**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS**
**STATE OF GEORGIA**

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| **GEORGIA GOVERNMENT TRANSPARENCY AND CAMPAIGN FINANCE COMMISSION,**<br>**Petitioner,**<br><br>**v.**<br><br>**JOHN OXENDINE,**<br>**Respondent.** | **Docket No.: 2125871**<br>**2125871-OSAH-GGTACFC-CAN-60-Walker**<br><br>**Agency Reference No.: 2009-0007** |

# MEMORANDUM OPINION AND ORDER ON MOTION TO DISMISS

On May 21, 2021, Petitioner, Georgia Government Transparency and Campaign Finance Commission ("Commission"), filed a Statement of Matters Asserted[1] alleging that Respondent had violated the Ethics in Government Act, O.C.G.A. § 21-5-1 et seq. (also the "Act").[2] On August 2, 2021, Respondent filed a Motion to Dismiss the Statement of Matters Asserted, arguing that it fails to state a violation of the Act and, further, that the Commission's delay in filing the Statement of Matters Asserted (also "SMA") violated Respondent's right to due process of law. Following additional briefing by the parties, oral argument was held on August 31, 2021, and the parties submitted post-hearing pleadings. For the foregoing reasons Respondent's Motion to Dismiss for failure to state a violation of the Act is **GRANTED**; however, Respondent's Motion to Dismiss on the grounds that the Commission's delay in filing the Statement of Matters Asserted violated Respondent's right to due process of law is **DENIED**.

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[1] On May 21, 2021, Petitioner also filed a second Statement of Matters Asserted regarding Respondent that has been docketed as 2125875-OSAH-GGTACFC-CAN-60-Walker.

[2] All citations to the Ethics in Government Act refer to the 2008 version of the Act attached to the Statement of Matters Asserted as Exhibit B.

## BACKGROUND

Petitioner, the Commission, is an agency created "to protect the integrity of the democratic process and to ensure fair elections . . . [and] to institute and to establish a requirement of public disclosure of campaign contributions and expenditures [. . . . ]" O.C.G.A. § 21-5-2. Respondent, John W. Oxendine, was a candidate for Governor of the State of Georgia during the 2010 primary election. SMA ¶ 13. On or about April 23, 2008, he filed his Declaration of Intention to Accept Campaign Contributions in advance of his 2010 gubernatorial campaign and registered his campaign as "Oxendine Working for Georgia, Inc." (also "the campaign"). Id. Mr. Oxendine was the listed chairperson and treasurer of his campaign. Id.

Pursuant to O.C.G.A. § 21-5-41(a), "[n]o person, corporation, political committee, or political party shall make, and no candidate or campaign committee shall receive from any such entity, contributions to any candidate for state-wide elected office" that exceed the maximum limitations listed in the statute.[3] In its introduction to the Statement of Matters Asserted, the Commission contends that Respondent violated O.C.G.A. § 21-5-41(a) by accepting campaign contributions from ten affiliated political action committees ("the ten contributing entities" or "the ten entities") in excess of the limits specified by O.C.G.A. § 21-5-41(a).[4] SMA at p. 1.

[3] Although ¶ 24 of the Statement of Matters Asserted states that during the 2008 calendar year O.C.G.A. § 21-5-41(a) specified maximum individual campaign contribution limits as $5,900 for a primary election; $3,500 for a primary runoff election; $5,900 for a general election; and $3,500 for a general runoff election, the 2008 version of O.C.G.A. § 21-5-41, attached to the Statement of Matters Asserted as Exhibit B, indicates that the 2008 limits were as follows: (1) Five thousand dollars for a primary election; (2) Three thousand dollars for a primary run-off election; (3) Five thousand dollars for a general election; and (4) Three thousand dollars for a general election run-off election.

[4] The Statement of Matters Asserted first alleges that John Oxendine, a candidate in the 2010 Georgia Gubernatorial primary election, accepted campaign contributions from ten affiliated political action committees in excess of individual contribution limits during the primary election. Additionally, the Statement of Matters Asserted alleges that there were expenditures from campaign contributions that were allocated to the primary runoff and general election, where Respondent failed to qualify for those elections. Respondent suggests the second allegation was

The Statement of Matters Asserted details the following facts in support of the Commission's allegations: The ten contributing entities, Cash N Checks PAC, Courtside Suite 10 PAC, First Highland Avenue PAC, Georgia Dome PAC, LIFT PAC, Peachtree PAC, Philips PAC, South Perry PAC, Turner PAC, and The Watkins Group PAC, were incorporated in the State of Alabama on August 31, 2002. SMA ¶ 75. The articles of incorporation and contact information for the ten contributing entities were identical; additionally, all the entities listed Donald V. Watkins Jr. as Chairperson and Sharon Childs-Long as Treasurer. SMA ¶¶ 77, 82.

On September 25, 2008, each of the ten contributing entities sent the campaign a check for $2,000.00 signed by Donald V. Watkins Jr. See SMA ¶¶ 25-81. The ten contributing entities contributed $20,000.00 to the campaign on this date. SMA ¶ 78. On December 31, 2008, each individual entity sent the campaign a series of three checks, dated December 30, 2008. See SMA ¶¶ 26-81. The first check was in the amount of $3,900.00 and was designated for the 2010 primary election. Id. A second check in the amount of $1,100.00 was designated for the 2010 primary runoff election. Id. The third check, in the amount of $5,000.00, was designated for the general election. Id. Donald V. Watkins Jr. signed each of the checks. SMA ¶ 81. All told, in addition to the $20,000 donated on September 25, 2008, on December 31, 2008, the ten contributing entities contributed another $100,000 to Respondent's campaign. SMA ¶ 79. Although the amount received from each entity did not exceed the individual maximum contribution limits for the designated election, the Commission alleges that, when aggregated, the contributions exceeded statutory limitations. See SMA ¶¶ 78, 82-88.

dismissed by the Commission prior to the filing of the Statement of Matters Asserted. See Respondent's Motion to Dismiss at p. 3. In any event, it appears that the Commission has abandoned the second allegation.

The Statement of Matters Asserted concludes by listing two violations of O.C.G.A. § 21-5-41(a). Violation I states that "John W. Oxendine accepted [a] $20,000 donation from an affiliated committee in excess of individual contribution limits for the 2008 calendar year in violation of O.C.G.A. § 21-5-41(a)." SMA ¶ 87. In Violation II, the Commission charges that "John W. Oxendine accepted [a] $100,000 donation from an affiliated committee in excess of individual contribution limits for the 2008 calendar year in violation of O.C.G.A. § 21-5-41(a)." SMA ¶ 88. If the Commission proves that Respondent violated O.C.G.A. § 21-5-41(a), it has the authority to require him to "cease and desist from committing further violations," correct public statements, and pay a civil penalty. O.C.G.A. § 21-5-6(b)(14).

## MOTION TO DISMISS

Pursuant to O.C.G.A. § 50-13-13(a)(6), an Administrative Law Judge may "dispose of motions to dismiss for lack of agency jurisdiction over the subject matter or parties or for any other ground." To grant a motion to dismiss, a court must find that "the allegations of the complaint disclose with certainty that the claimant would not be entitled to relief under any state of provable facts asserted in support thereof." Harrell v. City of Griffin, 346 Ga. App. 635, 636 (2018). Pleadings must be construed in "the light most favorable to the plaintiff with any doubts resolved in the plaintiff's favor." Id.; see also Williams v. DeKalb County, 308 Ga. 265, 270 (2020) (under Civil Practice Act motion to dismiss for failure to state a claim should not be granted unless "(1) the allegations of the complaint disclose with certainty that the claimant would not be entitled to relief under any state of provable facts asserted in support thereof; and (2) the movant establishes that the claimant could not possibly introduce evidence within the framework of the complaint sufficient to warrant a grant of the relief sought") (citation omitted).

## ANALYSIS

### A. Campaign Contributions

In his motion to dismiss, Respondent contends that the Statement of Matters Asserted fails to state a violation of the Ethics in Government Act. As relevant to the instant case the O.C.G.A. § 21-5-41(a) provides:

> (a) No person, corporation, political committee, or political party shall make, and no candidate or campaign committee shall receive from any such entity, contributions to any candidate for state-wide elected office which in the aggregate for an election cycle exceed:
>
> (1) Five thousand dollars for a primary election;
> (2) Three thousand dollars for a primary run-off election;
> (3) Five thousand dollars for a general election; and
> (4) Three thousand dollars for a general election runoff
>
> [ . . . . ] [and]
>
> (c) No business entity shall make any election contributions to any candidate which when aggregated with contributions to the same candidate for the same election from any affiliated corporations exceed the per election maximum allowable contribution limits for such candidate as specified in subsection (a) of this Code section.
>
> [ . . . . ]
>
> O.C.G.A. § 21-5-41(a).

Additionally, O.C.G.A. § 21-5-40 defines the following terms:

> (1) "Affiliated committees" means any two or more political committees (including a separate segregated fund) established, financed, maintained, or controlled by the same business entity, labor organization, person, or group of persons, including any parent, subsidiary, branch, division, department, or local unit thereof.
>
> (2) "Affiliated corporation" means with respect to any business entity any other business entity related thereto: as a parent business entity; as a subsidiary business entity; as a sister business entity; by common ownership or control; or by control of one business entity by the other.

(3) "Business entity" shall have the same meaning as provided in Code Section 21-5-3.[5]

(4) [….]

(5) "Person" means an individual.

(6) "Political committee" means: (A) any partnership, committee, club, association, organization, party caucus of the House of Representatives or the Senate, or similar entity (other than a business entity) or any other group of persons or entities which makes a contribution; or (B) any separate segregated fund.[6]

[ . . . . ]

In the introductory paragraph, the Statement of Matters Asserted deems the ten entities "affiliated political action committees." Additionally, the Commission characterizes the ten entities as corporations, "PACs," and "affiliated PAC[s]." SMA ¶¶ 75-84. In ¶ 82 of the SMA, the Commission concludes that "[b]ecause the ten aforementioned PACs had identical articles of incorporation, chairperson, treasurer, contact information, and made donations on the same date with the same signature on the check, they were an 'affiliated committee' as defined by O.C.G.A. § 21-5-40(1)." SMA ¶ 82.

1. Affiliated Committee

Ultimately, the violations listed in the Statement of Matters Asserted charge that Respondent violated O.C.G.A. § 21-5-41(a) by accepting donations from an "affiliated committee." SMA ¶¶ 82, 87, 88. However, the Ethics in Government Act never defines – or even

[5] Under O.C.G.A. § 21-5-3(1), a "'Business entity' means any corporation, sole proprietorship, partnership, limited partnership, limited liability company, limited liability partnership, professional corporation, enterprise, franchise, association, trust, joint venture, or other entity, whether for profit or nonprofit."

[6] A "political committee" under O.C.G.A. § 21-5-40(6) is defined differently than a "political action committee." Pursuant to O.C.G.A. § 21-5-3(20)(A), a "political action committee" means "any committee, club, association, partnership, corporation, labor union or other group of persons which receives donations during a calendar year from persons who are members or supporters of the committee, and which contributes funds to one or more candidates for public office or campaign committees of candidates for public office [. . . .] "

refers to - an "affiliated committee." See generally O.C.G.A. § 21-5-1 et seq.[7] Instead, the Act defines the plural of the term - "affiliated committees" - to mean "two or more political committees . . . established, financed, maintained, or controlled by the same business entity, labor organization, person, or group of persons, including any parent, subsidiary, branch, division, department or local unit thereof." O.C.G.A. § 21-5-40(1). This definition is the sole reference to the term "affiliated committees" in the Act. It is not one of the entities described in O.C.G.A. § 21-5-41(a), nor does the Ethics in Government Act address campaign contributions from affiliated committees in any other statute.

In O.C.G.A. § 21-5-41, subsection (a) addresses contributions beyond statutory maximums from single entities: be it a "person, corporation, political committee, or political party." The Commission argues that O.C.G.A. § 21-5-41(a) implicitly includes affiliated committees. It contends that even though the statute is silent regarding the term affiliated committees, contributions in excess of statutory maximums which are, in effect, contributions made by the same contributor, violate the mandate of O.C.G.A. § 21-5-41(a) that "[n]o person, corporation, political committee, or political party shall make, and no candidate or campaign committee shall receive from any such entity, contributions to any candidate for state-wide elected office which in the aggregate would exceed [the statutory maximums]."

In opposition, Respondent argues that the statutory text reflects the legislature's deliberate choice to exclude the term "affiliated committees" from O.C.G.A. § 21-5-41(a). See Truist Bank v. Stark, 359 Ga. App. 116, 119 (2021) ("Under the statutory interpretation doctrine of expressio unius est exclusio alterius, where [the General Assembly] includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that

[7] Construing the pleadings in the light most favorable to the Petitioner, the undersigned considers the term "affiliated committee" to be a scrivener's error and will replace its use by Petitioner with the term "affiliated committees."

[the General Assembly] acts intentionally and purposely in the disparate inclusion or exclusion.") (citation omitted). In the very same statute, O.C.G.A. § 21-5-41(c), the legislature addresses contributions from multiple "affiliated" business entities. Because both affiliated committees and affiliated corporations involve multiple entities, if any subsection of the statute "implicitly" applies to affiliated committees, Respondent maintains that it would be O.C.G.A. § 21-5-41(c), rather than O.C.G.A. § 21-5-41(a).

"Where the statutory text is 'clear and unambiguous,' [the court] attribute[s] to the statute its plain meaning, and [the] search for statutory meaning generally ends." Ga. Gov't Transparency & Campaign Fin. Comm'n v. New Ga. Project Action Fund, 359 Ga. App. 32, 33 (2021) (citation omitted). The plain text of O.C.G.A. § 21-5-41(a) does not penalize Respondent for receiving contributions beyond statutory maximums from affiliated committees, and it would be improper to add this term where the legislature has chosen not to do so. Harris v. Mahone, 340 Ga. App. 415, 422 (2017) ("'[S]tatutory construction belongs to the courts, legislation to the legislature.' Thus, we cannot and will not 'add a line to the law.'"); Premier Health Care Invs., LLC v. UHS of Anchor, L.P., 310 Ga. 32, 39, 42 (2020) (citations and punctuation omitted).

Additionally, the Commission's own rules regarding affiliated committees is consistent with the statutory language of O.C.G.A. § 21-5-41(c). Under Ga. Comp. R. & Regs. 189-6-.04, a political committee is barred from making, "for any election, contributions to any candidate which, when aggregated with contributions to the same candidate for the same election from any ***affiliated political committees***, exceed the per election contribution limits for such candidate as set forth in O.C.G.A. § 21-5-41." (emphasis added). However, the rule does not prohibit candidates from receiving these donations. Notwithstanding the Statement of Matters Asserted, the Commission's

own rule places the burden firmly upon the affiliated committees, not the candidates, regarding contributions above statutory maximums. Id.

2. Corporations

Although Violations I and II in the SMA charge Respondent with accepting contributions from an affiliated committee in violation of O.C.G.A. § 21-5-41(a), the Commission also contends that the ten contributing entities should be considered one corporation governed by O.C.G.A. § 21-5-41(a) (candidate may not receive campaign contributions exceeding maximum limitations from single entity such as a corporation). The Statement of Matters Asserted reflects that each entity was incorporated individually.[8] The Commission maintains that "any reasonably intelligent recipient of these checks would have known that these checks were, in reality, contributions made by a single contributor that was attempting to use multiple corporate entities in an effort to avoid the campaign contribution limits set forth in Georgia's Ethics in Government Act . . . ." Petitioner's Response to Motion to Dismiss at 1-2.

Respondent agrees that each entity has been incorporated but argues that the Commission cannot contend that the entities are both affiliated committees and corporations. Under the Ethics in Government Act, the definition of political committee specifically excludes business entities, including corporations. See O.C.G.A. § 21-5-40(6) (political committee cannot be business entity); O.C.G.A. § 21-5-3(1) (defining business entity as any for-profit or nonprofit corporation). Moreover, even though a "political action committee" may be a corporation, political action committees are not governed by O.C.G.A. § 21-5-41(a); the statute only addresses a political committee. Though a political committee and a political action committee sound very similar,

[8] "Cash N Checks PAC, Courtside Suite 10 PAC, First Highland Avenue PAC, Georgia Dome PAC, LIFT PAC, Peachtree PAC, Philips PAC, South Perry PAC, Turner PAC, and The Watkins Group PAC all were incorporated in the State of Alabama on August 31, 2002." SMA ¶ 75.

under the Ethics in Government Act only a political action committee may be a corporation as defined under O.C.G.A. § 21-5-3(1).

The Commission proposes that the ten individual entities could constitute one corporation for the purposes of O.C.G.A. § 21-5-41(a). Before deferring to an agency's interpretation, Georgia courts must employ the rules of statutory construction. Johnson v. State, 308 Ga. 141, 144-45 (2020); City of Guyton v. Barrow, 305 Ga. 799, 802-03 (2019) (only after applying all the canons of statutory construction may a court find a regulation ambiguous and holding deference unwarranted because regulation was not ambiguous). Although "[t]he common and customary usages of the words are important," they are not the sole consideration. Johnson, 308 Ga. at 144 (citation omitted). Instead, words must be considered within the greater legal context or statutory scheme. City of Guyton, 305 Ga. at 805 (directing that courts should endeavor to "[understand] the legal context in which the rule was created"). To determine context, a court "may look to other provisions of the same statute, the structure and history of the whole statute, and the other law – constitutional, statutory, and common law alike – that forms the legal background of the statutory provision in question." Johnson, 308 Ga. at 144-45 (citation omitted).

Although the Commission argues that contributions made by a single contributor using multiple corporate entities would be governed by O.C.G.A. § 21-5-41(a), the statute's plain text and context within the Act demonstrate that it is O.C.G.A. § 21-5-41(c), rather than O.C.G.A. § 21-5-41(a), that is applicable. Under O.C.G.A. § 21-5-41(a), one corporation may not donate, and a candidate may not receive, funds in excess of the maximums listed in the statute. The Act defines an affiliated corporation as one related to another business entity by common ownership or control. O.C.G.A. § 21-5-40(2). Likewise, the Statement of Matters Asserted states that the ten entities

had identical articles of incorporation, chairpersons, treasurers, and contact information. SMA ¶ 82. Contributions from affiliated corporations fall under the strictures of O.C.G.A. § 21-5-41(c).

The Commission suggests that in this case Respondent received multiple checks signed by the same signatory on the same day, and thus it was apparent that the money was coming from one source attempting to evade contribution limitations. An affiliated corporation may not make "any election contributions to any candidate which when aggregated with contributions to the same candidate for the same election from any affiliated corporations exceed the per election maximum allowable contribution limits for such candidate . . . ." O.C.G.A. § 21-5-41(c). However, in contrast to O.C.G.A. § 21-5-41(a), which prohibits both a donor from making a contribution in excess of the listed maximums and a candidate from receiving those contributions, O.C.G.A. § 21-5-41(c) only penalizes the donors. No matter how patently obvious it may be that corporations are "affiliated," the legislature has chosen only to penalize the donor in cases covered by O.C.G.A. § 21-5-41(c). Based on the aforementioned reasons, Respondent's Motion to Dismiss is **GRANTED**.[9]

[9] If the Commission proves that Respondent violated O.C.G.A. § 21-5-41(a), it has the authority to require the violator to pay a civil penalty. O.C.G.A. § 21-5-6 (b)(14). Respondent argues that because this "statute imposes a fine or penalty, strict construction is required in favor of the person penalized." Reheis v. Baxley Creosoting & Osmose Wood Preserving Co., 268 Ga. App. 256, 259 (2004); Ga. Lottery Corp. v. Tabletop Media, LLC, 346 Ga. App. 498, 502 n.14 (2018); see also State Ethics Comm'r. v. Moore, 214 Ga. App. 236, 237-238 (1994) ("The election law is in derogation of the common law and must be strictly construed.")

**B. Delay in Filing**

Respondent also asks the court to dismiss this case on the grounds that it is "stale." Because the acts alleged took place approximately thirteen years ago, he argues that it would be a "practical impossibility" to collect evidence and witness statements in violation of his right to due process of law.

The instant proceedings are the culmination of a long and complicated procedural history involving the parties. On May 11, 2009, an individual filed a complaint with the Commission alleging that Respondent had violated the Ethics in Government Act by accepting contributions from ten Alabama political action committees in excess of the limits outlined in O.C.G.A. § 21-5-41. See OSAH Form 1, Exhibit A. The Commission notified Respondent of the complaint and first considered the complaint during a preliminary hearing on October 15, 2009. See Exhibit 2 attached to Petitioner's Response to Respondent's Motion to Dismiss. On August 13, 2015, Respondent filed amended reports for two previously filed original campaign contribution disclosure reports from 2013 and 2014, respectively. See Exhibits 3-D and 3-G attached to Commission's Motion for Summary Determination, Case No. 2125875-OSAH-GGTACFC-CAN-60-Walker. Based on the new information, the Commission filed an Amended Complaint on September 18, 2015. See Exhibit A attached to Respondent's Motion to Dismiss and Exhibit 3 attached to Petitioner's Response to Respondent's Motion to Dismiss. Substantial litigation ensued. See Oxendine v. Gov't Transparency & Campaign Fin. Comm'n, 341 Ga. App. 901 (2017).

On June 19, 2019, the Commission sent a notice to Respondent that a specially set hearing would be conducted before the Commission on August 21, 2019. See Exhibit 11 attached to Petitioner's Response to Respondent's Motion to Dismiss. This notice advised Respondent that

the hearing would address the allegations contained in the Complaint and that the Commission would determine at the hearing whether there are reasonable grounds to believe that a violation of the Campaign Finance Act has occurred. On February 20, 2020, the Commission found reasonable grounds to believe that a violation of the Act occurred pursuant to O.C.G.A §§ 21-5-33(a) and 21-5-33(c). See Exhibit 12 attached to Petitioner's Response to Respondent's Motion to Dismiss. The case was referred to the Attorney General's office, which then initiated these proceedings.

Due process "requires provision of a hearing 'at a meaningful time.'" Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532, 547 (1985) (quoting Armstrong v. Manzo, 380 U.S. 545, 552 (1965)). Although "the mere passage of time is not enough to constitute a denial of due process[,]" Carter v. State, 265 Ga. App. 44, 52 (2004), a delay in conducting a hearing may rise to the level of a due process violation where it occasions prejudice to the appealing party. See, e.g., Spradlin v. State, 262 Ga. App. 897, 901–02 (2003); Glass v. City of Atlanta, 293 Ga. App. 11 (2008); see also Lyon v. Dep't of Children & Family Servs., 807 N.E.2d 423, 433 (Ill. 2004) ("Due process concerns may be raised by the length of time the subject waits for the issuance of the final agency decision concerning his appeal.").

The undersigned finds Respondent's arguments unpersuasive. As the Commission points out, much of the delay in this case has been due to Respondent's legal filings that have resulted in two Superior Court cases, one Federal Court case, six Georgia Court of Appeals proceedings and five Georgia Supreme Court proceedings. See Petitioner's Response to Respondent's Motion to Dismiss at pp. 5-10. He has not demonstrated that he is prejudiced by either the loss of witnesses or evidence. Moreover, the Administrative Procedure Act does not impose a statute of limitations in the instant case. Oxendine, 341 Ga. App. at 903 ("We are certainly troubled by the amount of time that has elapsed since the first complaint was filed against Oxendine. However, it is

undisputed that currently the APA does not contain a time limit in which the Commission must hold a final hearing."). For these reasons, Respondent's contention that the instant proceedings violated his right to due process of law are unavailing.

**DECISION**

The Commission has an imperative role to play in protecting "the integrity of the democratic process and to ensure fair elections . . . [and] to institute and to establish a requirement of public disclosure of campaign contributions and expenditures [. . . . ]" O.C.G.A. § 21-5-2. It is essential that the Commission work diligently to investigate alleged violations of the Ethics in Government Acts. For the aforementioned reasons, Respondent's Motion to Dismiss for failure to state a violation of the Act is **GRANTED**; however, the undersigned **DENIES** the Motion to Dismiss on the grounds that the Commission's delay in filing the Statement of Matters Asserted violated Respondent's right to due process of law. The undersigned makes no substantive findings regarding the Commission's allegations in the Statement of Matters Asserted.

**SO ORDERED**, this 18th day of October, 2021.

Ronit Walker

**Ronit Walker**
**Administrative Law Judge**