CODE ANN., 1976, AS AMENDED. That Lancer Shull, Mayor of Batesburg-Leesville, attempted to influence a governmental decision in which he had an economic interest by voting to appoint himself to the Joint Municipal Water and Sewer Commission at a December 11, 2023 Town Council meeting, in violation of Section 8-13-700(B).[1]

<u>COUNT SIX</u> FAILURE TO RECUSE FROM A GOVERNMENTAL DECISION IN WHICH RESPONDENT HAD AN ECONOMIC INTEREST SECTION 8-13-700(B), S.C. CODE ANN., 1976, AS AMENDED. That Lancer

[1] Count Five of the Commission's Notice of Hearing contained a scrivener's error. This Count improperly stated that Respondent improperly participated in a *discussion* regarding appointing himself to the JMWSC during a December 11, 2023 Council meeting. The Commission actually found probable cause to believe Respondent improperly participated in the *vote* to appoint himself to the JMWSC. This scrivener's error was corrected and properly stated in the Panel's Decision and Order.

Shull, Mayor of Batesburg-Leesville, failed to provide a written recusal statement regarding his appointment to the Joint Municipal Water and Sewer Commission at a December 11, 2023 Town Council meeting, in violation of Section 8-13-700(B).

On February 20, 2025, the Panel conducted a hearing pursuant to Section 8-13-320(10)(j) of the Ethics Act. The Panel heard testimony from Respondent, the JMSWC's General Manager Jay Nicholson, and Commission Investigator Kevin Hinson. On March 7, 2025, the Panel found Respondent violated Section 8-13-700(B) of the Act as outlined in the Notice of Hearing. Respondent timely filed a Notice of Appeal.

FACTS

1. Respondent has served on Town Council as Mayor since 2018.
2. The JMWSC is a joint municipal water system that exists, in part, to meet water and wastewater service needs in certain areas of Lexington County. Each member of the JMWSC (all of which are governmental entities) appoints a representative to the JMWSC. These appointed representatives constitute the governing body of the JMWSC.
3. The Town is a member of the JMSWC. Town Council initially appointed Respondent to serve as its JMWSC representative in 2018.
4. The JMWSC typically meets monthly. From 2018 through 2023, the JMWSC met, and Respondent attended, meetings as follows:
    a. In 2018, the JMWSC met eight (8) times. Respondent attended all eight (8) meetings.
    b. In 2019, the JMWSC met ten (10) times. Respondent attended only nine (9) meetings.
    c. In 2020, the JMWSC met six (6) times. Respondent attended all six (6) meetings.
    d. In 2021, the JMWSC met eight (8) times. Respondent attended only seven (7) meetings.
    e. In 2022, the JMWSC met six (6) times. Respondent attended all six (6) meetings.
    f. In 2023, the JMWSC met eight (8) times. Respondent attended all eight (8) meetings.

5. From 2018 through 2023, Respondent received a monthly payment of $250.00 from the JMWSC, for a total of $3,000.00 annually. Respondent was paid regardless of whether the JMWSC held a meeting and regardless of whether he attended those meetings. The JMWSC did not maintain records related to Respondent's mileage or actual expenses. According to the JMWSC staff, the $250.00 is a "*per diem*" payment and is issued under a "nonaccountable plan" in accordance with the Internal Revenue Code (IRC).[2]
6. During a January 13, 2020 Council meeting, Council engaged in discussions regarding Respondent's reappointment to the JMWSC. Instead of reappointing Respondent, Council voted to appoint another Councilmember in a 5-4 vote, with Respondent voting against his removal from the JMWSC. Respondent did not provide a written recusal statement.
7. On January 21, 2020, Council held a meeting to reconsider its January 13, 2020 appointment to the JMWSC. During the meeting, Respondent voted to appoint himself to the JMWSC in a 7-2 vote. Respondent did not provide a written recusal statement.
8. During a December 11, 2023 Council meeting, Respondent voted to reappoint himself to the JMWSC in a 6-2 vote. Respondent did not provide a written recusal statement.

APPLICABLE LAW

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:

[2] According to Internal Revenue Service Publication 463 (2025), "a nonaccountable plan is a reimbursement or expense allowance arrangement" wherein employees are paid a daily flat rate and are not required to provide detailed accounts of their expenses to their employer.

> (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(11) of the Ethics Act 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] 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] is incidental to the [public official's] position or which accrues to the [public official] as a member of a profession, occupation, or large class to no greater extent than the economic interest or potential benefit could reasonably be foreseen to accrue to all other members of the profession, occupation, or large class.

Section 6-25-60(C) of the Joint Authority Water and Sewer Systems Act (Joint Water and Sewer Act) provides, in relevant part:

> . . . no commissioner of a joint system shall receive any compensation solely for the performance of duties as a commissioner, but each commissioner may be paid per diem, mileage, and subsistence expenses . . .

ARGUMENTS

I. Respondent violated Section 8-13-700(B) when he participated in discussions, voted on, and failed to recuse himself from, discussions and votes specifically related to his removal or appointment to the JMWSC.

A. Economic Interest

Respondent argues he did not violate Section 8-13-700 of the Ethics Act because the monthly payments to the JMWSC members do not constitute an "economic interest." Specifically, Respondent argues that (1) his interest does not meet the statutory definition of economic interest under Section 8-13-100(11)(a); (2) his interest is subject to the "large class exception" found in Section 8-13-100(11)(b);[3] and (3) no economic interest can exist because the monthly payments are permissible under the Joint Water and Sewer Act and the IRC. (App.Br.9-13). As discussed herein, these arguments are without merit.

<u>Economic Interest and the Large Class Exception</u>

Section 8-13-700 of the Ethics Act prohibits a public official from participating in any matter in which he has an economic interest. As defined in Section 8-13-100(11)(a) of the Act, "economic interest" means "an interest distinct from that of the general public in a purchase, sale, lease, contract, option, or other transaction or other arrangement involving property or services in which a [public official] may gain" more than $50.00. When a public official is faced with a matter in which he has an economic interest, the public official must recuse himself following the

[3] Respondent briefly argues that his economic interest should be considered "incidental" under Section 8-13-100(11)(b) because all members of the JMWSC receive the same or similar payment. However, the plain language of Section 8-13-100(11)(b) requires that the economic interest be "incidental to the public official's, public member's or public employee's position" for the exception to apply. Here, while it may be true that such payments are incidental to the positions of all JMWSC members, they are *not* incidental to the positions of all Town Councilmembers because not all Town Councilmembers are entitled to receive the payments – only those who are appointed to the JMWSC. Thus, Respondent's argument fails. <u>See Hodges v. Rainey</u>, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) (finding a court must abide by the plain meaning of the words in a statute).

procedures outlined in Section 8-13-700(B) of the Ethics Act. See SEC AO99-002 ("Section 8-13-700(B) provides the steps to be taken by a public employee who is required to take action or make decisions affecting his personal economic interests").

However, there is an exception to the general recusal requirement called the "large class exception." This exception exists where the only economic interest that would accrue to the public official as a result of his conduct is no greater than that of similarly situated persons in the public official's profession, occupation, or other large class. See Section 8-13-100(11)(b).

Here, Respondent clearly had an interest distinct from the general public in an "arrangement involving . . . services" for which he would receive \$50.00 or more. First, it is undisputed that the JMWSC members are paid \$250.00 per month, for an annual total of \$3,000.00. Second, Respondent admitted during his Panel testimony that the work he does on the JMWSC is a "service." (Tr. 74:31-75:2). In each of the instances outlined in the Notice of Hearing, Respondent's continued service on the JMWSC, for which he receives more than \$50.00, was at risk. By the plain language of Section 8-13-100(11)(a), Respondent therefore had an economic interest in his appointment and/or removal from the JMWSC.

As to the "large class exception," Respondent argues that he was permitted to participate in his own appointment and/or removal from the JMWSC because his economic interest was no greater than that of all other JMWSC members. However, the proper question is not whether all JMWSC members were entitled to the same payments for their service on the JMWSC, but rather how many other people were entitled to the same payments *as a result of Respondent's conduct.* In that regard, Respondent's economic interest was unique as to the December 11, 2023 Council meeting because the motion and subsequent vote were limited solely to his reappointment. As to the January 13, 2020 and January 21, 2020 Council meetings, two (2) people had an economic interest – Respondent, who was the existing appointee to the JMWSC, and the Councilmember who was nominated on January 13, 2020, then replaced on January 21, 2020. However, the Commission has never held that two (2) people constitute a large class. See SEC AO2014-002 (finding 1 out of 9 does *not* constitute a large class); SEC AO2010-004 (finding 1 out of 56 constitutes a large class); SEC AO2008-004 (finding 1 out of 171 constitutes a large class, but 4 out of 19 does *not* constitute a large class). Accordingly, the large class exception cannot, and does not, apply.

Joint Water and Sewer Act

Respondent argues that there can be no economic interest in the JMWSC payments because (1) they are permissible under Section 6-25-60(C) of the Joint Water and Sewer Act and (2) the IRC gives the JMWSC discretion in deciding whether to utilize an accountable or nonaccountable *per diem* plan. (App.Br.5-8). Respondent further asks the Commission to "find that the nonaccountable *per diem* plan utilized by the JMWSC [] fully complies with the requirements of [S]ection 6-25-60." (App.Br.9). As discussed herein, these arguments lack merit and should be disregarded by the Commission.

As an initial matter, the Commission's jurisdiction is limited to the enforcement and interpretation of the Ethics Act. See Section 8-13-320(9)-(12); SEC AO93-72; Hutto, S.C. Op. Atty. Gen, Dec. 23, 2013 (finding the Commission's jurisdiction is limited to questions involving interpretation and administrative enforcement of the Ethics Act). Therefore, the Commission lacks the authority to find that the JMWSC payments, or the accounting method utilized for these payments, are compliant with Section 6-25-60(C) of the Joint Water and Sewer Act and/or the IRC.

Moreover, even assuming Respondent's assertions are true, they have no bearing on whether Respondent violated Section 8-13-700 of the Ethics Act. Section 6-25-60(C) of the Joint Water and Sewer Act appears to permit certain types of payments from the JMWSC to its members. The IRC appears to explain the possible accounting methods and/or tax implications of these payments. Neither the Joint Water and Sewer Act nor the IRC address how Respondent must conduct himself as a public official on Town Council when Council is considering whether to remove or appoint him to the JMWSC – this is governed by the Ethics Act. These provisions of law are not in conflict with one another - they simply address different aspects of the same scenario. Accordingly, the Commission should find that the JMWSC's compliance with Section 6-25-60(C) and the IRC is irrelevant for purposes of determining a violation of Section 8-13-700. See SEC AO2025-001 (distinguishing between the *permissibility* of a school board member receiving pay under the South Carolina School Code and the *methodology* by which the school board member could participate in receiving such pay under the Ethics Act).

B. Miscellaneous Arguments

Respondent argues the Commission should find that he did not violate Section 8-13-700 of the Ethics Act for several additional reasons, which are discussed below.[4]

Business With Which Respondent is Associated

Respondent argues he was permitted to participate in matters related to the JMWSC because the JMWSC is not a "business with which he is associated" for purposes of Section 8-13-700. Section 8-13-100(4) of the Ethics Act defines "business with which he is associated" as:

[4] Respondent argues that the underlying Panel Decision contains insufficient findings of fact and conclusions of law. (App.Br.4-5). However, the format and contents of the Panel Decision are immaterial for purposes of this appeal given that the Appellate Panel's standard of review is *de novo* and its decision may be based on any evidence found in the record. See S.C. Code Ann. Reg. 52-806; see also Black's Law Dictionary (12th ed. 2024) ("when a court engages in *de novo* review of a legal issue, it makes an independent determination without deference to any earlier analysis about the matter. It is treated as if no previous decision had been made: there is no presumption of the correctness or validity of any prior finding, recommendation, or conclusion"). The review of the Appellate Panel is the final decision of the Commission. See S.C. Code Ann. § 8-13-320(10)(m).

> 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 [certain] stock . . .

The Commission has formally opined that "a governmental entity is not a business" for purposes of the Ethics Act. See SEC AO2009-002. Thus, Commission staff agrees that the JMWSC is not a "business with which [Respondent] is associated." However, this argument is immaterial to the present matter because Respondent did not improperly participate in a matter in which a business with which he was associated had an economic interest. Rather, Respondent improperly participated in a matter in which *he personally* had an economic interest. Accordingly, whether the JMWSC is a business with which Respondent is associated is irrelevant.

Complainants Did Not Testify/Burden of Proof

Respondent argues Commission staff failed to carry its burden of proof because the Complainants did not testify. (App.Br.5). According to Respondent, the Panel was required to consider the testimony of the Complainants because "as complaining parties, they have voluntarily and intentionally made themselves available to the Court" and because "Respondent had the right to cross examine these complaining, available witnesses." (App.Br.5). In support of this assertion, Respondent relies on S.C. Code Ann. Regs. 52-714, which provides:

> A. All available evidence and testimony shall be presented at the scheduled hearing or a party must move for adjournment.
>
> B. Adjournment may be granted in order to take the testimony by deposition or at a hearing reconvened at a later date.

Hearings before the Commission are conducted in accordance with the Administrative Procedures Act (APA), which requires an agency to prove violations of law by a preponderance of the evidence. Section 8-13-320(10)(j). There is no requirement in the Ethics Act or the APA that the agency prove its case using specific witnesses or other evidence. In this case, Commission staff established Respondent's violations through documentary evidence and the testimony of Chief Investigator Kevin Hinson and the JMWSC General Manager Jay Nicholson.

According to Respondent's interpretation of Regulation 52-714, the Panel would have been required to hear literally *all* available evidence and testimony, regardless of whether such evidence or testimony was irrelevant, cumulative, or prejudicial. This interpretation is illogical. Moreover, even taking Respondent's argument as correct, it was still his responsibility to "move for adjournment" if he believed "all available evidence and testimony" had not been presented. See S.C. Code Ann. Reg. 52-712(A). Accordingly, this argument is without merit and should be disregarded by the Commission.

JMWSC Not "Separate and Distinct" from Town Council

Respondent argues he was permitted to participate in his appointment to and/or removal from the JMWSC because the JMWSC is not "separate and distinct" from Town Council. (App.Br.19-20). In support of this argument, Respondent cites prior Commission complaints and advisory opinions involving public officials who, in addition to their primary public offices, served on secondary boards in their official capacities. As discussed herein, this argument is without merit.

The Commission commonly refers to service on such secondary boards as "*ex-officio* service" and it has long held that when a public official's service on a secondary board is *ex-officio*, the public official is "not required to recuse himself on matters that c[o]me before [him] which would affect the economic interest of the board." SEC AO2002-009. For a public official to serve on a secondary board "*ex-officio*," the service must (1) arise because of the position held by the public official; (2) involve matters which fall within the official responsibility of the agency or public official; and (3) be a service the agency would normally provide and for which the public official would be subject to expense reimbursement by the agency. See SEC AO2018-002.

Here, it appears likely that Respondent's service on the JMWSC is in an *ex-officio* capacity. However, *ex-officio* status only permits a public official to participate in matters affecting "the economic interests of the board." SEC AO2002-009. The Commission has never held that serving *ex-officio* on a particular board gives a public official authorization to participate in or vote on matters affecting his own personal economic interest. Accordingly, Respondent's argument should be disregarded by the Commission.

Absurd Result

Respondent argues that any interpretation of the Ethics Act that finds him in violation of Section 8-13-700 for "voting on the appointment of a representative of [Council] to the [JMWSC]" is an absurd result because all members of Council are eligible for appointment and therefore all members of Council have an economic interest in the JMWSC payments. (App.Br.17-18). According to Respondent, this means no member of Council can vote on an appointment to the JMWSC. (App.Br.17-18). This argument overlooks the specific facts of Respondent's case.

Section 8-13-700 prohibits a public official from participating in a matter in which they have a personal economic interest. As explained in Argument I.A., *infra,* all Councilmembers did not have an economic interest in Council's decisions on January 13, 2020, January 21, 2020, and December 11, 2023. As to the January 13, 2020 and January 21, 2020 Council meetings, only two (2) people had an economic interest – Respondent, who was the existing appointee to the JMWSC, and the Councilmember who was nominated on January 13, 2020, then replaced on January 21, 2020. As to the December 11, 2023 Council meeting, Respondent's was the only person with an economic interest because the motion and subsequent vote were limited solely to his reappointment. Accordingly, Respondent's argument lacks merit.

CONCLUSION

For the reasons stated herein, the Commission should find Respondent in violation of Section 8-13-700 as outlined in the Notice of Hearing and as more fully explained herein. Commission staff also asks that the Commission permit the parties to submit competing appellate orders for the Commission to consider.

Respectfully submitted,

s/Courtney M. Laster
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June 27, 2025
Columbia, SC

RECEIVED
Nov 20 2025
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

Shirley Etheredge Mitchell and Stephen D. Cain .... Respondents

v.

Lancer Shull .... Appellant.

AMENDED NOTICE OF APPEAL

The Appellant Lancer Shull filed his Notice of Appeal to the South Carolina Court of Appeals on November 12, 2025. The Appeal Order was dated October 1, 2025, attached hereto, and the Appellant received the Appeal Order, via email, on October 13, 2025 and thereafter postmarked with the United States Postal Service on October 15, 2025.

Therefore, the Appellant amends his Notice of Appeal to extent of indicating the South Carolina Ethics Commission Appeal Order dated October 1, 2025 was received by the Appellant via email on October 13, 2025 and thereafter by the United States Postal Service on October 15, 2025.

DAVIS FRAWLEY, LLC

/s/ James Randall Davis
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RECEIVED
Nov 20 2025
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
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Shirley Etheredge Mitchell and Stephen D. Cain .... Respondents

v.

Lancer Shull .... Appellant.

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The Appellant Lancer Shull filed his Notice of Appeal to the South Carolina Court of Appeals on November 12, 2025. The Appeal Order was dated October 1, 2025, attached hereto, and the Appellant received the Appeal Order, via email, on October 13, 2025 and thereafter postmarked with the United States Postal Service on October 15, 2025.

Therefore, the Appellant amends his Notice of Appeal to extent of indicating the South Carolina Ethics Commission Appeal Order dated October 1, 2025 was received by the Appellant via email on October 13, 2025 and thereafter by the United States Postal Service on October 15, 2025.

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/s/ James Randall Davis
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RECEIVED
Nov 20 2025
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

Shirley Etheredge Mitchell and Stephen D. Cain .... Respondents

v.

Lancer Shull .... Appellant.

PROOF OF SERVICE

I, Nicole T. Price, a paralegal with the law firm of Davis Frawley, LLC, do hereby certify that I have served a copy of the following document upon the Respondents, by the below indicated methods at the below indicated addresses, this 20th day of November, 2025:

DOCUMENT SERVED: **AMENDED NOTICE OF APPEAL**

RESPONDENT: **VIA EMAIL AND HAND DELIVERY**

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Email: claster@ethics.sc.gov

VIA HAND DELIVERY
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VIA US POSTAL MAIL
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Stephen D. Cain
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Nicole T. Price

Nicole T. Price, Paralegal

November 20, 2025

Lexington, South Carolina

James Randall Davis
Patrick J. Frawley
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John J. McCauley ◊
Carey M. Ayer ∆
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RECEIVED
Nov 20 2025
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RE: Complaints C2021-078; C2023-129
Shirley Etheredge Mitchell and Stephen D. Cain v. Lancer Shull
Our File No. 34642

Dear Parties:

Enclosed, please find a copy our Amended Notice of Appeal which I hereby serve upon you by the above indicated method.

Yours very truly,

James Randall Davis

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STATE ETHICS COMMISSION
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STATE OF SOUTH CAROLINA COUNTY OF RICHLAND IN THE MATTER OF: Complaints C2021-078 C2023-129 Shirley Etheredge Mitchell Stephen D. Cain Complainants. Lancer Shull Respondent.	BEFORE THE STATE ETHICS COMMISSION **APPEAL ORDER**

RECEIVED
Nov 20 2025
SC Court of Appeals

This matter comes before the State Ethics Commission (Commission) by way of a timely Notice of Appeal filed by Lancer Shull (Respondent), Mayor of Batesburg-Leesville (Town). Therein, Respondent seeks review of the March 7, 2025 Order of the Commission Hearing Panel (Hearing Panel or Panel) which found him in violation of the Ethics, Government Accountability, and Campaign Reform Act of 1991 (Ethics Act or Act). Present at the July 17, 2025 Appeal Hearing were Commissioners Bryant S. Caldwell, Helen Munnerlyn, Sara Parrish, Mary Hunter B. Tomlinson, Matthew N. Tyler, Neal D. Truslow, and F. Xavier Starkes, Appellate Panel Chair.[1]

RELEVANT PROCEDURAL HISTORY

The above-referenced Complaints were filed on September 8, 2021 (C2021-078) and October 19, 2023 (C2023-129), alleging, among other things, that Respondent improperly participated in and voted on matters related to his appointment to the Lexington County Joint Municipal Water and Sewer Commission (JMWSC) during Batesburg-Leesville Town Council meetings held on January 13, 2020, January 21, 2020, and December 11, 2023. Following

[1] Pursuant to Reg. 52-805(A), the Appellate Panel is comprised of the full Commission "excluding the original hearing Commissioners." The Hearing Panel consisted of Commissioners Scott E. Frick, Brandolyn Thomas Pinkston, and AJ Holloway, whose terms all expired on March 30, 2025.

SA #1

investigations into the complaints, the Commission found probable cause existed to believe Respondent violated the Ethics Act as follows:

COUNT ONE **ATTEMPT TO INFLUENCE A GOVERNMENTAL DECISION IN WHICH RESPONDENT HAD AN ECONOMIC INTEREST SECTION 8-13-700(B), S.C. CODE ANN., 1976, AS AMENDED.** That Lancer Shull, Mayor of Batesburg-Leesville, attempted to influence a governmental decision in which he had an economic interest by participating in discussions regarding his appointment to the Joint Municipal Water and Sewer Commission at a January 13, 2020 Town Council meeting, in violation of Section 8-13-700(B).

COUNT TWO **ATTEMPT TO INFLUENCE A GOVERNMENTAL DECISION IN WHICH RESPONDENT HAD AN ECONOMIC INTEREST SECTION 8-13-700(B), S.C. CODE ANN., 1976, AS AMENDED.** That Lancer Shull, Mayor of Batesburg-Leesville, attempted to influence a governmental decision in which he had an economic interest by voting to appoint himself to the Joint Municipal Water and Sewer Commission at a January 21, 2020 Town Council meeting, in violation of Section 8-13-700(B).

COUNT THREE **FAILURE TO RECUSE FROM A GOVERNMENTAL DECISION IN WHICH RESPONDENT HAD AN ECONOMIC INTEREST SECTION 8-13-700(B), S.C. CODE ANN., 1976, AS AMENDED.** That Lancer Shull, Mayor of Batesburg-Leesville, failed to provide a written recusal statement regarding his appointment to the Joint Municipal Water and Sewer Commission at a January 13, 2020 Town Council meeting, in violation of Section 8-13-700(B).

COUNT FOUR **FAILURE TO RECUSE FROM A GOVERNMENTAL DECISION IN WHICH RESPONDENT HAD AN ECONOMIC INTEREST SECTION 8-13-700(B), S.C. CODE ANN., 1976, AS AMENDED.** That Lancer Shull, Mayor of Batesburg-Leesville, failed to provide a written recusal statement regarding his appointment to the Joint Municipal Water and Sewer Commission at a January 21, 2020 Town Council meeting, in violation of Section 8-13-700(B).

COUNT FIVE **ATTEMPT TO INFLUENCE A GOVERNMENTAL DECISION IN WHICH RESPONDENT HAD AN ECONOMIC INTEREST SECTION 8-13-700(B), S.C. CODE ANN., 1976, AS AMENDED.** That Lancer Shull, Mayor of Batesburg-Leesville, attempted to influence a governmental decision in which he had an economic interest by voting to appoint himself to the Joint Municipal Water and Sewer Commission at a December 11, 2023 Town Council meeting, in violation of Section 8-13-700(B).

COUNT SIX **FAILURE TO RECUSE FROM A GOVERNMENTAL DECISION IN WHICH RESPONDENT HAD AN ECONOMIC INTEREST SECTION 8-13-700(B), S.C. CODE ANN., 1976, AS AMENDED.** That Lancer Shull, Mayor of Batesburg-Leesville, failed to provide a written recusal statement

JH #2

regarding his appointment to the Joint Municipal Water and Sewer Commission at a December 11, 2023 Town Council meeting, in violation of Section 8-13-700(B).

On February 20, 2025, the Panel conducted a hearing pursuant to Section 8-13-320(10)(j) of the Ethics Act. The Panel heard testimony from Respondent, the JMSWC's General Manager Jay Nicholson, and Commission Investigator Kevin Hinson. On March 7, 2025, the Panel issued an Order finding Respondent in violation of the Ethics Act as outlined in the Notice of Hearing. This appeal followed.

FACTS

1. Respondent has served as Town Mayor since 2018.
2. The JMWSC is a joint municipal water system that exists, in part, to meet water and wastewater service needs in certain areas of Lexington County. The members of the JMWSC are governmental entities. Each governmental entity is responsible for appointing a representative to the JMWSC. These appointed representatives constitute the board of the JMWSC.
3. The Town is a member of the JMWSC. Town Council initially appointed Respondent to serve as its JMWSC board member in 2018.
4. The JMWSC's meetings are typically held once a month and the JMWSC pays its board members $250.00 each month for their service, for a total of $3,000.00 each year.
5. From 2018 through 2023, the JMWSC met, and Respondent attended meetings as follows:
   a. In 2018, the JMWSC met eight (8) times. Respondent attended eight (8) meetings.
   b. In 2019, the JMWSC met ten (10) times. Respondent attended nine (9) meetings.
   c. In 2020, the JMWSC met six (6) times. Respondent attended six (6) meetings.
   d. In 2021, the JMWSC met eight (8) times. Respondent attended seven (7) meetings.
   e. In 2022, the JMWSC met six (6) times. Respondent attended six (6) meetings.
   f. In 2023, the JMWSC met eight (8) times. Respondent attended eight (8) meetings.

JX#3

6. From 2018 through 2023, Respondent received $250.00 each month from the JMWSC, for a total of $3,000.00 annually, for a cumulative total of $18,000.00. Respondent was paid regardless of whether the JMWSC held a meeting and regardless of whether Respondent attended those meetings. The JMWSC did not maintain records related to Respondent's mileage or actual expenses. According to the JMWSC General Manager Jay Nicholson, the $250.00 is a "*per diem*" payment issued under a "nonaccountable plan" in accordance with the Internal Revenue Code (IRC).[2] This amount is paid regardless of whether a board member attends a meeting or performs JMWSC-related duties throughout the month.
7. During a January 13, 2020 Council meeting, Council engaged in discussions regarding Respondent's reappointment to the JMWSC. Instead of reappointing Respondent, Council voted to replace Respondent with Councilman Steve Cain. Respondent voted against his removal from the JMWSC. Respondent did not provide a written recusal statement.
8. On January 21, 2020, Council held a meeting to reconsider Respondent's removal from the JMWSC. During the meeting, Respondent voted to reappoint himself to the JMWSC. Respondent did not provide a written recusal statement.
9. During a December 11, 2023 Council meeting, Respondent voted to reappoint himself to the JMWSC. Respondent did not provide a written recusal statement.
10. As outlined in its Order, the Hearing Panel found Respondent in violation of three (3) counts of Section 8-13-700(B) for his attempts to influence a governmental decision in which he had an economic interest by participating in discussions and votes related to his reappointment to

[2] According to Internal Revenue Service Publication 463 (2025), "a nonaccountable plan is a reimbursement or expense allowance arrangement" wherein employees are paid a daily flat rate and are not required to provide detailed accounts of their expenses to their employer.

JH #4

the JMWSC during Council meetings held on January 13, 2020, January 21, 2020, and December 11, 2023. The Hearing Panel further found Respondent in violation of three (3) counts of Section 8-13-700(B) for failing to provide a written recusal statement with regard to his appointment on the aforementioned dates. The Hearing Panel assessed a $50.00 civil penalty for each violation and an administrative fee of $1,000.00, for a total of $1,300.00.

STANDARD OF REVIEW

Within ten (10) days after service of a Hearing Panel Order, a respondent may apply to the Commission for a full Commission review. Section 8-13-320(10)(m). The review must be made on the record established in the Panel hearing. Id. After reconsidering the evidence, the Commission shall "enter an order amending, affirming or modifying the Panel's decision." Reg. 52-806(A).

DISCUSSION

On appeal, Respondent argues that Section 8-13-700 did not prohibit him from participating in his own appointment because he does not have an economic interest in the JMWSC monthly payments. Specifically, Respondent argues no economic interest exists because (1) the payments do not meet the statutory definition of economic interest under Section 8-13-100(11)(a); (2) the large class exception found in Section 8-13-100(11)(b) applies; (3) construing the monthly payments as an economic interest would lead to an absurd result; (4) the monthly payments are authorized by the Joint Water and Sewer Act; and (5) his JMWSC service is *ex-officio*.[3] These arguments are addressed below, in turn.

[3] Respondent also argues that Commission staff failed to meet its burden of proof because it did not present the Complainants as witnesses. However, there is no requirement in either the Ethics Act or the Administrative Procedures Act that a party prove its case using specific witnesses or evidence. Accordingly, the Commission finds this argument without merit.

JX #5

I. Statutory Definition of Economic Interest

Section 8-13-700(B) of the Ethics Act prohibits a public official from participating in any matter in which he, a family member, a business with which he is associated, or an individual with whom he is associated has an economic interest. When a public official is faced with a matter in which he has an economic interest, the public official must recuse himself following the procedures outlined in Section 8-13-700(B) of the Ethics Act:

> 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.

As defined in Section 8-13-100(11)(a) of the Act, "economic interest" means "an interest distinct from that of the general public in a purchase, sale, lease, contract, option, or other transaction or other arrangement involving property or services in which a [public official] may gain" more than $50.00.

JK #6

Here, Respondent argues that his interest in the monthly JMWSC payments does not meet the statutory definition of economic interest because the payments are only for expense reimbursement. First, it is undisputed that the JMWSC pays its board members $250.00 each month. Second, Respondent admitted during his Panel testimony that the work he does on the JMWSC is a "service." Finally, because the JMWSC pays its board members each month without regard to meeting attendance or the performance of JMWSC-related duties, the payments constitute an arrangement in which Respondent *may* gain more than $50.00. Accordingly, the Commission finds that Respondent's interest in the monthly payments meets the statutory definition of "economic interest" found in Section 8-13-100(11)(a).

II. Applicability of the Large Class Exception

Section 8-13-700(B) requires a public official to recuse himself from any matter in which he, a family member, a business with which he is associated, or an individual with whom he is associated has an economic interest. However, there is an exception to the recusal requirement called the "large class exception" found in Section 8-13-100(11)(b).[4] Under this exception, a public official may participate in a matter in which he has an economic interest if:

> the only economic interest or reasonably foreseeable benefit that may accrue to the [public official] . . . accrues to the [public official] 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.

[4] Section 8-13-100(11)(b) also contains an exception to the recusal requirement when the only benefit that accrues to a public official is "incidental" to the public official's position. In his appeal, Respondent asks the Commission to apply this exception. However, the plain language of Section 8-13-100(11)(b) requires the economic interest to be "incidental to the public official's . . . position" for the exception to apply. In the present case, while the payments may be incidental to JMWSC board members, they are *not* incidental to all Town Councilmembers because not all Town Councilmembers receive the payments – only those who are appointed to the JMWSC. Thus, this argument fails. See Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) (finding a court must abide by the plain meaning of the words in a statute).

JX#7

In his appeal, Respondent argues he was permitted to participate in his own appointment because his economic interest was no greater than that of any other JMWSC board member and, therefore, the "large class exception" applies. However, Respondent's characterization of the remaining JMWSC board members as the "large class" is flawed. The "large class" consists of the individuals or entities impacted by Respondent's conduct. See SEC AO92-155 (finding a public member could vote on matters affecting his own property as long as all owners of property in the affected area were similarly impacted by the public member's vote).

In the present case, Respondent was the only person who had an economic interest in the discussion and vote that occurred on December 11, 2023 because the question considered by Town Council was limited to Respondent's re-appointment. As to the January 13, 2020 and January 21, 2020 Council meetings, only two (2) people had an economic interest – Respondent, who was the existing appointee to the JMWSC, and the Councilmember who briefly replaced Respondent. However, two (2) people do not constitute a large class. See SEC AO2014-002 (finding 1 out of 9 does *not* constitute a large class); SEC AO2010-004 (finding 1 out of 56 constitutes a large class); SEC AO2008-004 (finding 1 out of 171 constitutes a large class, but 4 out of 19 does *not* constitute a large class). Accordingly, the Commission finds that large class exception does not apply.

III. Absurd Result

Section 8-13-700 prohibits a public official from participating in a matter in which he has a personal economic interest. On appeal, Respondent argues that any interpretation of the Ethics Act finding him in violation of Section 8-13-700 for participating in or voting on his appointment to JMWSC would lead to an absurd result because it would prohibit all Councilmembers from voting on a JMWSC appointment. However, this argument overlooks the specific facts of Respondent's case.

JX#8

As explained above in Section II, infra, on January 13, 2020 and January 21, 2020, only two (2) people had an economic interest in the specific questions taken up by Council – Respondent and Councilman Cain, who briefly replaced him. On December 11, 2023, only one (1) person had an interest in the specific question taken up by Council – Respondent. The Commission finds that prohibiting a public official from participating in a matter in which he has a specific economic interest is not absurd. It is, in fact, the entire purpose of Section 8-13-700(B).

IV. Joint Water and Sewer Act

Section 6-25-60(C) of the Joint Water and Sewer Act[5] provides, in relevant part:

> . . . no commissioner of a joint system shall receive any compensation solely for the performance of duties as a commissioner, but each commissioner may be paid per diem, mileage, and subsistence expenses . . .

Respondent argues that there can be no economic interest in the JMWSC monthly payments because such payments are permissible under Section 6-25-60(C). However, this provision of the Joint Water and Sewer Act only addresses the *types* of payments the JMWSC may make to its board members. It does not address how Respondent must conduct himself as a member of Town Council when Council is considering his appointment to the JMWSC – this situation is governed by the Ethics Act. Contrary to Respondent's position, the Joint Water and Sewer Act and the Ethics Act are not in conflict - they simply address different aspects of the same scenario. Accordingly, the Commission finds that the permissibility of the payments under Section

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[5] In his brief, Respondent asks the Commission to find that the accounting method utilized by the JMWSC "fully complies with the requirements of [S]ection 6-25-60" and the IRC. However, this Commission's jurisdiction is limited to the enforcement and interpretation of the Ethics Act. See Section 8-13-320(9)-(12); SEC AO93-72; Hutto, S.C. Op. Atty. Gen, Dec. 23, 2013 (finding the Commission's jurisdiction is limited to questions involving interpretation and administrative enforcement of the Ethics Act). Therefore, the Commission lacks the authority to make such a finding.

JH #9

6-25-60(C) is irrelevant for purposes of determining whether Respondent violated Section 8-13-700(B) when he participated in, and failed to recuse from, matters related to his appointment to the JMWSC. See SEC AO2025-001 (distinguishing between the permissibility of a school board member receiving pay and the methodology by which the school board member could participate in receiving such pay).

V. Ex-Officio Service

Section 8-13-700(B) requires a public official to recuse himself from any matter in which he, a family member, a business with which he is associated, or an individual with whom he is associated has an economic interest. The Commission has long held that when a public official's service on a secondary board is *ex-officio* then the public official is "not required to recuse himself on matters that c[o]me before [him] which would affect the economic interest of the board" because the secondary board is not considered a "business with which [Respondent] is associated" for purposes of Section 8-13-700. SEC AO2002-009. For a public official's service on a secondary board to be considered *ex-officio*, the service must (1) arise because of the position held by the public official; (2) involve matters which fall within the official responsibility of the agency or public official; and (3) be a service the agency would normally provide and for which the public official would be subject to expense reimbursement by the agency. See SEC AO2018-002.

On appeal, Respondent argues he was permitted to participate in matters related to his own appointment because the JMWSC is not a "business with which he is associated" for purposes of Section 8-13-700. In that regard, the Commission agrees. However, this fact is immaterial because Respondent did not improperly participate in matters in which the JMWSC had an economic interest. Rather, Respondent improperly participated in matters in which *he* had a personal economic interest. And the Commission has never held that a public official serving *ex-officio* on

JK #10

a secondary board is permitted to participate in matters affecting his own personal economic interest – only that participation in matters affecting the economic interests of the secondary board is permissible. Accordingly, the Commission finds Respondent's argument without merit.

DECISION

In this matter, the Commission is essentially tasked with deciding whether Section 8-13-700(B) of the Ethics Act allows a public official to appoint himself to a position that pays $3,000.00 per year. For the reasons outlined above, the Commission finds that such behavior is prohibited.

NOW, based on the evidence in the record and oral arguments presented, the Commission finds Respondent in violation of six (6) counts of Section 8-13-700(B) as outlined in the Notice of Hearing. Specifically, the Commission finds Respondent was not permitted to participate in discussions and/or votes related to his appointment or removal from the JMWSC. In addition, the Commission finds that Respondent was required to recuse himself pursuant to Section 8-13-700(B)(4) when such matters came before him on Town Council.

THEREFORE, pursuant to Section 8-13-320(10)(l)(i) of the Ethics Act, the Commission hereby issues a Public Reprimand and orders Respondent to pay a reduced civil penalty of $300.00 ($50.00 for each count);

AND, pursuant to Section 8-13-130 of the Ethics Act, and in addition to the civil penalty, the Commission hereby orders Respondent to pay an administrative fee of $1,000.00, making Respondent's total amount owed to the Commission $1,300.00.

AND, pursuant to Section 8-13-320 of the Ethics Act, if the $1,300.00 is not paid within six (6) months from Respondent's receipt of this Order, a judgment in the amount of $1,300.00 shall be entered against Respondent. In the event of a failure to pay, upon the Commission's filing

JX #11

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 $1,300.00 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 1st DAY OF October 2025.

STATE ETHICS COMMISSION

F. XAVIER STARKES,
APPELLATE PANEL CHAIR

Columbia, South Carolina

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC 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.

CERTIFICATE OF COUNSEL

Pursuant to Rule 210(g), SCACR, I certify that the record on appeal contains all material proposed to be included by any of the parties and not any other material.

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BY:/s/ James Randall Davis____________
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August 13, 2026
Lexington, South Carolina