



STATE OF SOUTH CAROLINA )  
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 COUNTY OF RICHLAND )  
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 IN THE MATTER OF: )  
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 COMPLAINT C2010-108 )  
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 Gary Santos, )  
 Complainant; )  
 )  
 vs. )  
 )  
 Paul S. Gawrych, )  
 Respondent. )  
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BEFORE THE STATE ETHICS COMMISSION

**DECISION AND ORDER**

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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 July 21, 2010, charging the Respondent, Paul S. Gawrych, with a violation of 8-13-700 (A) and 8-13-700 (B), Code of Laws for South Carolina, 1976, as amended.

Present at the meeting were Commission Members Phillip Florence, Jr., Chairman, E. Kay Biermann-Brohl, Vice-Chair, Priscilla L. Tanner, G. Carlton Manley, JB Holeman, Jonathan H. Burnett, Richard H. Fitzgerald. Also present were the Commission's Executive Director, Herbert R. Havden, Jr., and his immediate staff.

The following allegations were considered:

**ALLEGATIONS**

It appears that Council Member, Paul Gawrych, lobbied the SCDOT to approve a product that only his company represents and can install in the city where he serves. It appears that Council Member, Paul Gawrych, lobbied the Town of Mt. Pleasant's staff to approve his asphalt company (Asphalt Concepts) as the subcontractor for the installation of crosswalks on Coleman

Blvd. The Coleman Blvd Revitalization Plan called for the installation of mast arm traffic signals and four pedestrian crosswalks. This plan was approved by Town Council. Mr. Gawrych, as a member of Town Council, voted for the plan. His involvement with this issue was not disclosed to Town Council or the public. Based on his statement, "please keep the email inside the town" there is no way the public or anyone outside of those involved in or knowledgeable of the installation could have known. Even the invoice from the general contractor does not show that a separate subcontractor was involved. Therefore, statute of limitations should not apply.

With his involvement, the Town selected the product (stamped asphalt that gives the appearance of brick) of Mr. Gawrych's company and helped Mr. Gawrych gain SCDOT approval. There is no record available that the Town looked at other processes. Since Mr. Gawrych's company had the franchise for the selected product in this area, the business went to him as a sole source provider without competing bids. I believe that this is a violation of the SC Code of Laws; Section 8-13-700 (A) and (B) as well as violations of applicable Ethics Laws.

On May 6, 2010 the Complainant amended his original complaint to include the Respondent's participation in the Watermark and Central Mt. Pleasant Developments.

### **FINDINGS OF FACT**

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

1. Interviews with the Town of Mt. Pleasant Administrator and members of the Mt Pleasant Planning Department as well as review of relevant Council minutes did not produce any information indicating that the Respondent and/or his business, had any economic interest

in the Oakland Plantation, Watermark Development and Central Mt. Pleasant projects at any time these projects were being considered or approved by Mt. Pleasant Town Council.

2. These development agreements considered and approved by Council did not contain specificity regarding the type of crosswalks to be installed in the developments.
3. The Respondent is the owner Asphalt Concepts (AC), a business specializing in decorative surfacing. During the period of time that the Mt. Pleasant Planning Department was considering various types of crosswalk applications for Coleman Boulevard the Respondent and a representative of the Mt. Pleasant Planning Department had many discussions concerning the applications.
4. The Respondent did arrange through the Town of Mt. Pleasant to demonstrate a new product being offered by his company at a test site selected by the Town of Mt. Pleasant. Following the test site application the Mt. Pleasant Planning Department, not the Town Council, selected the new product being offered by AC.
5. Subsequently, AC did perform some of the cross walk installation in the Coleman Boulevard Plan and received compensation for the work performed.

#### **CONCLUSIONS OF LAW**

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

1. The Respondent is a public official as defined in Section 8-13-100 (27) and at all times relevant, was within the jurisdiction of the State Ethics Commission.

2. Section 8-13-700 (A) states no public official, public member, or public employee may knowingly use his official office, membership, or employment to obtain an economic interest for himself, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated.

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3. Section 8-13-700 (B) states no public official, public member, or public employee may make, participate in making, or in any way attempt to use his office, membership, or employment to influence a governmental decision in which he, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated has an economic interest.

### **DISCUSSION**

In view of the facts presented in the investigation, there does not appear to have been any intentional violation of the State Ethics Act; however, the procurement process charges public officials and public employees to objectively and impartially consider and determine contractual matters. The prohibitions contained in Section 8-13-700 (A) and (B) serve the public interest in objective, impartial and effective government by preventing the creation of situations which would tend to impair that objectivity and impartiality and therefore, the effectiveness of a public employee tasked with a procurement decision.

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. However, the Commission does express serious concern

regarding the appearance of impropriety in the frequent contacts between the Respondent and Mt. Pleasant Planning Department employees concerning the crosswalk applications for Coleman Boulevard.

When a public employee is tasked with the responsibility of selecting a contractor, and one of the potential contractors, or even sub-contractors, is a member of that public employee's elected body, an inherent conflict exists. It is incumbent upon the elected official to do everything possible to avoid that conflict.

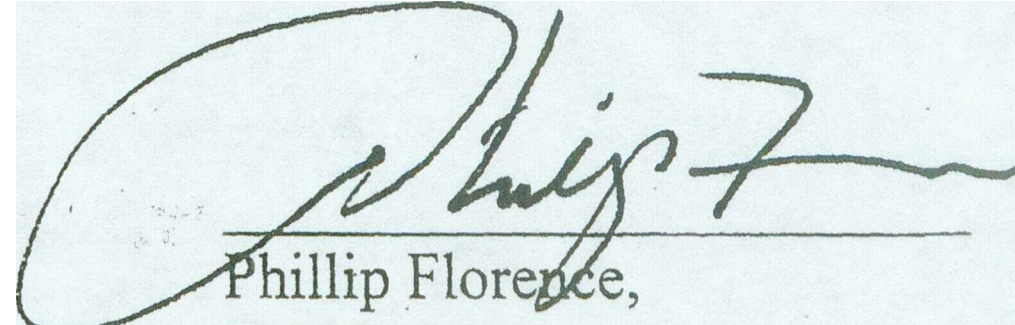
In the Preamble to the State Ethics Act, the General Assembly stated that "...at every turn those who represent the people of this State must be certain that it is the interests of the people, and not their own, that are being served. Officials should be prepared to remove themselves immediately from a decision, vote, or process that even appears to be a conflict of interest;...". It is with that thought in mind that the State Ethics Commission issues this Decision.

### **DECISION**

THEREFORE, based upon evidence presented, the State Ethics Commission has determined that there is not probable cause to indicate that the Respondent, Paul S. Gawrych, violated Section 8-13-700 (A) and 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; however, the Commission cautions the Respondent to endeavor to avoid the appearance of impropriety.

IT IS SO ORDERED THIS 10 DAY OF ^/fcr 2010.

STATE ETHICS COMMISSION



Phillip Florence,  
Chair

COLUMBIA, SOUTH CAROLINA

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