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## House Legislative Ethics Committee

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**In the Matter of the South Carolina )  
House of Representatives Ethics )  
Committee Complaint against )  
Representative Harold Mitchell, Jr. )**

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### FINAL ORDER

On April 27, 2012 the South Carolina Attorney General's Office forwarded documents to the House Ethics Committee containing information that came to the attention of the Attorney General's Office during the review of a matter involving Representative Harold Mitchell, Jr.'s (Respondent) records from the South Carolina Department of Revenue. The information included an investigation report from the Department of Revenue detailing several discrepancies with Respondent's campaign finance reports and campaign bank account for tax years 2005 through 2008. After reviewing the information, the Committee voted on June 05, 2012 to file a complaint against Respondent based upon the information received from the Attorney General's Office. On July 2, 2012 the Committee received Respondent's response and on July 17, 2012 voted to proceed with the investigation stage. On February 20, 2013 the Committee held a hearing and heard testimony from Respondent and Respondent's attorney. At the conclusion of the hearing the Committee unanimously voted to find probable cause. In May 2013, the Committee decided to expand the investigation to look at Respondent's filings for years 2009 through 2013. On May 2, 2013, the Committee requested Respondent to provide bank statements for the years 2009 through 2013 along with any and all receipts substantiating campaign expenditures. After multiple requests and extensions, Respondent failed to provide the requested documents to the Committee. Accordingly, the Committee issued subpoenas on June 26, 2013 to Respondent's bank requesting the account documents associated with his campaign account for years 2009 through the present at that time. In the course of reviewing the bank records, the

Committee discovered various irregularities, and on September 5, 2013, the Committee filed an Amended Complaint to include the irregularities discovered for the time period of 2009 through the present. On October 17, 2013 the Committee found probable cause with regard to the Amended Complaint and subsequently held a formal hearing on the matter on November 26, 2013. The Committee reconvened on December 17, 2013 to continue deliberations on the matter and hereby issues this advisory opinion to resolve the matter.

The relevant provisions of law which apply to the allegations are: S.C. Code Section 8-13-1302; Section 8-13-1308; Section 8-13-1312; Section 8-13-1348; and Section 8-13-1370, each of which will be discussed in the following sections. Under House Rule 4.16, any finding of a violation must be based on substantial and competent evidence. The Committee finds that Respondent engaged in a continuous pattern of noncompliance with various campaign finance provisions of the Ethics Act, which is detailed below based on the type of transaction. Additionally, the Committee finds that Respondent predominately operated his campaign on a cash basis, making numerous cash withdrawals and cash payments in violation of the Ethics Act which also made it difficult for the Committee to track the funds and lengthened the investigation. Further, the investigation revealed that Respondent filed seventeen disclosure reports (accounting for 51 months total) in which Respondent reported zero expenditures and contributions.

## **PART A - ALLEGATIONS OF TECHNICAL VIOLATIONS**

The Committee finds that the violations detailed in Part A below were unintentional. Nonetheless, Respondent, as a public official, has a duty to follow the requirements of the Ethics Act and the House Ethics Committee has a duty to hold the public official accountable to the public for even unintentional violations of the Ethics Act.

### **I. Failure to properly maintain records**

Section 8-13-1302 of the South Carolina Code provides that a candidate must maintain and preserve an account of, among other things, “the name and address of each person to whom an expenditure is made including the date, amount, purpose, and beneficiary of the expenditure” and “all receipted bills, cancelled checks, or other proof of payment for each expenditure.”

The Committee finds this provision requires a candidate to maintain and preserve an account of all receipted bills, cancelled checks, or other proof of payment verifying payment to the ultimate vendor. For example, where a candidate writes a check to himself as reimbursement for an expenditure, the cancelled check written out to the candidate does not satisfy the requirements of 8-13-1302. In order to satisfy 8-13-1302, the candidate must have a receipt or other proof of payment verifying payment to the ultimate vendor.

The Committee finds that on sixteen occasions Respondent failed to preserve and maintain an account of any receipted bills, cancelled checks, or other proof of payment for expenditures made with campaign funds. THEREFORE, the Committee orders Respondent to pay a fine of \$1,000 to the Committee for the violations in this section.

## **II. Cash withdrawals in violation of § 8-13-1348 and § 8-13-1302**

### **a. Cash withdrawals in excess of \$100**

Section 8-13-1302 provides "[e]xcept as otherwise provided under Section 8-13-1348(C), expenses paid on behalf of a candidate or committee must be drawn from the campaign account and issued on a check signed by the candidate." Section 8-13-1348(C) provides that "[a]n expenditure of more than twenty-five dollars drawn upon a campaign account must be made by: (a) a written instrument; (b) debit card; or (c) online transfers." Further, Section 8-13-1348(E) provides that "[a] candidate or a duly authorized officer of a committee may not withdraw more than one hundred dollars from the campaign account to establish or replenish a petty cash fund for the candidate or committee at any time."

The Committee finds that 8-13-1348 prohibits candidates from withdrawing cash for the purpose of making campaign expenditures of more than twenty-five dollars. The Committee further finds that Section 8-13-1348 prohibits candidates from making cash withdrawals in excess of \$100.

The Committee finds that on seventeen occasions Respondent made cash withdrawals in excess of \$100, each of which is a separate violation of Section 8-13-1348. THEREFORE, the Committee orders Respondent to pay a fine of \$1,000 to the Committee for the violations in this section.

### **b. Cash withdrawals of \$100 or less**

Section 8-13-1348(E) provides that "[a] candidate or a duly authorized officer of a committee may not withdraw more than one hundred dollars from the campaign account to establish or replenish a petty cash fund for the candidate or committee at any time, and at no time may the fund exceed one hundred dollars. Expenditures from the petty cash fund may be made only for office supplies, food, transportation expenses, and other necessities and may not exceed twenty-five dollars for each expenditure."

In sum, a candidate may establish a petty cash fund to pay for office supplies, food, transportation expenses, and other necessities; however, at no time may the fund exceed \$100 and no expenditure may exceed \$25. Further, each expenditure must be accounted for by a written receipt or other proof of payment or written record of payment. Respondent contends that each cash withdrawal he made of \$100 or less would be "acceptable amounts of cash withdrawn at any one time" (See Response to Amended Complaint pg 13). However, Respondent provided no other evidence in the form of receipts or written records to verify that the cash withdrawals were used to establish or replenish a petty cash fund. Further, Respondent provided no receipts or other records to account for where and how the money was spent, which is a violation reflected in Part A, Section I of this order. Although the Committee is concerned with these transactions, there is no evidence, other than speculation, to indicate that these withdrawals were not used to establish a petty cash fund. Therefore, the Committee declines to find a violation for the nine occasions in which Respondent made cash withdrawals of \$100 or less from his campaign account.

### III. Cash payments in violation of § 8-13-1348 and § 8-13-1302

Section 8-13-1302 provides "[e]xcept as otherwise provided under Section 8-13-1348(C), expenses paid on behalf of a candidate or committee must be drawn from the campaign account and issued on a check signed by the candidate." Section 8-13-1348(C) provides that "[a]n expenditure of more than twenty-five dollars drawn upon a campaign account must be made by: (a) a written instrument; (b) debit card; or (c) online transfers." The Committee interprets Section 8-13-1348 so as to require that the ultimate payment to the vendor must be made by written instrument, debit card, or online transfer. The Committee finds that a candidate cannot withdraw cash, or write a check to cash or himself, and then use that cash to pay the vendor and subsequently claim that the withdrawal slip or check written to cash/himself satisfies the written instrument requirement of 8-13-1348. If the Committee allowed such a practice it would allow candidates to circumvent the requirements of 8-13-1348 and eviscerate the purpose of that statute. The Committee finds that on thirty-four occasions Respondent made cash payments for expenditures of more than twenty-five dollars, each of which is a separate violation of Section 8-13-1348. THEREFORE, the Committee orders Respondent to pay a fine of \$1,000 to the Committee for the violations in this section.

### IV. Transferring Campaign Funds to REDO

The Department of Revenue's investigation revealed the following transaction: On July 3, 2008, Respondent transferred \$12,015.53 from his campaign account to a bank account for Regenesys Economic Development Corporation, a 501(c)(3) non-profit entity for which Respondent serves as the Director.

Section 8-13-1370 provides:

"(A) Contributions received by a candidate that are in excess of expenditures during an election cycle must be used by the candidate *upon final disbursement*:

- (1) to defray ordinary and necessary expenses incurred in connection with his duties in his public office;
- (2) *to be contributed to an organization exempt from tax under Section 501(c)(3) of the Internal Revenue Code of 1986, a political party, or a committee*;
- (3) to be maintained in the campaign account for a subsequent race for the same elective office;
- (4) to further the candidacy of the individual for a different elective office. However, after December 31, 1992, the funds must be used in a campaign for a different elective office only as provided for in Section 8-13-1352;
- (5) to be returned pro rata to all contributors;
- (6) to be contributed to the state's general fund; or
- (7) to be distributed using a combination of these options.

(B) No candidate may expend contributions for personal use." (emphasis added)

The Committee finds that the plain language of the statute is ambiguous and, when applied to the transaction above, can be interpreted one of two ways.

First, it can be interpreted to mean that contributions to a 501(c)(3) can only be made upon final disbursement when a candidate is closing the campaign account and disbursing the remaining funds. This interpretation relies on the "upon final disbursement" language to conclude that this section only applies to the scenario where a candidate is closing the account and making final disbursement.

The other interpretation is that the statute is not limited to the scenario where a candidate is closing his account, based upon the language in (A)(3), which states that funds may be maintained in the campaign account for a subsequent race for the same elective office. Under this interpretation, disbursement of excess contributions to 501(c)(3) organizations would be appropriate. Such an interpretation creates a potential conflict with Section 8-13-1348, which provides that campaign funds may only be expended on items related to the campaign or office, where the disbursement is not related to the candidates campaign or office.

Under the rule of lenity, used in statutory construction, any ambiguities found in a statute are to be resolved in favor of the accused. Because the Committee finds that 8-13-1370 is ambiguous, as applied to the facts of this case, the Committee must resolve the ambiguity in favor of Respondent. Going forward, the Committee cautions any Members of the House to ensure that any disbursements made to 501(c)(3) organizations also comply with the requirements of Section 8-13-1348.

#### **V. Improper recording of contributions or expenditures**

Section 8-13-1308(F) provides that certified campaign reports detailing campaign contributions and expenditures must contain “(1) the total of contributions accepted by the candidate . . . ; (2) the name and address of each person making a contribution of more than one hundred dollars and the amount and date of receipt of each contribution; (3) the total expenditures made by or on behalf of the candidate; (4) the name and address of each person to whom an expenditure is made from campaign funds, including the date, amount, purpose, and beneficiary of the expenditure.”

After reviewing Respondent's bank records, the Committee finds that on forty-nine occasions Respondent either failed to report, or inaccurately reported, expenditures and/or contributions. The Committee notes that once Respondent was notified of those inaccuracies by way of the Complaint, he has since made many of the proper corrections, and is in the process of correcting those remaining. THEREFORE, the Committee orders Respondent to pay a fine of \$1,000 to the Committee for the violations in this section and to make the appropriate corrections to his campaign disclosure reports.

## **VI. Contributions Deposited Less Cash**

Section 8-13-1312 provides that "[a]ll contributions received by the candidate or committee, directly or indirectly, must be deposited in the campaign account by the candidate or committee within ten days after receipt."

The Committee finds that on four occasions Respondent took a campaign contribution check to the bank and deposited part of the check in his campaign account while receiving cash in hand for the remainder not deposited. The Committee finds that this practice is a violation of Section 8-13-1312 because the entire contribution must be deposited in the account, which is required so that the funds may be tracked to ensure compliance with the Ethics Act. THEREFORE, the Committee orders Respondent to pay a fine of \$1,000 to the Committee for the violations in this section.

## **PART B - VIOLATIONS REQUIRING REPAYMENT**

Section 8-13-1348(A) provides:

"No candidate, committee, public official, or political party may use campaign funds to defray personal expenses which are unrelated to the campaign or the office if the candidate is an officeholder nor may these funds be converted to personal use. The prohibition of this subsection does not extend to the incidental personal use of campaign materials or equipment nor to an expenditure used to defray any ordinary expenses incurred in connection with an individual's duties as a holder of elective office."

The Committee finds that Respondent utilized campaign funds for purposes unrelated to his campaign or office, each of which is a separate violation of Section 8-13-1348. Accordingly, the Committee orders the Respondent to repay the amounts listed below in Sections I and II.

### **I. Respondent's admissions**

The Respondent concedes that the following transactions should be repaid to his campaign account. Accordingly, the Committee orders Respondent to reimburse his campaign account for the following transactions, which total \$4,411.23.

1. 08/22/2008 - \$350 contribution to campaign that was cashed, not deposited.
2. 03/20/2009 - \$92.47 to Bell Laundry for dry cleaning services.
3. 04/09/2009 - \$300. Respondent contends these funds were used for legitimate legislative purposes, but concedes he has no receipts accounting for the use of these funds.
4. 04/21/2009 - \$150.97 to Bell Laundry for dry cleaning services.
5. 05/29/2009 - \$1,847 to Founders Federal Credit Union as payment on a personal loan.
6. 10/26/2010 - \$18.14 to Bell Laundry for dry cleaning services.
7. 11/10/2010 - \$20.86 to Bell Laundry for dry cleaning services.

8. 11/10/2010 - \$31.96 to Vic Bailey for oil change.
9. 12/31/2010 - \$50.18 to Bell Laundry for dry cleaning services.
10. 12/31/2010 - \$31.96 to Vic Bailey for oil change/maintenance on vehicle.
11. 04/27/2012 - \$270.25 used to reimburse Respondent for travel expenses related to a speaking engagement. Respondent conceded that he was reimbursed by the organization hosting the conference and therefore should not have reimbursed himself out his campaign account.
12. 05/14/2012 - \$174.72 to Creative Health for a personal expenditure.
13. 10/23/2012 - \$240. Respondent asserts that the funds were used for travel expenses related to speaking engagement but was unable to obtain receipts evidencing the same.
14. 10/25/2012 - \$332.72. Respondent asserts that the funds were used for travel expenses related to speaking engagement but was unable to obtain receipts evidencing the same.
15. 10/31/2012 - \$100 cash withdrawal. Respondent asserts the funds were used for legitimate legislative purposes but concedes there are no receipts accounting for the use of these funds.
16. 01/07/2013 - \$150 cash withdrawal. Respondent asserts the funds were used for legitimate legislative purposes but concedes there are no receipts accounting for the use of these funds.
17. 02/08/2013 - \$180 cash withdrawal. Respondent asserts the funds were used for reimbursement of expenses incurred in attending a legislative function but conceded he has no receipts or invoices evidencing the same.
18. 02/14/2013 - \$70 cash withdrawal. Respondent asserts the funds were used for mileage expense but concedes there are no receipts accounting for the use of these funds.

## **II. Funds Respondent must repay campaign account**

The Committee finds that the following transactions were a misuse of campaign funds and orders Respondent to reimburse his campaign account for the following transactions, which total \$2,976.67.

1. 06/10/2008 - \$700 check payable to Harold Mitchell. Respondent contends these funds were used to pay for a van rental on election day but did not provide any documentation substantiating the assertion.
2. 09/17/2009 - \$100 check payable to Harold Mitchell. Respondent contends these funds were used to pay for gas to Columbia but did not provide any documentation substantiating the assertion.
3. 11/10/2008 - \$400 check payable to Harold Mitchell. Respondent contends these funds were used to reimburse himself for cell phone expenses but did not provide any documentation substantiating the assertion.
4. 12/01/2008 - \$400 used pay Extended Stay of America for family displaced by Hurricane Katrina.
5. 12/23/2008 - \$500 used pay Extended Stay of America for family displaced by Hurricane Katrina.
6. 12/31/2008 - \$150 used pay Extended Stay of America for family displaced by Hurricane Katrina.

7. 08/17/2009 - \$20. Respondent asserts amount was placed in petty cash but provided no receipts to account for the funds.
8. 04/20/2010 - \$30. Respondent asserts amount was placed in petty cash but provided no receipts to account for the funds.
9. 04/11/2011 - \$6.67. Respondent asserts amount was placed in petty cash but provided no receipts to account for the funds.
10. 05/24/2012 - \$30 cash withdrawal. Respondent asserts amount was placed in petty cash but provided no receipts to account for the funds.
11. 11/08/2012 - \$40 cash withdrawal. Respondent asserts amount was placed in petty cash but provided no receipts to account for the funds.
12. 11/09/2012 - \$400 paid to T-Mobile which Committee found was unrelated to campaign.
13. 12/21/2012 - \$120. Respondent asserts funds were used for maintenance/upkeep on vehicle used for both personal and legislative use.
14. 02/11/2013 - \$36.00 cash withdrawal. Respondent asserts amount was placed in petty cash but provided no receipts to account for the funds.
15. 02/05/13 - \$44. Respondent asserts funds were used for maintenance/upkeep on vehicle used for both personal and legislative use.

### **TOTAL PENALTIES**

- A. With regard to Part A, Section I of this order, the Committee orders Respondent to pay a fine of \$1,000.
- B. With regard to Part A, Section II(a) of this order, the Committee orders Respondent to pay a fine of \$1,000.
- C. With regard to Part A, Section III, subsection (a) of this order, the Committee orders Respondent to pay a fine of \$1,000.
- D. With regard to Part A, Section V of this order, the Committee orders Respondent to pay a fine of \$1,000.
- E. With regard to Part A, Section VI of this order, the Committee orders Respondent to pay a fine of \$1,000.
- F. With regard to Part B, Section I, #s 2, 4, 6 -11, 13, 14, and Part B, Section II, #s 4 - 11, 13 - 15, the Committee orders Respondent to pay a fine of \$100 for each count for a total fine of \$2,100.
- G. With regard to Part B, Section I, #s 1, 3, 15 - 18, and Part B, Section II, #s 1 - 3, 12, the Committee orders Respondent to pay a fine of \$500 for each count for a total fine of \$5,000.
- H. With regard to Part B, Section I, #s 5 and 12, the Committee orders Respondent to pay a fine of \$2,000 for each count for a total fine of \$4,000.
- I. With regard to Part B, Sections I and II, the Committee orders Respondent to reimburse his campaign account the total amount of the transactions in those sections, totaling \$7,387.90.
- J. The Committee orders Respondent to refrain from maintaining a petty cash fund through the end of 2018.

- K. The Committee orders Respondent to submit campaign bank account records to the appropriate supervisory office with each quarterly campaign disclosure filing through the end of 2018 or until Respondent leaves public office, whichever is sooner.
- L. The Committee orders Respondent to submit to the appropriate supervisory office proof of payment to the ultimate vendor (canceled check, receipt, etc.) for each campaign expenditure with each quarterly filing through the end of 2018 or until Respondent leaves public office, whichever is sooner.
- M. The Committee orders Respondent to refrain from contributing campaign funds to any 501(c)(3) organizations which any of the following are associated with: himself, a family member (as defined in 8-13-100), an individual with whom he is associated (as defined in 8-13-100), or a business with which he is associated (as defined in 8-13-100).

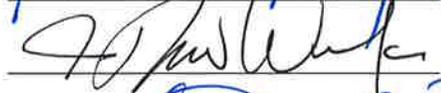
This order shall serve as the Committee's final disposition of this matter pursuant to and in accordance with the terms set forth herein.

**AND IT IS SO ORDERED**, this 22 day of May, 2014, by the following members of the House Ethics Committee:

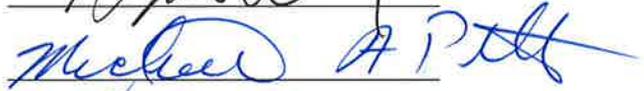
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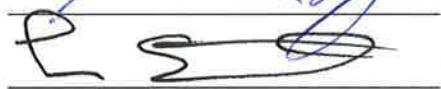
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