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May 14, 2013

BY FAX & MAIL: (803)212-6499

Honorable Luke A. Rankin
Chairman
Senate Ethics Committee
The Senate of South Carolina
P. O. Box 142
Columbia, SC 29202

RE: Senator Robert I. Ford

Dear Senator Rankin:

Please find enclosed AMENDED RESPONSE, MOTION TO MAKE DEFINITE AND CERTAIN together with MOTIONS in reference to the above referenced matter with copies for each member of the Committee.

Thanking you, I remain

Sincerely,



William L. Runyon, Jr.

WLR, JR. / bb

Enclosure

Cc: Senator Robert Ford

**The Senate of South Carolina
Before the Senate Ethics Committee**

In The Matter of Senator Robert I. Ford

RESPONSE TO COMPLAINT

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Attorney for Respondent

I

All Charges and Allegations Should Be Dismissed With or Without Prejudice

The reasons are very simple. First, this Committee is charged with enforcing Chapter 13 of Title 8. Title 8 Chapter 13 Section 530 (1) Code of Laws of South Carolina 1976 as amended. The Chapter provides that upon filing of a report the reviewing agency must "promptly" notify the office holder of any deficiencies. Title 8-13- 320 (7) Code of Laws of S.C. 1976 as amended. There does not appear to be any such Notice of record or in the submissions to the Respondent. Accordingly, prior to the action taken by the Committee a condition predicate should have been complied with and it was not. Furthermore we expect that the testimony will show that the Counsel for the Committee called the Respondent and sought information so that perceived deficiencies could be addressed. This was in fact not the intent of the call. The Respondent, who thought he was talking to a Lawyer and receiving advice, was actually being investigated. The Respondent was not Noticed. Under the customs and practices of the Senate, Counsel for Committees do in fact advise Senators. Thus there is a de facto attorney client relationship. Now there will be a hue and cry that there is no attorney-client relationship. But a Lawyer's obligations, such as a duty of confidentiality, may exist even if there is not an attorney-client relationship. ABA Formal Opinion #90-358. The whole issue of Committee Counsels role, since he is a lawyer, tends to pollute the review of this matter.

Recalling the "prompt notification" issue one may ask what does that mean? Well there are numerous cases but one from the Sixth Circuit of The United States Court of Appeals is most illuminating. There the Sixth Circuit citing the opinion of the Ohio Supreme Court said:

"The Ohio Supreme Court explained its holdings as follows
....unreasonable delay in giving Notice is **presumed prejudicial**
....absent evidence to the contrary. ".....emphasis added
Ferrando, 781 N.E. 2d at Pages 945-46 cited in **Clark v. Chubb**
Electronic Citation 2003 FED APP 0250 P (6th Circuit 2003).

Now this is not an insurance case, but the point is prompt Notification in most cases means something more than waiting years. The failure to do so is presumed to be prejudicial to this Respondent.

Therefore these allegations should be dismissed. At the least the Respondent should be returned to the status quo prior to the charges. At that point, a decision could be made if his position has not been prejudiced by the failure to "promptly Notify" him of the specific deficiencies in 2009, 2010, 2011, 2012 and 2013. Certainly the 2009 issues are barred by 8-13-320(d) Title 8-13-320(d). Code of Laws of South Carolina 1976 as amended.

II

The allegations 1 through 7 will be dealt with as a group since they are all duplicative and not specified. As a group they fall into the following categories:

- A. Using Campaign Funds for Personal Expenditures
- B. Misrepresentation of Expenditures
- C. Cash Withdrawals in excess of \$100.00
- D. Failure to report Contributions and or failure to report Expenditures

Initially it is admitted that the reporting of Campaign Loans and or the reporting of loan payments may be inaccurate. It is acknowledged that there were legitimate loan repayments made without the accompanying entries of the loans to the campaign by the Respondent. This would have to be addressed by a comprehensive accounting analysis. However the repayments were legitimate payments to the lending institutions. However it is respectfully denied that the Respondent violated Title 8-13-1308 of the Code of Laws as alleged. It is respectfully called to the Committees attention that the requirements of Title 8-13-1308 are to file the report within certain time frames. While it is anticipated that the reports will be accurate, the requirements of the said section are that they will be filed and they were. Therefore it is respectfully submitted that the filing of an inaccurate report in a timely manner is **not** a violation of Title 8-13-1308. Therefore it is submitted that this allegation should be dismissed.

Now, one should turn to misuse of campaign expenditures. There are no specifics in the allegations so one must turn to the subpoenaed materials for a hint. One return was from SCE&G. It is a payment on a utility bill at Barrett Road. At first blush this appears to be the Senators residence. However, he occupies one bedroom. The rest of the house is both Senate and Political Office with the garage storing political materials. It is respectfully submitted that this is **not** an expenditure for personal expenses. The premises may be inspected. It is anticipated that photos will be supplied to the Committee. Additionally your staff has subpoenaed the framing bill and received the certification of the work and payments. Certainly if the Committee was going to order an audit it seems that a proper audit would have been ordered initially and that would have determined the questioned items and any amounts in controversy.

Additionally we would remind the Committee that there are submissions that go back well over Four (4) years despite the Limitations of Title 8-13-320(d) Code of Laws of S.C. 1976 as amended.

Certainly the Committees approach at this time seems to be counterproductive to the goals of getting an accurate reading of the reports and insuring that the system is working. Additionally anyone who has ever handled an accounting case knows that credit card companies do not have sales receipts. Certainly the stack of subpoenaed statements from the companies is impressive

for bulk. However that bulk contains no specifics that rise to the level of an allegation of improper conduct.

The difficulty with the charges and the lack of specifications is the issue of cash withdrawals. One must consider that Title 8-13- 1348(E) does not prohibit cash withdrawals. Title 8-13-1348(E) Code of Laws of South Carolina 1976 as amended. What is the prosecutor talking about? We are left to surmise what is being reviewed as cash withdrawals.

The misrepresentation of expenditures is another matter that is vague. Is the prosecutor talking about the framing? If so the response to the subpoena should have answered that question. What expenditures, contributions or personal expenses are being referenced?

The method of approaching this entire matter certainly calls into question due process. There is absolutely no way that the Respondent can receive thousands of pages of documents, do a complete audit and answer the "charges" in thirty (30) days.

The burden of proof is certainly on Counsel for the Committee. Here the process seems to be one of finger pointing and assume that the Respondent will then do all of the work. Frankly, the burden of proof of a violation coupled with evidence of willfulness and knowingly violating any rule is on the accuser.

Title 8 contains numerous statutes and requirements on expenditures but the allegations do not specify which expenditures are in violation of Title 8-13-1348. It should be noted that of the years complained of there are no specifications as to contributions or expenditures.

III

May 2, 2013 Complaint

The most egregious complaint is the one leveled on May 2, 2013. What the prosecutor **did not** tell the Committee is that he called Senator Ford. He opined that he desired to help the Senator get his forms in order. He did not say "I am investigating you." He did not question the condition of the paper work. He took it and then this charge was ultimately leveled. He absolutely misled the Senator. Then he would say that there were misleading entries etc and that the Senator was attempting to willfully deceive the Committee.

One should ask the circumstances under which the working papers were secured. They were submitted upon request with the understanding that he would be back to the Senator for explanations and review.

IV

Knowingly And Willfully As To All Allegations Including Allegation 8

Common to all allegations by at least inference and the specific wording of Allegation 8 is the phrase "knowingly and willfully." In short Senator Ford is accused of not doing anything by inadvertence. This phrase is common to the Criminal Law and is most readily defined in criminal cases. Essentially knowingly means that an act was done voluntarily and intentionally and not because of mistake or accident. Knowingly refers to knowledge. In short there must be a conscious and intentional act. Please reference Bryan v. U.S. 524 US 184 at 193 (1998); U.S. v. Jarvouhey 117 F. 3d 440 at 442 (9th Cir 1997)

In short the Committee is unequivocally saying Senator Ford engaged in "Criminal Conduct" merely by using the phrase "willfully and knowingly." However there is little if any evidence of any conduct rising to that level. Inadvertence or negligent bookkeeping is not "willful and knowing."

V

Possible Jurisdictional Issues

The Committee Counsel in his zeal to showcase this Senator's shortcomings has sought and obtained subpoenas on all records associated with the Respondent. These include checking account records of two community development activities of the Senator. Is it the Committee's position that these activities are within the jurisdiction of this inquiry? The difficulty with this position is that there must be a clear nexus between his ethics reports and these activities. I would refer the Committee to Ford v. State Ethics Commission wherein the State Supreme Court clearly said that there are Constitutional boundaries. Please see Ford v. State Ethics Commission, Opinion 325286 April 23, 2001. Therefore there is a bright line jurisdictional question. Why would this Committee plow through the community activities of Senator Ford when there may be no relevance to his activities as a State Senator? Clearly these activities will

impact a vote at election time. But that does not necessarily bring them under this Honorable Committee's umbrella without a clear connection to his reports. At this point there is only a clear fishing expedition and it may be fishing without a Constitutional license.

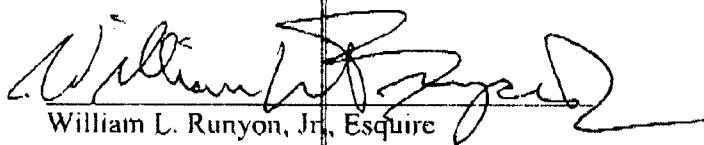
VI

What Should Be Done?

The only thing that the Senator has **not** been accused of is receiving gifts receipts or profits in violation of Chapter 13, Title 8 or Chapter 17 of Title 2 of the South Carolina Code.

It is clear that the Senator has never received prompt Notice of deficiencies in accord with the statutory requirements. It is also clear that the question of Ethics enforcement is extremely sensitive at this time. Accordingly it is only logical that the Committee not simply brush the questions aside for procedural issues. Therefore it is suggested that these matters be thoroughly investigated by referring them for further review. At the conclusion of such review the accounting issues would have been addressed and the Committee would then have concrete facts, not supposition, upon which to base a decision.

The undersigned Respectfully submits the foregoing Response on behalf of the Respondent this 15th day of May, 2013.



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Attorney for Respondent

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
In Re:)
THE HONORABLE ROBERT FORD,))
SENATOR,)
Respondent.)
_____)

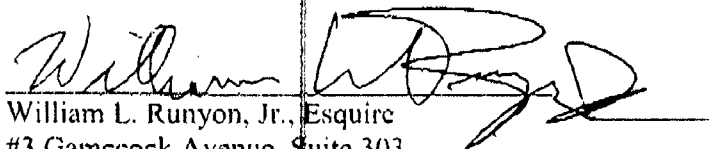
IN THE SENATE OF THE STATE
OF SOUTH CAROLINA BEFORE
THE SENATE ETHICS COMMITTEE

MOTION TO MAKE DEFINITE
AND CERTAIN

The Respondent moves this Honorable Committee to provide the respondent as to all allegations the following specifics:

- A. The year of the alleged violation and the specific item which is alleged to be a violation.

AND IT IS SO MOVED this 15th day of May 2013 at Charleston, South Carolina.



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STATE OF SOUTH CAROLINA)
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IN THE SENATE OF THE STATE
OF SOUTH CAROLINA BEFORE
THE SENATE ETHICS COMMITTEE

In Re:)
THE HONORABLE ROBERT FORD,))

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Respondent.)

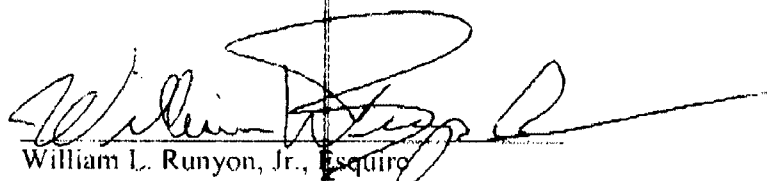
MOTIONS

MOTIONS

The Respondent respectfully moves the Honorable Committee as follows:

1. To produce to the Respondent the "Prompt Notices" as required by Title 8-13-320 (7) Code of Laws for the years 2009, 2010, 2011, 2012 and 2013.
2. To dismiss any allegation relating to 2009 in conformity to Title 8-13-320 (d) Code of Laws of S. C. 1976 as amended.
3. To supply to the Respondent the source of the information upon which the allegations were made upon information and belief.

AND IT IS SO MOVED this 15th day of May 2013 at Charleston, South Carolina.


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