

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
)
IN THE MATTER OF:)
COMPLAINT C2020-006)
)
William H. Martin, Jr.,)
Complainant,)
)
Johnny Gardner,)
Respondent.)
_____)

BEFORE THE STATE ETHICS COMMISSION

CONSENT ORDER

This matter comes before the State Ethics Commission (Commission) by way of a Complaint filed on February 25, 2020. Pursuant to Section 8-13-320(10)(i) of the South Carolina Ethics, Government Accountability, and Campaign Reform Act (Ethics Act), the Complaint against Johnny Gardner (Respondent) was considered by the Commission and probable cause was found to warrant an evidentiary hearing. Prior to the call of the case, Respondent agreed to entry of the following:

STATEMENTS OF FACT

1. Respondent was a candidate in a 2018 election for Horry County Council Chairman.
2. Respondent's campaign manager was Luther Allen Barefoot. Mr. Barefoot filed Respondent's Campaign Disclosure Reports (CDRs) and maintained his campaign records.
3. Throughout his 2018 election cycle, Respondent reported numerous loans from his own law firm that, in the aggregate, exceeded the \$1,000 contribution limit imposed by Section 8-13-1314.
4. The instant complaint alleged that these loans were actually campaign contributions from one or more unknown individuals. The complaint further alleged that the law firm exceeded the contribution limits of Section 8-13-1314. Finally, the complaint alleged Respondent improperly reimbursed himself for loans following the election.¹

¹ The complaint also alleged that Respondent repeatedly failed to timely file quarterly CDRs. The Commission notes that Respondent was penalized \$600 (\$100 for each CDR) for his failure to timely file the following quarterly CDRs: July 10, 2018; 2018 Pre-Election CDR; April 10, 2019; July 10, 2019; October 10, 2019; and January 10, 2019. Respondent paid these penalties to the Commission prior to the filing of this complaint and they are not a part of the current action.

5. During the Commission investigation, Respondent's campaign bank records were subpoenaed and reviewed. These records revealed the following items, which were not reported on any of Respondent's CDRs:
 - a. On April 27, 2018, Respondent accepted a check from Rachel E. and Luther Allen Barefoot in the amount of \$8,700.
 - b. On January 4, 2019, Respondent accepted a check from Randy Beverly in the amount of \$1,200.
6. In addition to Respondent's campaign bank records, the Commission reviewed loan documents from Anderson Brothers Bank. These documents revealed that Anderson Brothers Bank was the source of the loans reported by Respondent, not Respondent's law firm. The documents further revealed that the loans were secured by Respondent's personal residence.
7. Subsequently, with the assistance of Commission staff, Respondent amended his CDRs to reflect Anderson Brothers Bank as the source of his campaign loans. In addition, Respondent amended his CDRs to reflect the contribution from Mr. Barefoot, as well as a subsequent refund of \$8,700 to Mr. Barefoot. Finally, Respondent amended his CDRs to reflect the \$1,200 contribution from Mr. Beverly, as well as a \$200 refund to Mr. Beverly.²

CONCLUSIONS OF LAW

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

1. At all times relevant, Respondent was a candidate pursuant to Section 8-13-1300(4). Therefore, the Commission has personal and subject matter jurisdiction.
2. Section 8-13-1308(F) provides, in relevant part:

Certified campaign reports detailing campaign contributions and expenditures must contain: (1) the total of contributions accepted by the candidate or committee; (2) the name and address of each person making a contribution of more than one hundred dollars and the amount and date of each contribution
...

² Respondent provided proof of these refunds to the Commission.

3. Section 8-13-1326 provides:

- (A) A loan is considered a contribution from the maker or the guarantors of the loan and is subject to the contribution limitations of this article.
- (B) A loan to a candidate must be by written agreement.
- (C) The proceeds of a loan made to a candidate under the following conditions are not subject to the contribution limits of this article: (1) by a commercial lending institution; (2) in the regular course of business; (3) on the same terms ordinarily available to members of the public; and (4) secured or guaranteed upon which collection is not made.

4. Section 8-13-1314(A) provides, in relevant part:

Within an election cycle, a candidate or anyone acting on his behalf shall not solicit or accept, and a person shall not give or offer to give to a candidate or person acting on the candidate's behalf: (1) a contribution which exceeds: (a) three thousand five hundred dollars in the case of a candidate for statewide office; or . . . (c) one thousand dollars in the case of a candidate for any other office . . .

- 5. Section 8-13-320 allows the Commission to assess a civil penalty of up to \$2,000.00 for each violation of the Ethics Act.
- 6. Section 8-13-130 allows the Commission to "levy an enforcement or administrative fee on a person who is in violation" of the Ethics Act.

DISCUSSION

The Commission found probable cause to charge Respondent with four (4) counts of violating Section 8-13-1308 for failing to disclose the following loans and contributions in his CDRs: (1) a \$50,000 loan from Anderson Brothers Bank; (2) a \$20,000 loan from Anderson Brothers Bank; (3) an \$8,700 contribution from Luther Barefoot; and (4) a \$1,200 contribution from Randy Beverly. In addition, the Commission found probable cause to charge Respondent with two (2) counts of violating Section 8-13-1314 for accepting the following contributions in excess of the \$1,000 contribution limit: (1) \$8,700 from Luke Barefoot; and (2) \$1,200 from Randy Beverly.

Through this Consent Order, Respondent acknowledges he violated the Ethics Act when he failed to disclose the correct source of his campaign loans. Respondent further admits that he violated the Ethics Act

when he accepted \$8,700 from Luke Barefoot and \$1,200 from Randy Beverly. Respondent acknowledges his ultimate responsibility for his campaign filings and has since amended his CDRs to properly reflect the correct information. In addition, Respondent has returned the excess amount received from Randy Beverly (\$200) and the full amount received from Mr. Barefoot (\$8,700).

DISPOSITION

1. The Commission hereby finds Respondent in violation of four (4) counts of Section 8-13-1308 and two (2) counts of Section 8-13-1314.
2. The Commission hereby adopts the Statements of Fact, Conclusions of Law, Discussion, and Disposition as agreed upon by the Respondent.


THEREFORE, the Commission hereby issues a Public Reprimand and orders the Respondent to pay the Commission, within sixty (60) days from receipt of this Order, a reduced civil penalty of \$3,000 (\$500 per violation) and an administrative fee of \$650, for a total of \$3,650.

By executing this Consent Order, Respondent understands that he is not only admitting to violations of the Ethics Act, but also confessing to a judgment of \$3,650 (less any money paid to the Commission) in the event he does not make full and timely payment as provided for in this Order. In that event, the Commission shall file a Judgment against Respondent in the Horry County Clerk of Court's Office. Upon said filing, the Clerk of Court shall enter this Order in the amount of \$3,650 (less any money paid to the Commission) in its Judgment Rolls, without cost to the Commission.

AND IT IS SO ORDERED THIS 20th DAY OF July 2021.
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STATE ETHICS COMMISSION


CHILD'S CANTEY THRASHER, CHAIR


JOHNNY GARDNER
RESPONDENT