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JOINT LEGISLATIVE COMMITTEE
CANDIDATE SCREENING FOR COLLEGE AND UNIVERSITY
BOARDS OF TRUSTEES

Thursday, April 18, 2013

11:45 a.m.

1101 Pendleton Street
South Carolina State House
Columbia, South Carolina

REPORTED BY: LISA GARSON
COURT REPORTER

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- 1 MEMBERS IN ATTENDANCE:
- 2 SENATOR HARVEY S. PEELER JR., CHAIRMAN
- 3 REPRESENTATIVE PETER M. McCOY JR
- 4 REPRESENTATIVE DAVID J MACK III
- 5 SENATOR ROBERT W. HAYES JR
- 6 REPRESENTATIVE WILLIAM R. WHITMIRE
- 7 SENATOR THOMAS C. ALEXANDER
- 8 SENATOR JOHN YANCY McGILL
- 9 REPRESENTATIVE PHYLLIS HENDERSON
- 10 COMMITTEE RESEARCH PERSONNEL:
- 11 MARTHA CASTO
- 12 (INDEX AT REAR OF TRANSCRIPT)
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SENATOR PEELER: I'd like to call the meeting to order. This is a meeting of the Joint Legislative Committee to Screen College and University Board of Trustees. Today we want to take up the 5th District Medical University of South Carolina Board candidate, Dr. Murrell Smith.

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We've carried this over a couple of times and received a couple of Attorney General opinions. The question of Dr. Smith is a question of residency. Does he or does he not live in the 5th Congressional District?

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The precedent set by the Committee before, when determining residency, is the four-percent property tax. The statute is clear. There's a certain number of things that you must comply with in order to receive the four-percent benefit on your property. Even to this case, even if your spouse owns the property, it's clear that unless you are legally separated, it's determined in that statute that that is your place of residence.

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I think the question in the past was that some other people may want to use some other criteria on determining the place of residence. As was said earlier, I don't think you can have it both ways. If you are qualified to be a 5th District candidate for MUSC, then you do not qualify for the four-percent property tax in

1 Charleston County, if you claim to live in Sumter County.
2 And because of that, I think the statute is clear.

3 I would encourage the Committee to support the
4 precedent of the Committee in the past, in terms of
5 determining residence, and so now it's open for
6 discussion. Senator Hayes.

7 SENATOR HAYES: On two occasions in the past,
8 haven't we made this holding, as far as someone having
9 four-percent property?

10 SENATOR PEELER: Yes. Let me ask Ms. Casto.
11 Specifically, there were two.

12 MS. CASTO: Yes, two. One was an MUSC Board
13 seat and one was a USC Board seat.

14 SENATOR HAYES: Did they decide to change the
15 four-percent property in order to run? What did they do?

16 MS. CASTO: On both occasions, they changed it
17 to be in the district where they were running. Yes.

18 One was from Columbia, paid the four percent in
19 Georgetown, switched it back to Richland County. One
20 was -- they were claiming it in Florence County. USC
21 runs by judicial circuits. They had to move it back to
22 Clarendon County to claim the four percent in Clarendon
23 County, as opposed to Florence County.

24 SENATOR PEELER: Senator McGill.

25 SENATOR MCGILL: Was the property of those two

1 individuals in -- was it fee simple in the names of the
2 two candidates? Were their names on the actual deed?

3 MS. CASTO: I don't have any idea.

4 SENATOR MCGILL: If that's the assumption, that
5 they both were on that fee simple deed, then it's an
6 absolute where they live with four to six percent. If
7 they're wise and their names were on it, that's one
8 issue.

9 Another issue is, if, in this case with
10 Dr. Smith, where his wife, her name is on the fee simple,
11 is Dr. Smith's name on that deed of ownership where they
12 get that four percent? Again, I read this opinion. It's
13 saying several things, and I read that domicile -- and I
14 read it where it talks about spouse living -- wherever
15 one spouse is, the other one is.

16 It states in here and I read it and I should
17 have underlined it before the meeting started. If it
18 says his place of residency is where he returns for his
19 domicile, or his home, then it would be based where he
20 said that it would. If he said Sumter or if he said Isle
21 of Palms, I mean, that would be where it's located.

22 I'm not trying to defend Dr. Smith, but I see a
23 bouncing, left to right. And, historically, we always
24 said if Dr. Roland is getting four percent in his name at
25 their beach, he's out. In this case, it's a little bit

1 different.

2 As a matter of fact, I called for the Attorney
3 General, but not for this. He'll be here in a minute for
4 something else. I can tell you this, that, being in her
5 name -- I'm not saying that husbands and wives can be
6 married and live apart, and I know the statute relates to
7 husband and spouse or wife and spouse.

8 In this case, what we have is a man's wife has
9 declared her residency and domicile in the Isle of Palms.
10 His name is not on that deed. There's a difference. If
11 these two candidates have their names on that fee simple,
12 on that deed, it plainly states who has what ownership.

13 Now, I'm not trying to bust a balloon, and we
14 need to vote and be done and go forward, but in this
15 thing -- I can't see it to read it. At the last meeting,
16 I read a sentence in it, and it plainly stated that
17 domicile one could be at one place and one could be at
18 another place. That's what it stated.

19 I'm just going by what this thing says. I'm
20 just glad when I was in municipal government, I used to
21 communicate with the Attorney General's office a lot on
22 local government issues.

23 MS. CASTO: Senator McGill, I found the Roland
24 case. It was in her name, Isabel Roland.

25 SENATOR MCGILL: There you go. That's the

1 deal. I mean, that's the whole shebang. If it was in
2 her name, and it was four percent -- the property in
3 Columbia was in her name?

4 MS. CASTO: And the property in Georgetown.
5 Yes, sir.

6 SENATOR MCGILL: That's an issue.

7 SENATOR PEELER: Unfortunately, Senator, I'm
8 told that a lot of times, especially medical doctors will
9 put their house in their spouse's name because of
10 lawsuits. Unfortunately, that's the case. So this is
11 really not unique to this case. A lot of times, doctors
12 have their house in their spouse's name for fear of
13 lawsuits.

14 I think the intent and -- evidently, the
15 structure of the statute that created the four percent
16 anticipated something like this, that the definition of a
17 spouse -- that would be the spouse's house also, unless
18 they're legally separated.

19 SENATOR MCGILL: The thing is -- and I'm saying
20 it because we need to see it. The law in South Carolina
21 is clear that a person's residence is his domicile. A
22 person may only have one domicile, and that's where the
23 person has the intention of returning whenever he is
24 gone.

25 And then there's all these other things in

1 here. Give me just one second. See, that's the thing.
2 Do wives in that other case that the fee simple was in
3 that other person's name -- that just complicates it
4 more. I'm of the opinion -- I'm going to say this, and
5 then I'm through.

6 I'm of the opinion -- even studying it at the
7 last meeting and even seeing this now and listening to
8 Senator McElveen from Sumter. I'm of the opinion -- I
9 don't know where Dr. Smith's wife's domicile is. Maybe
10 it's Isle of Palms because of the four percent.

11 I'm of the opinion that this man's residence is
12 Sumter by testimony of the Mayor of Sumter and by
13 testimony of the Senator from Sumter. I want to say it
14 because I love Murrell Smith, but I'm trying to kick all
15 that out on the table. That's what makes it so hard.

16 My mind tells me -- I don't know where his wife
17 lays her head at night, but I can tell you that I believe
18 his residence is Sumter, but it's up for discussion.
19 Anybody can figure it how they want to figure it. I
20 don't know.

21 SENATOR PEELER: Well, refresh my memory. I
22 think Dr. Smith said he changed his driver's license and
23 his voter registration back to Sumter.

24 MS. CASTO: In 2006, when the property taxes
25 were moved from the four percent in Sumter to four

1 percent in Charleston, he changed his voter registration
2 and his driver's license. In mid February, after he had
3 filed his letter of intent to run for this seat, he
4 changed both of those back to Sumter County. So he has
5 had them in Charleston County since 2006.

6 SENATOR PEELER: So if he had followed
7 precedent, if he had changed his four percent back to
8 Sumter County, then it would have complied with the
9 standard of the Committee.

10 MS. CASTO: Correct.

11 SENATOR PEELER: Like the two previous
12 candidates have done.

13 MS. CASTO: Correct.

14 SENATOR PEELER: Representative Henderson.

15 REPRESENTATIVE HENDERSON: Thank you, Mr.
16 Chairman. I know we had this discussion with Dr. Smith
17 last week, you know, about moving the -- would he be
18 willing to move the four percent. I don't know that --
19 I'm not sure that -- I mean, being new, I'm just going
20 out on a limb here, that we actually have the authority
21 to ask him to do that.

22 But if we did, this still doesn't -- time wise,
23 I mean, you know, that would take weeks, months,
24 whatever, and we kind of would just drag this out. I
25 feel like that, you know, what you said, Senator McGill.

1 Dr. Smith lives in Sumter, and whether there's an issue
2 with the taxing, and all that, that's really, to a
3 certain extent, outside of what we're trying to do, which
4 is determine where he lives and is he qualified to serve?

5 I think he is qualified to serve, and I think
6 that we need to make a decision on this today, so we can
7 move ahead and not continue to drag this out any longer.

8 SENATOR PEELER: Well, if the precedent of the
9 Committee was otherwise, it would be easier. We've had
10 this challenge before, and we'll have it again. It will
11 be a bigger challenge, if we change it. The four percent
12 seems to be the most specific definition of where your
13 home is in the State of South Carolina because it's a
14 difference between four percent and six percent. The
15 precedent is set and it's specific.

16 SENATOR MCGILL: Chairman, one last thing real
17 quick. I found the paragraph. Last page, page five.

18 "Based on a plain reading of the statute, it
19 appears that any such certification by the spouse of a
20 candidate of a legal residence could be truthful and
21 could still be consistent with a candidate having a
22 residence in a different county. The candidate would be
23 a member of the household of his spouse pursuant to S.C.
24 Code Section 12-43-220(c)(2)(iii). As long as the
25 candidate doesn't claim the four-percent rate when the

1 spouse does, as long as the spouse and the candidate are
2 both legal residents where they claim to be and are both
3 residents in South Carolina, then they may be in
4 compliance with the law while claiming separate
5 residences."

6 SENATOR PEELER: Senator Alexander.

7 SENATOR ALEXANDER: You know, even in Section
8 12-43-220 -- and I like Dr. Smith and I wish he would
9 change his percentage to that and I agree that's not
10 within our purview, but certainly that would make him --
11 it says for purposes of assessment ratio allowed pursuant
12 to this item a residence does not qualify as a legal
13 residence unless the residence is determined to be the
14 domicile of the owner-applicant.

15 You know, I don't know how much clearer you can
16 get from that standpoint, and it's my understanding from
17 what you said, too -- and I even had a situation not long
18 ago where there was a couple that lived in Pickens
19 County. They're separated, but not legally separated,
20 and the wife is now living in Oconee County.

21 She was not eligible to claim four percent
22 because they were not legally separated. And as far as
23 the other criteria, I think if someone doesn't have the
24 owner-occupied home, then you look to the other things.
25 From the Committee's standpoint -- it's been the

1 Committee's standpoint in the past that if they own a
2 home and are allowed to have an owner-occupied
3 designation, then that has been determined to be their
4 residence.

5 I think, to me, as much as I'd like to support
6 finding Dr. Smith qualified, I'm looking down the road,
7 outside the parameters of what's facing us today. As we
8 look outside the parameters of the other individuals, it
9 was painful for us to do that on those other occasions
10 with those other individuals, but it was determined by
11 the Committee, and I think it was a unanimous vote, if I
12 remember correctly, at that time, with the Committee
13 House and Senate members, that that would be the
14 standard.

15 SENATOR HAYES: I'm in agreement with Senator
16 Alexander, that, as much as I'd like to help, I think we
17 have a precedent, and I think if we threw the precedent
18 out, get ready because then we have to tell them on every
19 one of these.

20 I think the reason that we asked the Attorney
21 General was we didn't want -- you know, we were clearly
22 violating his rights to let us know. I think my reading
23 of this says that we're within our rights, obviously,
24 subject to judicial review.

25 If the court says we're not, we're not. But I

1 think the Attorney General's opinion says we're within
2 our rights to do it that way, and I think we set the
3 precedent with two other people, so I think we need to
4 stay within the precedent.

5 SENATOR PEELER: Any other member have a
6 question or comment? What's the desire of the Committee?
7 Senator McGill.

8 SENATOR MCGILL: Mr. Chairman, believe me, if
9 anybody had a reason to vote for or against the rule, in
10 his mind, this way or that way, I probably would. But
11 the fact remains, by testimony that we received and by
12 the Attorney General's opinion, it's still a gray, up and
13 down area, in my mind.

14 I'm not an attorney, but I'm reading exactly
15 what this thing said. I'm going to do a favorable and
16 let these candidates go to work.

17 SENATOR PEELER: Motion is a favorable. Is
18 there a second?

19 REPRESENTATIVE MACK: Second.

20 SENATOR PEELER: The motion is made by Senator
21 McGill and seconded by Representative Mack. Any
22 discussion? Hearing none, we can proceed to a vote.

23 Staff, if you would call, and we'll have a role
24 call.

25 MS. CASTO: Senator Peeler?

1 SENATOR PEELER: No.

2 MS. CASTO: Senator McGill?

3 SENATOR MCGILL: Yes.

4 MS. CASTO: Senator Alexander?

5 SENATOR ALEXANDER: No.

6 MS. CASTO: Senator Hayes?

7 SENATOR HAYES: No.

8 MS. CASTO: Representative Whitmire?

9 REPRESENTATIVE WHITMIRE: Yes.

10 MS. CASTO: Representative Mack?

11 REPRESENTATIVE MACK: Yes.

12 MS. CASTO: Representative Henderson?

13 REPRESENTATIVE HENDERSON: Yes.

14 MS. CASTO: Representative McCoy?

15 REPRESENTATIVE MCCOY: Yes.

16 MS. CASTO: I have five to three to find him

17 qualified.

18 SENATOR PEELER: By a vote of five to three,

19 Dr. Murrell Smith is found qualified. What other

20 business?

21 MS. CASTO: For one thing, this seat is not on

22 the May 1st election. There is no report yet, so he cannot

23 start seeking commitments until there is a report. The 5th

24 Congressional seat will be elected on May 15th, along

25 with the 5th Congressional seat on Coastal Carolina's

1 Board that you all have yet to screen those candidates.

2 Their packets are due by noon tomorrow, so next
3 week or early the following week, you need to screen --
4 there are two candidates. We had a person drop out of
5 the 6th Congressional District for MUSC yesterday, Sandra
6 Sims. She was the only candidate, so we have to re-open
7 that seat. We will send a notice.

8 This one opens it back up. We have to
9 re-advertise for it. You may have enough time to get it
10 in for the May 15th election. I don't know.

11 SENATOR PEELER: Representative Henderson, do
12 you have a question?

13 REPRESENTATIVE HENDERSON: Yes. This would
14 probably be later, but I think there's also a possibility
15 with SC State, that some of the incumbents, even though
16 they're unopposed, could potentially not get elected.

17 MS. CASTO: There's only one unopposed.

18 REPRESENTATIVE HENDERSON: There's been talk to
19 open that up again, but it just dawned on me that we have
20 to have the May 1st vote first and go from there.

21 SENATOR PEELER: Well, would that be up to this
22 Committee?

23 SENATOR ALEXANDER: It would be up to the
24 General Assembly, wouldn't it?

25 MS. CASTO: Since that individual is running

1 unopposed, if they got --

2 REPRESENTATIVE WHITMIRE: They have five votes.
3 Isn't that enough?

4 MS. CASTO: If they got one vote, that's
5 enough.

6 SENATOR ALEXANDER: I don't know if you vote no
7 because we have that with a judicial candidate, when
8 there was a judge found qualified and voted no, and they
9 sent it back to the screening committee.

10 MS. CASTO: We can check with the clerks. That
11 would be up to the Lieutenant Governor.

12 SENATOR PEELER: No, no. That would be a
13 precedent, and we're not dealing with precedents.
14 Precedents are out the window.

15 MS. CASTO: If they're not elected by the time
16 you all go home in June, and the seats are vacant, the
17 Governor appoints them.

18 REPRESENTATIVE HENDERSON: May I ask one other
19 thing? I ask that, moving ahead, after we get through
20 this, that we actually come up with some rules and/or
21 guidelines.

22 Not so much this issue -- this should be part
23 of it, but, you know, we had people with different kinds
24 of questionable records and things. I've had people ask
25 me, you know, I've heard such-and-such about so-and-so,

1 how can you screen them out? Don't you have any
2 guidelines?

3 We really don't, and I don't know if it's
4 possible if we could agree to something, some criteria,
5 some rules, some guidelines, something, you know, or if
6 we want to leave it on a case by case basis. I would
7 like to see us come up with something.

8 SENATOR PEELER: I agree, and if individually
9 as a group, the members of the Committee want to get
10 together with staff and make some recommendations,
11 they're welcome.

12 Anything else to come before the Committee? Do
13 you have a letter in front of you from Representative
14 Bill Taylor? Here again, we would take that under
15 advisement. I don't know if that would be under our
16 purview.

17 MS. CASTO: You could add it when you're doing
18 guidelines or any additional legislation. At this point
19 in time, we have no rules that govern that.

20 SENATOR PEELER: In the meantime, while the
21 candidates are running, he's certainly within his right
22 to share that with the members. I would recommend, if he
23 wanted to do that, to do that.

24 Anything else? We stand adjourned. Thank you
25 for your service.

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(The hearing was adjourned at 12:05 p.m.)

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CERTIFICATE OF REPORTER

I, Lisa A. Garson, Court Reporter and Notary Public for the State of South Carolina at Large, do hereby certify:

That the foregoing transcript was taken before me on the date and at the time and location stated on the 1st page of this transcript; that all statements made on the record at the time of the proceeding were recorded stenographically by me and were thereafter transcribed; that the foregoing transcript as typed is a true, accurate and complete record of the proceeding to the best of my ability.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 22nd day of April, 2013, at Greenville, Greenville County, South Carolina.

Lisa A. Garson,
Court Reporter
Notary Public
State of South Carolina
My Commission Expires:
December 19, 2019

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Reporter's Certificate

19

E X H I B I T S

(No exhibits entered.)