

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
)
IN THE MATTER OF:)
)
COMPLAINT C2013-057)
)
)
State Ethics Commission,)
Complainant;)
)
vs.)
)
William Reynolds Williams,)
Respondent.)
_____)

BEFORE THE STATE ETHICS COMMISSION

DECISION AND ORDER

STATE ETHICS
COMMISSION

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RECEIVED

Pursuant to Section 8-13-320(10)(i), Code of Laws for South Carolina, 1976, as amended, the State Ethics Commission reviewed the above captioned complaint on January 15, 2014, charging the Respondent, William Reynolds Williams, with a violations of Sections 8-13-700(A) and 8-13-700(B), Code of Laws for South Carolina, 1976, as amended.

Present at the meeting were Commission Chairman Phillip Florence, Jr., Vice-Chair E. Kay Biermann-Brohl, and members, George Carlton Manley, Jonathan H. Burnett and Richard H. Fitzgerald. Also present were the Commission's Executive Director, Herbert R. Hayden, Jr., and his immediate staff.

The following allegations were considered:

ALLEGATIONS

The complaint contained the following:

The South Carolina Attorney General's office has requested that the State Ethics Commission investigate conflict of interest allegations against the Respondent, William

Reynolds Williams, to determine if violations of Sections 8-13-700 (A) and 8-13-700 (B) have occurred.

The Respondent is currently the Chairman of the South Carolina Retirement System Investment Commission (IC) and has served as a member of the IC since October 2005. The Respondent is an attorney and partner in the firm of Willcox, Buyck, and Williams, PA (WBW) in Florence, SC.

American Timberlands Company (ATC) is and has been a client of WBW for several years. Beginning in approximately November 2010 the Respondent allegedly used his position on the IC to influence a decision by the IC to invest IC funds with ATC, while having the knowledge that WBW would represent ATC in the contract and receive a financial benefit through legal fees paid.

FINDINGS OF FACT

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

1. The Respondent, William Reynolds Williams, is, and during all times relevant, was a member of the South Carolina Retirement System Investment Commission.
2. In 2007 the Respondent introduced ATC officials to IC CEO Robert Borden with the possibility of the IC investing with ATC in a land venture. Nothing came of the meeting until 2010, when ATC again contacted IC with a proposal.
3. On April 11, 2011 the Respondent participated in a “due diligence” meeting with staff members who were discussing the ATC investment; however, according to statements given by staff members present, the Respondent did not make any recommendations or suggest that the

investment move forward. However, several IC staff members considered the Respondent the Commissioner assigned to the ATC project.

4. The Respondent had knowledge that at the time of and for several years prior to ATC's contact with IC, WBW had provided legal representation to ATC through the Respondent's partner, Mark Buyck.

5. According to IC staff, when it was learned that ATC used the Respondent's law firm, WBW, for legal work, this relationship was discussed by IC staff at an Internal Investment Committee (IIC) meeting on April 20, 2011, and it was decided that the ATC proposal would not be presented to the IC at their April 21, 2011 meeting.

5. The ATC investment continued to be considered, however, and at a November 9, 2011 IIC meeting it was again determined not to present the ATC proposal at the IC's November 18, 2011 meeting. However, the ATC proposal was added to the agenda by Robert Borden, and was approved at the November 18, 2011 meeting. The Respondent was not present for the vote, having left early and entered a recusal statement in the minutes.

6. Comments from staff members and copies of emails to the Respondent and other staff members suggest that the Respondent was being kept advised of the ATC matter; however, no one suggested that he tried to influence the IIC's decisions.

7. During the investment process, between May 8, 2007 and the November 18, 2011 approval, there were approximately nineteen (19) emails to, from or cc'd to the Respondent regarding the ATC investment.

8. In several additional emails reference is made to various contacts and discussions with

the Respondent regarding the ATC project; however, there is no corroborating evidence that the Respondent took any action or used his position to influence the IC's decision to proceed with the ATC investment.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the Commission concludes, as a matter of law:

1. During all times relevant, the Respondent, William Reynolds Williams was a public official as defined by Sections 8-13-100(27).
2. The State Ethics Commission has personal and subject matter jurisdiction.
3. Section 8-13-100(4) defines "Business with which he is associated" as a business of which the person is "a director, an officer, owner, employee...".
4. Section 8-13-700(A) prohibits a public official/member from using his official position to obtain an economic interest for a business with which he is associated.
5. Section 8-13-700(B) prohibits a public official/member from making, participating in making, or in any way attempting to use his position to influence a governmental decision in which a business with which he is associated has an economic interest.

DISCUSSION

Chapter 16 of Title 9 provides for the fiduciary standards of the IC and its members and establishes that those members are subject to the provision of Chapter 13 of Title 8. Likewise, the prohibitions contained in Sections 8-13-700(A) and 8-13-700(B) serve the public interest by preventing the creation of situations which would tend to impair the objectivity and impartiality and therefore, the effectiveness of a public official.

The Preamble to the Ethics, Government Accountability and Campaign Reform Act of 1991 provides in part that “Whereas, one of the most important functions of any law aimed at making public servants more accountable is that of complete and effective disclosure. Since many public officials serve on a part-time basis, it is inevitable that conflicts of interest and appearances of impropriety will occur. Often these conflicts are unintentional and slight, but at every turn those who represent the people of this State must be certain that it is the interests of the people, and not their own, that are being served. Officials should be prepared to remove themselves immediately from a decision, vote, or process that even appears to be a conflict of interest.”

The State Ethics Commission has advised in prior advisory opinions that public officials may have business interests which may contract with public agencies, including the agency with which the public official is associated, and, as in this case, where a business with which a public official is associated will benefit as a result of actions taken by the associated agency. In such situations, the official has been advised to adhere to the provisions of Section 8-13-700(B) and remove themselves from all aspects of the process, not only the vote. Further, the public official is advised to provide, in writing, a statement describing the nature of the conflict, and to allow the matter to be assigned to another official who does not have a potential conflict.

It is the opinion of the State Ethics Commission that while there is no evidence of an actual violation on the part of the Respondent, the Commission feels strongly that based on the Respondent’s continued participation, i.e. attendance in a staff meeting, being kept up to date on the progress by email, and discussions with IC staff, an appearance of impropriety does exist.

The Respondent's failure to totally remove himself from the process when the IC staff first began to consider the ATC investment further exacerbates the Commission's concerns.

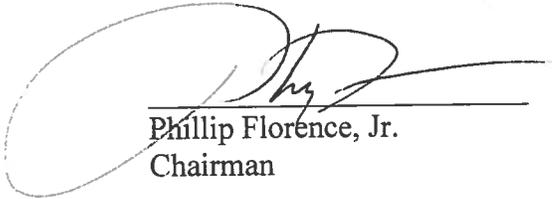
DECISION

THEREFORE, based upon the evidence presented, the State Ethics Commission has determined that there is not probable cause to indicate that the Respondent, William Reynolds Williams, violated Section 8-13-700(A) or Section 8-13-700(B), S.C. Code Ann., 1976, as amended. The Commission has therefore dismissed the charges in accordance with Section 8-13-320(10)(i), Code of Laws for South Carolina, 1976, as amended, and the rules and regulations promulgated thereunder.

AND, cautions the Respondent, William Reynolds Williams, that in the abundance of caution, in order to avoid even the appearance of impropriety, that should any matter affecting the economic interest of himself or any business with which he is associated come before the IC, he should immediately recuse himself, and not participate in any capacity.

IT IS SO ORDERED THIS 27th DAY OF JAN, 2014.

STATE ETHICS COMMISSION


Phillip Florence, Jr.
Chairman

COLUMBIA, SOUTH CAROLINA