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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM STATE ETHICS COMMISSION

Complaints No. C2021-078
C2023-129

Appellate Case No.: 2025-002308

South Carolina State Ethics Commission……………………………Respondent.

v.

Lancer Shull ……………………………………………………………Appellant.

Final Brief of Respondent

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RE-STATEMENT OF ISSUES ON APPEAL

I. Did the Commission correctly find that Shull violated § 8-13-700(B) when he participated in matters related to his own appointment to the Lexington County Joint Municipal Water and Sewer Commission (JMWSC), for which he was paid $250.00 per month regardless of meetings attended or work performed?

A. Did the Commission correctly find that Shull had an economic interest in the JMWSC payments?

B. Did the Commission correctly find that the JMWSC payments were not incidental to Shull's position as Town Mayor?

C. Did the Commission correctly find that the large class exception did not apply?

II. Did the Commission correctly find that the permissibility of the JMWSC payments under the Joint Water and Sewer Act was irrelevant to Shull's violation of § 8-13-700(B)?

III. Did the Commission correctly find that Shull's status as an *ex-officio* member of the JMWSC did not give him free rein to participate in matters where he had a personal economic interest?

STATEMENT OF THE CASE

This is an appeal from the State Ethics Commission's (Commission) finding that Appellant Lancer Shull (Shull), former Mayor of the Town of Batesburg-Leesville (Town), violated S.C. Code Ann. § 8-13-700(B) of the Ethics, Government Accountability, and Campaign Reform Act of 1991 (Ethics Act). The instant complaints were filed on September 8, 2021 (C2021-078) and October 19, 2023 (C2023-129) alleging, among other things, that Shull improperly participated in, and failed to recuse himself from, his own 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. (Apx.R.pp.1-21).

Following the investigations into the Complaints, the Commission issued a Notice of Hearing (NOH) alleging Shull violated the Ethics Act, in relevant part, 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).[2]

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). (R.pp.183-86).

On February 20, 2025, the Panel conducted a hearing pursuant to S.C. Code Ann. § 8-13-320(10)(j). (R.pp.58-144). In a Decision and Order dated March 7, 2025, the Hearing Panel found Shull in violation of the Ethics Act as outlined in the NOH. (R.pp.1-7). The Panel assessed a reduced civil penalty of $50.00 for each count and an administrative fine of $1,000.00, for a total of $1,300.00. (R.pp.1-7). On March 24, 2025, Shull timely appealed to the full Commission. (R.pp.8-11).The appellate hearing was held on July 17, 2025. (R.p.191; pp.145-70). The full Commission affirmed the Hearing Panel's Decision and Order on October 1, 2025. (R.pp.29-40). Shull timely filed his Notice of Appeal on November 12, 2025.

[2] Count Five of the Commission's Notice of Hearing contained a scrivener's error. This Count stated that Shull improperly participated in a *discussion* regarding his reappointment to the JMWSC during a December 11, 2023, Council meeting. The Commission actually found probable cause to believe Shull improperly *voted* to appoint himself to the JMWSC. This scrivener's error was properly stated in the Hearing Panel's Decision and Order then again in the Commission's Appeal Order.

FACTS

The JMWSC is a joint municipal water system that provides water and wastewater services within Lexington County. (R.p.85, line 24-p.86, line 25; p.92, lines 13-16). The Town is a member of the JMWSC and Town Council is responsible for appointing its representative to the JWMSC board. (R.p.67, lines 5-16; p.87, lines 3-11; p.91, lines 3-18; p.94, line 17-p.95, line 20; p.122, lines 12-16). JMWSC meetings are typically held once a month and the JMWSC pays its board members $250.00 each month, for a total of $3,000.00 each year. (R.p.74, lines 4-19; p.82, lines 1-6; p.87, line 13-p.89, line 3; R.pp.187-90).

In 2018, Town Council appointed Shull to serve as its representative on the JMWSC. (R.p.67, lines 18-21; p.86, line 27-p.87, line 1; p.121, line 30-p.122, line 8). From 2018-2023, JMWSC paid its members $250.00 each month regardless of whether it held a meeting, regardless of whether the member attended those meetings, and regardless of whether the member performed JMWSC-related duties.[3] (R.p.97, lines 1-28; p.104, lines 4-16, p.105, line 26-p.106, line 6; p.121, line 17-p.122, line 10; pp.187-90). Shull disclosed the amounts received from JMWSC as income on his Statements of Economic Interests filed with the Commission.[4] (R.p.138, lines 14-20).

According to JMWSC General Manager Jay Nicholson, the $250.00 monthly payment is a "*per diem*" payment issued under a "nonaccountable plan" in accordance with the Internal

[3] Prior to the Commission's Panel Hearing, the parties stipulated to the following: in 2018, the JMWSC met eight (8) times and Shull attended eight (8) meetings; in 2019, the JMWSC met ten (10) times and Shull attended nine (9) meetings; in 2020, the JMWSC met six (6) times and Shull attended six (6) meetings; in 2021, the JMWSC met eight (8) times and Shull attended seven (7) meetings; in 2022, the JMWSC met six (6) times and Shull attended six (6) meetings; in 2023, the JMWSC met eight (8) times and Shull attended eight (8) meetings. (R.pp.187-90).

[4] Statements of Economic Interests are annual financial disclosures filed, in relevant part, by public officials. *See* S.C. Code Ann. § 8-13-1110. These documents are publicly available on the Commission's website at https://ethics.sc.gov.

Revenue Code (IRC).[5] (R.p.101, lines 30-32). As such, the JWMSC did not require its members to submit actual expenses. (R.p.101, lines 30-32). To that end, during the Panel hearing, Nicholson testified:

> . . . this is a monthly, comprehensive per diem because its 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 we get into as [the JMWSC]. That's up to the commissioners to handle their – with their tax burden. (R.p.99, lines 11-17).

During a January 13, 2020, Town Council meeting, Town Council engaged in discussions regarding Shull's potential reappointment to the JMWSC. (R.p.69, line 5-p.72, line 22; p.123, lines 9-14; Apx.R.pp.28-35). Following these discussions, Town Council voted to replace Shull with another Councilmember. (R.p.70, lines 5-9; Apx.R.pp.28-35). Shull voted against his removal from the JMWSC and did not provide a written recusal statement. (R.p.70, lines 11-22; Apx.R.pp. 28-35). Thereafter, on January 21, 2020, Town Council convened to reconsider Shull's removal from the JWMSC. (R.p.70, line 24-p.72, line 7; p.124, line 9-p.125, line 15; Apx.R.pp.36-38). During the meeting, Shull voted to reappoint himself to the JMWSC and did not provide a written recusal statement. (R.p.71, lines 9-28; Apx.R.pp.36-38). Town Council next considered Shull's appointment to the JMWSC during a December 11, 2023, Town Council meeting. (R.p.72, line 8-p.73, line 17; Apx.R.pp.39-49). During this meeting, Shull once again voted to reappoint himself to the JMWSC and did not provide a written recusal statement. (R.p.73, line 15-p.74, line 2; Apx.R.pp.39-49).

The Hearing Panel found Shull in violation of three (3) counts of S.C. Code Ann. § 8-13-

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[5] According to p.46 of IRS Publication 463, "a nonaccountable plan is a reimbursement or expense allowance arrangement" wherein employees are paid a flat rate and are not required to provide detailed accounts of their expenses to their employer. However, if expenses are not accounted for then those payments are treated as wages. *Id.* at p. 47.

700(B) for participating in discussions and/or votes related to his reappointment to the JWMSC during the January 13, 2020, January 21, 2020, and December 11, 2023, Town Council meetings. The Hearing Panel further found Shull in violation of three (3) counts of S.C. Code Ann. § 8-13-700(B) for failing to provide written recusal statements during those meetings. (R.pp.1-7).

The full Commission affirmed the Hearing Panel's Decision and Order, finding § 8-13-700(B) prohibited Shull from participating in, and required him to recuse himself from, the aforementioned matters because he had an "economic interest" in the monthly JMWSC payments as defined by § 8-13-100(11)(a). The Commission also found that neither the "large class" nor the "incidental" exceptions contained within the definition of economic interest applied. The Commission further found that the permissibility of the JMWSC payments under S.C. Code Ann. § 6-25-60(C) of the Joint Authority Water and Sewer Systems Act (Joint Water and Sewer Act) was irrelevant. Finally, the Commission found that whether Shull's service on the JMWSC was *ex-officio* was irrelevant. (R.pp.29-40).

STANDARD OF REVIEW

Panel hearings before the Commission are conducted pursuant to the Administrative Procedures Act (APA). *See* § 8-13-320(10)(j) ("A panel of three commissioners must conduct a hearing in accordance with [the APA], except as otherwise expressly provided."). Following a Panel Hearing, "a respondent may apply to the [C]ommission for a full [C]ommission review of the decision made by the [C]ommission panel." S.C. Code Ann. § 8-13-320(10)(m). "The review must be made on the record established in the panel hearings." *Id.* A full Commission review is the final disposition of the complaint before the Commission. *Id.*

Appeals from the Commission are to the South Carolina Court of Appeals. *Id.* The standard used by appellate bodies to review agency decisions is provided by § 1-23-380(5):

> The reviewing court may not substitute its judgment for the judgment of the [Commission] as to the weight of the evidence on questions of fact. The court may affirm the decision of the [Commission] or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are: (a) in violation of constitutional or statutory provisions; (b) in excess of the statutory authority of the agency; (c) made upon unlawful procedure; (d) affected by other error of law; (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

ARGUMENTS

I. The Commission correctly determined that § 8-13-700(B) prohibited Shull from participating in matters related to his appointment to the JMWSC because Shull had an economic interest in the JMWSC payments and no exception applied.

A. The Commission correctly determined that Shull had an economic interest in the JMWSC payments.

Shull argues that he did not violate § 8-13-700(B), contending he did not have an "economic interest" in the JMWSC payments because the payments were "only for expense reimbursement" rather than employment. (App.Br.pp.16-17). In support of this argument, Shull asserts that § 8-13-700(B) "codifies the common law rule," which allegedly "only forbade conflicts between the public official's independent, private interests in contracts with the government for the provision of goods or services."[6] (App.Br.pp.10-11). Shull argues the Commission is not permitted to construe "services" within the definition of economic interest to include "public service" because such a construction is "in derogation of common law."[7] (App.Br.pp.10-11). As

[6] It appears that the common law rule espoused by Shull is actually codified in S.C. Code Ann. § 8-13-775 of the Ethics Act, which prohibits a public servant from having an economic interest in a contract with one's own governmental entity.

[7] At the outset, this issue is not preserved for review because it was not raised to <u>and</u> ruled upon by the Commission and Shull failed to file a motion for reconsideration. *See Carson v. S.C. Dep't of Nat. Res.*, 371 S.C. 114, 120, 638 S.E.2d 45, 48 (2002) (issues not raised to and ruled on by agency are not preserved

discussed herein, the Commission correctly found that Shull's interest in the JMWSC payments constituted an "economic interest" under S.C. Code Ann. § 8-13-100(11)(a). Moreover, Shull's argument regarding the common law fails because the plain language of S.C. Code Ann. § 8-13-100(11)(a) does not limit "services" to "private services."

"The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). "All rules of statutory interpretation are subservient to the one that legislative intent must prevail if it can reasonably be discovered in the language used, and such language must be construed in light of the statute's intended purpose." *State v. Hudson*, 336 S.C. 237, 246, 519 S.E.2d 577, 581 (Ct. App. 1999). "Where a statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." *Hodges*, 341 S.C. at 79, 533 S.E.2d at 581.

If a statute is in derogation of the common law, it must be strictly construed. *Grier v. AMISUB of SC, Inc.*, 397 S.C. 532, 536, 725 S.E.2d 693, 696 (2012). In those instances, "words must be given their plain and ordinary meaning without resort to a subtle or forced construction for the purpose of limiting or expanding their operation." *Walton v. Walton*, 282 S.C. 165, 168, 318 S.E.2d 14, 16 (1984). Moreover, even when a statute is to be strictly construed, "the canons of construction certainly allow the court to consider the statute as a whole and to interpret its words in light of the context." *Rorrer v. P.J. Club, Inc.*, 347 S.C. 560, 568, 556 S.E.2d 726, 730 (Ct. App. 2001).

Section 8-13-700(B) of the Ethics Act prohibits a public official from participating in any

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for review); *Kiawah Resort Assoc. v. S.C. Tax Comm'n*, 318 S.C. 502, 505, 458 S.E.2d 542, 544 (1995) (appellant should seek reconsideration or request a rehearing when agency fails to rule on an issue). However, the merits of this argument are addressed herein to the extent the court finds the issue preserved.

matter in which he has an economic interest:

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

Section 8-13-700(B) of the Ethics Act "establish[es] the procedure by which a public official or member must recuse himself from any official action on matters *potentially* affecting his economic interest." *Op. S.C. Att'y Gen.*, 2004 WL 1297822 (Jun. 7, 2004) (emphasis added). Pursuant to S.C. Code Ann. § 8-13-100(11)(a), a public official has an "economic interest" in a matter when he has:

> 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 [he] *may* gain an economic benefit of fifty dollars or more. (emphasis added).

Here, Shull clearly had an economic interest in the JMWSC payments. First, Shull's interest in the outcome of the discussions and votes held on January 13, 2020, January 21, 2020, and December 11, 2023, was obviously distinct from that of the general public given that Town Council's discussions and votes were limited specifically to whether *he* should be reappointed/replaced/removed. (Apx.R.pp.22-52). Second, Council's appointment of a representative to the JMWSC board unmistakably constitutes an "arrangement." See Cambridge Dictionary, https://dictionary.cambridge.org/us/dictionary/English/arrangement (last visited March 11, 2026) (defining "arrangement" as "a plan for how something will happen"); the Britannica Dictionary, www.britannica.com/dictionary/arrangement (last visited March 11, 2026) (defining "arrangement" as "the way that things or people are organized for a particular purpose or activity"). Third, Shull undoubtedly had the *potential* to gain a benefit of more than $50.00 by serving on the JMWSC because JMWSC members receive $250.00 each month regardless of whether they attend JMWSC meetings or perform JMWSC-related duties. (R.p.97, lines 1-28; p.104, lines 4-16, p.105, line 26-p.106, line 6).

Finally, as to Shull's argument regarding the common law and his desired interpretation of the word "services," Shull has not established that S.C. Code Ann. § 8-13-100(11), S.C. Code Ann. § 8-13-700, or the Commission's interpretation of either is in derogation of common law. As stated in Shull's brief, at common law:

> a public official [could] not use his official power to further his own interests and [was] not permitted to place himself in a position that [would] subject him to conflicting duties – that is, in a position where the official's private interest conflict[ed] 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.

(App.Br.p.10). Both the Ethics Act and the Commission's interpretation thereof comport with this statement. Moreover, at common law, it was "contrary to public policy to permit an officer having an appointing power to use such power as a means of conferring an office upon himself, or to permit an appointing body to appoint one of its own members." *Bradley v. City Council of Greenville*, 212 S.C. 389, 397, 46 S.E.2d 291, 295 (1948) (citing 42 Am.Jur. 955, *Pub. Officers*).

Even assuming *arguendo* that one of these statutes *is* in derogation of the common law, this fact would simply require the Commission to use strict construction when interpreting them, which is already required given the penal nature of the Ethics Act. *See Crosby v. Glasscock Trucking Co.*, 340 S.C. 626, 532 S.E.2d 856 (2000) (finding a court may not extend a statute's application beyond its plain meaning when strict construction is required); *Op. S.C. Att'y Gen.*, 2006 WL 2593082 (Aug. 24, 2006) (noting "that the State Ethics Act is a penal statute, attaching criminal penalties to any violation thereof ... penal statutes are generally strictly construed . . .").

Here, not only did Shull admit his work on the JMWSC constituted a service, (R.p.131, line 31-p.132, line 2), there is nothing in the plain language of the statute to suggest the General Assembly intended to limit the word "services" to those rendered under a private contract with one's own governmental entity as asserted by Shull. To the contrary, "service" used elsewhere in the Ethics Act affirmatively contemplates that the term includes *public* service. *See* S.C. Code Ann. § 8-13-100(26) ("A public member does not lose [his public member status] by receiving reimbursement of expenses or a per diem for *services*.") (emphasis added). Despite Shull's claim, strict construction of a statute does not require the Commission or this court to insert a non-existent limitation that does not comport with the Ethics Act as a whole. *See Grier*, 397 S.C. at 540, 725 S.E.2d at 698 ("imposing requirements which are not clearly intended to be [in a statute] violates" the canon of strict construction).

The plain and explicit language of S.C. Code Ann. § 8-13-100(11) requires a finding that Shull had an economic interest in the JMWSC payments. More specifically, Shull had an interest (1) distinct from the general public (because the specific issue before Council was whether *Shull* should be removed/appointed/replaced); (2) in an arrangement (Council's decision to appoint an individual to the JMWSC as its representative); (3) for services (the action of helping or doing work for someone, with no requirement that such services be limited to the private sector); (4) in which Shull *could* have gained a benefit of more than $50.00 (which was possible given that JMWSC members are paid regardless of JMWSC-related duties performed). Accordingly, the Commission correctly found that Shull had an economic interest in the JMWSC payments and, therefore, that S.C. Code Ann. § 8-13-700(B) prohibited him from participating in matters related to his reappointment/removal/replacement to the JMWSC during the Town Council meetings held on January 13, 2020, January 21, 2020, and December 11, 2023.[8]

B. The Commission correctly determined that the "incidental" exception to the definition of economic interest did not apply.

Section 8-13-700(B) of the Ethics Act requires a public official to recuse himself from any matter in which he has an economic interest. However, there is an exception to the recusal requirement if the only foreseeable benefit that accrues to the public official is "incidental" to the public official's position:

> This definition [of economic interest] 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 . . .* (emphasis added).

[8] As part of his argument on this subject, Shull references ethics laws from other states and contends that the Commission is prohibited from finding Shull had an economic interest in the JMWSC because "no other state has found a *per diem* to be an economic interest." Although he does not provide any instance where the matter has ever been raised in any other state, even if this were true it would be immaterial given that "each state has constitutional authority to make its own law with respect to persons and events within its borders..." *Magnolia Petroleum Co. v. Hunt*, 320 U.S. 430, 88 L.Ed. 149 (1943). Moreover, South Carolina is not required to defer to any other state's interpretation of a statute, even if it is vaguely similar. *See Widenhouse v. Colson*, 405 S.C. 55, 59, 747 S.E.2d 188, 191 (2013) (holding a state is not required to defer to another state's judgment or apply the law of another state in an action in its own courts).

S.C. Code Ann. § 8-13-100(11); *see also* Kelly J. Golden, *S.C. Gov't Ethics – A Guide to the Ethics Reform Act of 1991*, 181 (S.C. Bar 1999) ("An economic interest or reasonably foreseeable benefit that accrues to a public servant and which is 'incidental' *to the public servant's position* is excluded from the definition of a disqualifying economic interest.") (emphasis added).

Shull contends the word "incidental" means "depending upon or appertaining to something else as primary . . ." (App.Br.p.7). Shull therefore argues that any benefit he received from the JMWSC payments was "incidental to the main purpose" of the money, which was for "reimbursement of expenses." (App.Br.p.8). As discussed above in Section I(A), an actual benefit is not required for S.C. Code Ann. § 8-13-700(B) to apply – only the potential for one. *See* § 8-13-100(11)(b) (providing that an economic interest exists where a public servant *may* gain an economic benefit of more than $50.00). More importantly, as explained herein, Shull's argument overlooks the plain language of S.C. Code Ann. § 8-13-100(11)(b), which requires the benefit to be incident *to the public official's position* for the exception to apply.

During the January 13, 2020, January 21, 2020, and December 11, 2023, Town Council meetings, Shull was acting as a member of Town Council. The JMWSC payments cannot be incidental to the position of Town Councilmember because they are not provided to all Town Councilmembers. Rather, they are provided only to members of the JMWSC board, regardless of whether they serve on Town Council. Thus, the Commission correctly found that the JMWSC payments were not incidental to Shull's position on Town Council.

C. The Commission correctly found that the "large class" exception to the definition of economic interest did not apply.

Section 8-13-700(B) of the Ethics Act requires a public official to recuse himself from any matter in which he has an economic interest. However, there is another exception to the recusal requirement. Under the "large class" 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.

S.C. Code Ann. § 8-13-100(11)(b). The large class exception applies in instances where a public official is similarly situated to numerous other people or entities directly affected by the public official's/governmental entity's conduct. For example:

- In SEC AO2010-004, a City Council was considering repairs to a municipal boardwalk. A Councilmember owned one (1) out of fifty-six (56) properties that would be impacted by the potential repairs. The Commission found the Councilmember was permitted to participate because her interests were no greater than that of all members of the large class, which consisted of the other fifty-five (55) similarly situated property owners who would be impacted by City Council's decision.

- In SEC AO2008-004, a Town Council was considering the management of Town-owned land. A Councilmember owned one (1) out of 172 lots that would be impacted by the decision. The Commission determined that the Councilmember was permitted to participate in the related discussions and votes because her interest was no greater than that of all members of the large class, which consisted of the other 171 similarly situated property owners who would be impacted by Town Council's decision.

- In SEC AO92-230, the Commission advised members of an Energy Advisory Committee that they were permitted to participate in deliberations and votes on issues having general applicability to energy producers or consumers because their interests would be no greater than those in the large class, which consisted of all energy producers and consumers, which would be impacted equally by the Committee's decision.

Shull criticizes the Commission's holding that the "large class consists of the individuals or entities impacted by [Shull's] conduct" (R.p.36), arguing the Commission was "not specific enough in identifying a large class." (App.Br.pp.19-20). Shull further argues that he was permitted to participate because his economic interest was no greater than any other JMWSC board member and, therefore, the large class exception applies. (App.Br.pp.19-20).

The proper question is not whether all JMWSC members were entitled to payments for their services, but rather how many individuals stood to lose or gain the payments as a result of Town Council's decisions to reappoint/remove/replace Shull. The evidence demonstrates that only Shull had an interest in the vote for his reappointment on December 11, 2023. (Apx.R.pp.39-49; R.p.123, lines 9-19). On January 13, 2020, and January 21, 2020, only two (2) people had an economic interest in the matter: (1) Shull, who was the existing JMWSC appointee and (2) the Councilmember who was nominated on January 13, 2020, then replaced on January 21, 2020. (Apx.R.pp.28-38; R.p.123, lines 9-19). There is no "large class" when there is only one (1) similarly situated person. *See* SEC AO2008-004 (finding 4 out of 19 did not constitute a large class). Thus, the Commission did not identify a large class because one does not exist and, therefore, the large class exception could not apply.

II. The Commission correctly determined that the permissibility of the JMWSC payments under the Joint Water and Sewer Act was irrelevant to Shull's violation of § 8-13-700(B).

Shull argues there can be no economic interest in the JMWSC payments because they are permissible under the Joint Water and Sewer Act.[9] Shull contends that S.C. Code Ann. § 6-25-60(C) and S.C. Code Ann. § 8-13-700(B) "deal[] with the same subject matter" and therefore "must be construed together, if possible, to produce a single, harmonious result." (App.Br.p.18). Shull further argues that the effect of the Commission's ruling is to "ban IRS approved nonaccountable *per diem plans*." (R.pp.29-40).

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[9] Shull also contends that "there is no factual dispute as to whether the JMWSC nonaccountable *per diem* was completely in compliance with federal law and IRS regulations." (App.Br.p.8). However, this is inaccurate because the Commission explicitly concluded it lacked the ability to make such a finding. (R.pp.29-40).

Section 6-25-60(C) of the 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 . . .

As the Commission correctly found, the Joint Water and Sewer Act only addresses the *types* of payments JMWSC may make to its board members (i.e., *per diem*, mileage, subsistence). Presumably,[10] federal law explains the possible accounting methods and/or tax implications for various types of payments. However, neither address how Shull must conduct himself as a member of Town Council when Town Council is considering his reappointment/replacement/removal from the JMWSC – Shull's conduct in this situation is governed by the Ethics Act. Contrary to Shull's position, these provisions of law are not in conflict – they simply address different aspects of the same scenario. *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 receive such pay). As to Shull's argument that the Commission's ruling somehow "bans" the JMWSC from utilizing nonaccountable *per diems* – this is false. The Commission's ruling does not allow or disallow nonaccountable *per diems*, nor does it address the type, method, or amount of money the JMWSC may use to pay its board members – the JMWSC is free to compensate its members how it sees fit. The effect of the Commission's decision is simply to prohibit public officials from participating in their own appointment/removal/replacement to a position that carries a potential benefit of $50.00 or more. Accordingly, the Commission properly found that the permissibility of

[10] Shull contends that "federal law recognizes two types of *per diem* plans" and that the payment of a "small flat rate . . . is considered proof that the expenses were incurred by the IRS." (App.Br.p.7). Shull's argument with regard to federal law is not preserved for review because Shull failed to cite any authority supporting this assertion and, therefore, the argument is deemed abandoned. *See First Sav. Bank*, 314 S.C. 361, 444 S.E.2d 513 (1994) (considering an issue abandoned because the appellant failed to provide pertinent argument or supporting authority).

the payments under the Joint Water and Sewer was irrelevant for purposes of determining whether Shull violated Ethics Act.

III. The Commission correctly determined that whether Shull's service on the JMWSC was *ex-officio* was irrelevant to Shull's violation of S.C. Code Ann. § 8-13-700(B).

Section 8-13-700(B) of the Ethics Act 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. Section 8-13-100(4) of the Ethics Act defines "business with which he is associated," in relevant part, as:

> a business of which the person or a member of his immediate family is a director, an officer, owner, employee, a compensated agent, or a holder of [certain] stock.

Section 8-13-100(21) of the Ethics Act defines "individual with whom he is associated," in relevant part, as:

> an individual with whom the person or a member of his immediate family mutually has an interest in any business of which the person or a member of his immediate family is a director, officer, owner, employee, compensated agent, or holder of [certain] stock.

The Commission 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 interests of the [secondary] board," because the secondary board is not considered a "business with which the public official is associated" for purposes of S.C. Code Ann. § 8-13-700(B). 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. *Id.* (*citing* S.C. Code Ann. § 8-

13-100(30)).

On appeal to the full Commission, Shull argued that he was permitted to participate in his own appointment/removal/replacement because the JMWSC was not an "Affiliated Business." (R.p.208). More specifically, Shull argued, "[s]ince the JMWSC is not a business but rather a governmental entity … the Full Commission should find that section 8-13-700(B) does not apply to this case." (R.p.209). The Commission agreed that "JMWSC [was] not a business with which [Shull] is associated." However, the Commission found this fact immaterial given that Shull was not charged with improperly participating in a matter in which the *JMWSC* had an economic interest. Rather, he was charged with improperly participating in a matter in which *he* had an economic interest.

Shull now argues that S.C. Code Ann. § 8-13-700(B) permitted him to participate in matters in which he had a personal economic interest because he served on the JMWSC in an *ex-officio* capacity.[11] (App.Br.p.14). In support of this argument, Shull cites SEC AO2018-002, which found that S.C. Code Ann. § 8-13-700(B) did not require recusal where "individual and business associations exist only as a direct extension of a public position." (App.Br.p.15).

As an initial matter, this argument is not preserved for review because it was not raised to and ruled upon by the Commission and Shull failed to file a motion for reconsideration. *See*

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[11] Shull also appears to argue that the JMWSC is a "subcommittee or alter ego agency" of Town Council and that Town Council and the JMWSC should be "treated legally as one in the same" because "a decision of the [JWMSC] is one in the same as a decision of the Town and County Councils that created it." (App.Br.p.10; p.14). First, this argument is not preserved for review because Shull fails to cite any authority for this claim. *See First Sav. Bank v. McLean*, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994) (considering an issue abandoned because the appellant failed to provide pertinent argument or supporting authority). On the merits, it is unclear what difference this would make in the pending matter. Regardless, Shull's statement is demonstrably untrue because the Town and the JMWSC are authorized by separate bodies of law, are comprised of different members, and make decisions independent of one another. *Compare* S.C. Code Ann. § 5-7-10, et seq. (outlining the powers and duties of a municipal council) *with* S.C. Code Ann. § 6-25-5, et seq. (outlining the powers and duties of a joint water system).

Carson, 371 S.C. at 120, 638 S.E.2d at 45 (issues not raised to and ruled on by agency are not preserved for review) (emphasis added); *Kiawah Resort Assoc.*, 318 S.C. at 506, 458 S.E.2d at 544, fn. 5 (appellant should seek reconsideration or request a rehearing when agency fails to rule on an issue); *Rhame v. Charleston County Sch. Dist.*, 412 S.C. 273, 276, 772 S.E.2d 159, 161 (2015) (finding the APA allows motions for rehearing in all administrative agencies).

On the merits, Shull's argument fails because he misinterprets SEC AO2018-002, which was limited to individual and business associations that existed solely as a result of *ex-officio* status. There, the Commission reasoned that "when service is undertaken in one's official capacity, the required 'interest in any business' contained in the definitions of both 'individual with whom he is associated' and 'business with which he is associated' simply does not exist." However, the Commission did not find, nor has it ever found, that serving in an *ex-officio* capacity gives a public official free rein to participate in matters where he has a personal economic interest. Accordingly, Shull's argument fails.

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CONCLUSION

The predominant question this court must answer is whether the Commission properly held that S.C. Code Ann. § 8-13-700(B) prohibits a public official from participating in his own appointment/removal/replacement to a position that pays $3,000.00 per year regardless of services rendered. According to the plain language of the relevant statutes and the arguments set forth herein, this conduct must be prohibited. For the foregoing reasons, the decision of the Commission should be affirmed. In addition, the undersigned respectfully asks that the Court affirm for any reason appearing in the record pursuant to Rule 220(c), SCACR.

Respectfully submitted,

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September 1, 2026