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J. Todd Rutherford  
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## House Legislative Ethics Committee



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### ORDER OF DISMISSAL

#### C2019-006: IN THE MATTER OF NEAL COLLINS

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**Complainant:** State Ethics Commission  
**Address:** 201 Executive Drive, Suite 150  
Columbia, South Carolina 29210  
**Telephone:** 803-253-4192

**Respondent:** Neal Collins  
**Address:** P.O. Box 906  
Easley, South Carolina 29641  
**Telephone Number:** 864-350-4175  
**Title:** Rep Dist. No. 5 Pickens County  
**Email:** collins.neal@gmail.com

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A complaint was initiated and investigated by the State Ethics Commission. (herein "SEC") against Representative Neal Collins (herein "Respondent") for an alleged violation of S.C. Code Ann. § 8-13-1346. The House Legislative Ethics Committee (herein "Committee") met on February 12, 2019 and determined that there is not competent and substantial evidence that a violation of Chapter 13, Article 8 has occurred. The Committee hereby dismisses said complaint, pursuant to § 8-13-540(D)(2).

### BACKGROUND

Senator Rex Rice submitted information to the SEC requesting a formal advisory opinion concerning an alleged violation of the State Ethics Act. The SEC determined not to issue a formal advisory opinion, but *sua sponte* initiated a SEC Complaint (hereinafter "Complaint"). The Complaint was initiated on July 24, 2018. Specifically, the complaint alleges that Respondent Neal Collins (herein "Respondent") did use public funds, property, or time to influence the outcome of an election, specifically a ballot measure, in possible violation of S.C. Code Ann. § 8-

13-1346 by using Legislative Services to print and mail a constituent newsletter which included the following statement: "After two decades, we were finally able to put to voter referendum granting the Governor the authority to appoint the office of Superintendent of Education. I strongly recommend that you vote for Superintendent to be an appointed position."

On July 2, 2018, an investigator for the SEC contacted the Respondent via telephone to inquire whether public funds were used to distribute the newsletter in question. According to the Report, Respondent said his newsletter was paid using both campaign funds and public funds, but he did not know the exact cost. Respondent allegedly stated he spent \$344.48 of campaign funds for a portion of postage and/or printing. A review of the investigative file shows that Respondent wrote check number 288 from his campaign account to Legislative Services in the amount of \$344.48. This amount equals the copying costs for Respondent's newsletter. Respondent used a portion of his allocated postage funds given to each House Member to cover the postage for his newsletters in the amount of \$2,024.29.

In a letter dated September 26, 2018, the SEC informed the Committee for the first time of a concern/complaint against a Member of the House as follows:

Dear Representative Pitts:

Pursuant to S.C. Code Ann. § 8-13-540(B)(6), the State Ethics Commission hereby provides you with its recommendation in the above referenced Complaint. Please be advised that this matter did not originally come to the Commission as a complaint, but rather as an unrelated third-party request for a formal advisory opinion.

The September 26, 2018 letter and Report (herein "Initial Report") came before the Committee on October 4, 2018. The Initial Report, attached herein and made a part hereof as Exhibit A, sent by the Commission to the Committee involves an allegation that House Member, Respondent violated S.C. Code Ann. §8-13-1346 for expending public funds to influence the outcome of a ballot measure. Further, the Initial Report recommends that the Committee "find probable cause is present and charge Respondent with one count of violation of S.C. Code Ann. §8-13-1346 for expending public funds to influence the outcome of a ballot measure."

On October 15, 2018, the Committee referred the matter back to the SEC to further investigate the issue and consider, *inter alia*, whether §8-13-1346(A) allows Respondent to use public resources to influence the outcome of a ballot measure.

On January 28, 2019, the Committee received the SEC's Final Report recommending probable cause does exist to find Respondent violated §8-13-1346. Specifically, the SEC interprets §8-13-1346 "to prohibit any use of public resources to influence the outcome of an election *or ballot measure*" and finds that Respondent's use of his legislative allotment of postage is not incidental under §8-13-1346. Based on well-established statutory construction, the Committee renders the following opinion.

## FINDINGS

The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. Charleston County Sch. Dist. v. State Budget and Control Bd., 313 S.C. 1,437 S.E.2d 6 (1993). Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute. In re Vincent J., 333 S.C. 233, 509 S.E.2d 261 (1998) (citations omitted). Where the 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. Id. at 233, 509 S.E.2d at 262 (citing Paschal v. State Election Comm'n, 317 S.C. 434, 454 S.E.2d 890 (1995)). "What a legislature says in the text of a statute is considered the best evidence of the legislature intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature." Norman J. Singer, Sutherland Statutory Construction § 46.03 at 94 (5<sup>th</sup> ed. 1992). 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, 519 S.E.2d 577 (Ct. App. 1999). In construing statutes, the words must be given their plain and ordinary meaning without resort to a subtle or forced construction of the purpose of limiting or expanding their operation. Walton v. Walton, 282 S.C. 165, 318 S.E.2d 14 (1984).

In addition, we note that the State Ethics Act is a penal statute, attaching criminal penalties to any violation thereof. See § 8-13-1520. When a statute is penal in nature, it must be construed strictly against the State and in favor of the defendant. State v. Cutler, 274 S.C. 376, 264 S.E.2d 420 (1980).

S.C. Code Ann. § 8-13-1346(A) states "A person may not use or authorize the use of public funds, property, or time to influence the outcome of an *election*." (emphasis added)

S.C. Code Ann. § 8-13-1300(9) states that "Election" means:

- (a) a general, special, primary, or runoff election;
- (b) a convention or caucus of a political party held to nominate a candidate; or
- (c) the election of delegates to a constitutional convention for proposing amendments to the Constitution of the United States or the Constitution of this State.

A plain reading of the definition of "election" does not include a voter referendum. In fact, a review of the legislative history shows that the definition of "election" in S.C. Code Ann. §8-13-1300(9) was amended in 2003 by Act 76, Section 22 (eff June 26, 2003) by deleting subsection (d) which read "a ballot measure." "Ballot measure" is defined in SC Code Ann. §8-13-1300(2) as "a referendum, proposition, or measure submitted to voters for their approval."

The SEC attempts to expand the scope of the statute stating that "the Act's definition of 'election' is circular and calling the amendment "confusing." However, the Committee finds that specifically striking "ballot measure" from the definition of "election" clearly conveys the legislature's intent to exclude the term from the definition of "election." If the Legislature had intended to include "ballot measure" in its definition of "election," then it would not have

specifically struck it. Any contention otherwise would be manifestly contrary to the statute. Further, as South Carolina Attorney General's Office previously opined,

“...[A]n administrative agency, such as the State Ethics Commission, possesses no authority to alter by means of construction or interpretation those laws enacted by the General Assembly. The Commission may not modify legislative policy as set forth in the governing statutes....[T]he power to make laws is a legislative power and the Ethics Commission or its officers may not exercise such power either by means of rules, regulations or orders having the effect of legislation or otherwise. Under the constitutional requirements of separation of powers, only the General Assembly may make the law or alter it.”

Op. S.C. Atty. Gen. August 24, 2006 (internal citations omitted). Absent any specific prohibition, such activity must be deemed permitted. See State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1991)[where criminal statute does not proscribe certain activity, such activity is permitted].

Based on well-established statutory construction, including a review of the legislative history, the Committee finds that a statement to influence the outcome of a voter referendum is actually a ballot measure, which does not fall under the definition of “election.” As such, the Committee finds that Respondent's use of House printing and postage services to publish his newsletter containing language prompting individuals to vote in favor of a voter referendum is not a violation of S.C. Code Ann. § 8-13-1346(A).

## CONCLUSION

Accordingly, the Committee dismisses the SEC's complaint against Respondent and finds there is not competent and substantial evidence that a violation of § 8-13-1346 has occurred.

AND IT SO ORDERED, this 12<sup>th</sup> day of February 2019, by the following members of the House Ethics Committee:

Rep. G. Murrell Smith, Jr., Chairman

Rep. J. David Weeks, Vice-Chairman

Rep. Beth E. Bernstein, Secretary

Rep. Heather Ammons Crawford

Rep. Wallace H. "Jay" Jordan, Jr.

Rep. John Richard King

Rep. Peter M. McCoy, Jr.

Rep. Dennis C. Moss

Rep. J. Todd Rutherford

Rep. Leonidas E. "Leon" Stavrinakis

The image shows a series of horizontal lines with handwritten signatures in blue and black ink. The signatures correspond to the names listed on the left. From top to bottom, the signatures are: a blue signature for G. Murrell Smith, Jr.; a black signature for J. David Weeks; a black signature for Beth E. Bernstein; a black signature for Heather Ammons Crawford; a blue signature for Wallace H. "Jay" Jordan, Jr.; a blue signature for John Richard King; a black signature for Peter M. McCoy, Jr.; a black signature for Dennis C. Moss; a blue signature for J. Todd Rutherford; and a blue signature for Leonidas E. "Leon" Stavrinakis.

# **EXHIBIT A**

State of South Carolina  
State Ethics Commission

BRIAN M. BARNWELL, CHAIR  
VICTOR K. LI, VICE CHAIR  
DONALD GIST  
SAMUEL L. ERWIN



DON JACKSON  
BRANDOLYN THOMAS PINKSTON  
CHILDS CANTEY THRASHER  
ASHLEIGH R. WILSON

201 EXECUTIVE CENTER DRIVE, SUITE 150  
COLUMBIA, S.C. 29210

MEGHAN L. WALKER  
EXECUTIVE DIRECTOR

September 26, 2018

South Carolina House of Representatives  
Attn: Representative Michael A. Pitts  
Chairman, House Legislative Ethics Committee  
519B Blatt Building  
Columbia, SC 29201

RE: COMPLAINT C2019-006 In the Matter of Neal Collins

Dear Representative Pitts:

Pursuant to S.C. Code Ann. § 8-13-540(B)(6), the State Ethics Commission hereby provides you with its recommendation in the above-referenced Complaint. Please be advised that this matter did not originally come to the Commission as a complaint, but rather as an unrelated third-party request for a formal advisory opinion.

Sincerely,

A handwritten signature in black ink that reads "Meghan Walker".

Meghan L. Walker  
Executive Director

**State Ethics Commission—Recommendation to House Legislative Ethics Committee**  
**In the Matter of Neal Collins**

**COMPLAINANT INFORMATION**

<b>Name</b>	State Ethics Commission
<b>Address</b>	201 Executive Center Drive, Suite 150 Columbia, SC 29210
<b>Telephone Number</b>	803-253-4192
<b>Fax Number</b>	803-253-7539
<b>Email</b>	None

**RESPONDENT INFORMATION**

<b>Name</b>	Representative Neal Collins
<b>Address</b>	PO Box 906 Easley, SC 29641
<b>Telephone Number</b>	864-350-4175
<b>Fax Number</b>	None
<b>Email</b>	collins.neal@gmail.com
<b>Attorney Information</b>	None
<b>Confidentiality Waived</b>	No

**COMPLAINT INFORMATION**

<b>Complaint No.</b>	C2019-006
<b>Complaint Received</b>	July 19, 2018
<b>Facts Sufficient Determination</b>	July 19, 2018
<b>Facts Sufficient Determination Made By</b>	State Ethics Commission

**COMMISSION RECOMMENDATION**

The State Ethics Commission recommends the House Legislative Ethics Committee find probable cause is present and charge Respondent with one count of violation of §8-13-1346 for expending public funds to influence the outcome of a ballot measure.