

November 24, 2020

State of South Carolina
State Ethics Commission
201 Executive Center Drive, Suite 150
Columbia, South Carolina 29210

Re: David W. McGhee Ethics Complaint

To Whom It May Concern:

I represent Dr. Herman Perry Holcomb, and I will be his point of contact with respect to this matter. Please direct all related correspondence to my office.

Enclosed please find the executed Complaint Form (C102form) (hereinafter "Complaint") from Dr. Holcomb. Specific facts and documentary support upon which Dr. Holcomb has based his Complaint have been provided in the supplemental sheets and exhibits to the Complaint marked as Exhibits 1-17.

The substance of the elements of Dr. Holcomb's Complaint is as follows:

The mayor and individual Council members swear an oath to "exercise the trust reposed in me . . . and . . . use my best endeavors to . . . carry into effect according to the law" (Exh. 8). For times relevant to this Complaint, David W. McGhee (hereinafter "McGhee") was a City of North Augusta (hereinafter the "City") Council member, and since May 6, 2019, has been Mayor Pro Tem of the City. (See Exh. 7). The enclosed Complaint from Dr. Holcomb demonstrates a pattern of conduct over a period of many years where McGhee failed to use his best endeavors to carry into effect his service as a Council member and business person according to the law.

The included exhibits appear to demonstrate that he and members of his family have obtained business with the City, while McGhee has served as a member of City Council in a manner that is inconsistent with the statutory requirements placed on elected officials like McGhee. McGhee has, further, failed to adequately disclose his financial interests. Appropriate disclosure would have made discovery of the inappropriate procurement of business much more likely to have been discovered prior to this time.

**McGhee, McGhee Family, and McGhee Business Economic Interests
(Hereinafter "McGhee interests")**

Council member McGhee is designated in company materials as "owner" of SITEC, LLC. (See also Exh. 9). His father, William M. McGhee, Jr., is founder of McGhee and McGhee, LLC, Aiken, SC, which is now owned by McGhee and his brother Michael. William M. McGhee Jr. has continued to be represented as its primary contact. (Exh. 15 and 16). Mr. Johnny Beam, principal in Beam Contracting, Inc. and in SITEC, LLC, is Council member McGhee's father-in-law. (Exh. 15). Ruthie Beam McGhee, daughter of Johnny and Patricia Beam, is the wife of Council Member McGhee. (Exh. 5).

City Made Payments to McGhee Interests.

It is evident from the enclosed documentary evidence that McGhee and his family members do business with the City and receive payments from the City. For example, Exhibit 2 includes documents indicating at least \$66,971 in checks were paid to McGhee's company SITEC, LLC. (Exh. 2, 9 and 10). McGhee and McGhee, LLC is owned by McGhee and his brother Michael. (Exh. 13) Though it is not clear that McGhee and McGhee was paid by the City, it is certainly a likely candidate. Beam's Contracting, Inc., on the other hand, clearly profited from the City. For example, Composite Exhibit 14, shows a \$302,000 check made to Beam's Contracting Inc. by the City. (Exh. 14)

The Statutes Prohibit Use of Official Position for Financial Gain to the Official, His Family, Individuals With Whom he is Associated or a Business With Whom he is Associated, and Conflicts Must be Disclosed and Result in Recusal.

The statutes prohibit McGhee from influencing a governmental decision with respect to something in which he, a family member, an associate or one of his businesses has an economic interest. See S.C. Code Ann. § 8-13-700(B). The statutes further prohibit him from using his position for financial gain to himself, his family, his associates or his businesses. See S.C. Code Ann. § 8-13-700(A). S.C. Code Ann. Section 8-13-100(15) further defines "Family member" broadly

for purposes of the statute relating to Ethics, Government Accountability, and Campaign Reform, and it indicates “Family member” means an individual who is:

- (a) The spouse, parent, brother, sister, child, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, grandparent, or grandchild;
- (b) A member of the individual’s immediate family.

S.C. Code Ann. § 8-13-100(15)(emphasis supplied).

Ethics limitations on accepting gain by Family members include, but are not limited to, limitations on his father, father-in-law, wife and brother, in addition to McGhee, his associates and businesses because of the statutory definition of “Family member.” See S.C. Code Ann. § 8-13-700(A) and (B).

S.C. Code Ann. § 8-13-700 further regulates the “Use of official position or office for financial gain; [and] disclosure of potential conflict of interest.” (emphasis supplied). In so doing, § 8-13-700 requires that:

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

[and]

- (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.

Therefore, Mr. McGhee is not allowed to benefit himself, the aforementioned family members, associates and his business interests through use of his office. Exhibit 2 contains emails suggesting an intimacy with City staff on issues relating to payments to business interests that

demonstrate a use of office to his benefit as contemplated and prohibited by this statute. See also S.C. Code Ann. § 8-13-700, 705, 725 and 775.

Any Action by the City Council Member That Would Accrue Gain for McGhee's Interests Would Require Recusal.

In the case of a City Council member, if his/her position requires the public official to take an action described and prohibited in S.C. Code Ann. § 8-13-700(B), the official must prepare a written statement consistent with the statute and 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". S.C. Code Ann. § 8-13-700(B)(4). Dr. Holcomb's research and FOIA requests revealed only one such recusal. Given McGhee's extensive interests described herein, a single recusal is very likely inadequate, suggesting further violations of ethics requirements.

Council member McGhee has also voted for passage of every City budget since he took office in May of 2013. He was reelected in 2017. That information can be found in the City Clerk's online folder containing the approved minutes for those meetings.

S.C. Law Requires a Truthful and Exhaustive Disclosure of Economic Interests. McGhee's Disclosures Were, on the Whole, Inadequately Given as They Fail Repeatedly to Disclose Income From Business Interests.

According to S.C. Code Ann. § 8-13-710, public officials are required to file a statement of economic interests under Section 8-13-1110. When the public official is one "who receives, accepts, or takes, directly or indirectly, from a person, anything of value worth twenty-five dollars or more in a day and anything of value worth two hundred dollars or more in the aggregate in a calendar year [the public official] must report on his statement of economic interests pursuant to Section 8-13-1120" S.C. Code Ann. § 8-13-1110.

The thing of value must be reported when it is from:

(2) a person, or from an officer or director of a person, if the public official, public member or public employee has reason to believe the person:

- (a) Has or is seeking to obtain contractual or other business of financial relationships with the public official's, public member's or public employee's governmental entity;
- (b) Conducts operations or activities, which are regulated by the public official's, public member's, or public employee's governmental entity.
- (c) Nothing in this section requires a public official, public member, or public employee to report a gift from a parent, grandparent, or relative to a child, grandchild, or other immediate family member for love and affection.

S.C. Code Ann. § 8-13-710 (emphasis supplied).

According to the statute, "'Person' means an individual, a proprietorship, firm, partnership, joint venture, joint stock company, syndicate, business trust, an estate, a company, committee, an association, a corporation club, labor organization or any other organization or group of persons acting in concert." S.C. Code Ann. § 8-13-100 (24).

Composite Exhibit 3 includes 23 statements of economic interest from McGhee. Given his ownership interests in businesses that either had contractual relationships with the City or sought contractual relationships with the City, his disclosures should have been much more substantial than the very limited disclosures filed, which demonstrate very little income to him from those businesses. It is evident that McGhee, while a public official, has failed to disclose significant value received from the contracting businesses in which he has an interest, in violation of the statute.

S.C. Code Ann. § 8-13-1110 requires public officials to file the aforementioned statements of economic interests. S.C. Code Ann. § 8-13-1120 governs the content of what must be disclosed in a statement of economic interest.

The economic interests are reported on State Ethics Commission forms and "must contain full and complete information concerning:" the required contents. S.C. Code Ann. § 8-13-1120(A). The required contents include:

(2) the source, type, and amount or value of income, . . . received from a governmental entity by the filer or a member of the filer's immediate family during the reporting period; . . . (5) the identity of every business or entity in which the filer or a member of the filer's immediate family held or controlled, in the aggregate, securities or interests constituting five percent or more of the total issued and outstanding securities and interests which constitute a value of one hundred thousand dollars or more; (8) if a public official, public member, or public employee receives compensation from an individual or business which contracts with the governmental entity with which the public official, public member or public employee serves or is employed, the public official, public member, or public employee must report the name and address of that individual or business and the amount of compensation paid to the public official, public member, or public employee by that individual or business.

S.C. Code Ann. § 8-13-1120(A). As discussed in Exhibit 1, which analyzes in detail the Exhibits, including each of the economic statements in Composite Exhibit 3 to Dr. Holcomb's Complaint, McGhee knowingly failed repeatedly to accurately report the identity of businesses and amount of compensation, even after successive amendments to the statements.

These are clearly not technical violations as contemplated by S.C. Code Ann. § 8-13-1170. Rather, they are a continuous, systematic flouting of the reporting requirements.

Consistent with Herman Perry Holcomb's enclosed Complaint, as discussed in this letter, please review and investigate this important matter and take any necessary and appropriate action. Thank you for your kind consideration.

Sincerely,



Dionè C. Carroll, Esq.

CC: Herman Perry Holcomb