

NORTH CAROLINA
WAKE COUNTY

BEFORE THE STATE BOARD OF
ELECTIONS AND ETHICS ENFORCEMENT

IN THE MATTER OF:

18-C-00010(E)

Timothy K. Moore,
Respondent

NOTICE OF DISMISSAL

THIS CAUSE, coming before the North Carolina State Board of Elections and Ethics Enforcement (the "Board"), by and through its duly-constituted Probable Cause Investigation Panel (the "Panel") pursuant to N.C.G.S. § 163A-156(f) and (h), and 30 N.C.A.C. § 9B.0101, and it appearing to the Board that:

1. On March 9, 2018, Daniel Stevens (Complainant) filed a complaint with the Board against Representative Timothy K. Moore.
2. Representative Moore is Speaker of the North Carolina House of Representatives. As Speaker, Moore is a public servant covered by Chapter 163A, Subchapter II of the North Carolina General Statutes, the State Government Ethics Act (the "Act"), and therefore, a "covered person" under the Act.
3. Pursuant to N.C.G.S. § 163A-156(b), Speaker Moore was notified of these allegations on March 7, 2018.
4. On March 23, 2018, pursuant to N.C.G.S. § 163A-156(e)(5) and (f), the Board sent a copy of the complaint to Speaker Moore and initiated a preliminary inquiry.
5. Stevens made the following allegations:
 - At all relevant times, Moore was Vice President and part owner of Southeast Land Holdings, LLC ("Southeast").
 - Southeast owned property in Siler City, North Carolina that had been a poultry processing plant and contained two underground storage tanks ("tanks" or "USTs").
 - During 2014 and 2015 the North Carolina Department of Environmental Quality (the "Department") engaged in enforcement activity regarding the tanks.
 - Moore, on Southeast's behalf, appeared to have caused the Department to delay enforcement action, enabling Southeast to sell the property in September 2016 for \$465,000 more than Southeast's purchase price.
 - Moore may have influenced state and local officials to make available grant money and tax incentives, thereby making the property more attractive to potential purchasers.
 - This activity may constitute use of Moore's legislative position to benefit his personal financial interest.

6. Staff's initial review found that the complaint met the technical requirements of N.C.G.S. § 163A-156(e)(1). The preliminary inquiry panel, met on May 14, 2018, via teleconference. After a staff presentation, the panel dismissed the allegations regarding grant money and tax incentives, and determined to proceed with a probable cause investigation as to the remaining allegations under N.C.G.S. § 163A-156(i).
7. Pursuant to N.C.G.S. § 163A-156(i), Moore was notified of the partial dismissal by letter dated May 24, 2018.
8. To violate N.C.G.S. § 163A-211(a), Moore must have knowingly used his public position in official or legislative action that resulted in financial benefit to him or Southeast. Because "legislative action" did not appear to be a part of the remaining allegations, The Board's investigation focused on potentially illicit "official action," which is defined as "[a]ny decision, including administration, approval, disapproval, preparation, recommendation, the rendering of advice, and investigation, made or contemplated in any proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, investigation, charge, or rule making." N.C.G.S. § 163A-152(56). Here, the most likely path to a finding of a violation of Sec. 163A-211(a) would have been that Moore inappropriately made a "request for a ruling or other determination" surrounding the Department's delay of enforcement action regarding the underground storage tanks in Siler City.
9. Following the preliminary inquiry hearing, the staff collected more documents from the Department in addition to the ones gathered by the Complainant, and interviewed Department staff members who were involved in regulating the underground storage tanks at issue.
10. The staff found that much of the confusion surrounding this matter arose from Moore's failure to notify the Department of Southeast's relatively prompt partial compliance with the Notice of Violation. After the Notice of Violation was issued on August 21, 2014, a Department staff member followed up with an email to Moore on September 25, 2014, to explain the necessary steps to resolve the situation. These steps included updating the UST registration files, payment of all annual fees and late payment penalties related to the tanks, and removal of the tanks and their contents.
11. Within eleven days of that September 25, 2014 email, Southeast had paid up the annual fees for the tanks and had an environmental consulting firm remove the oil in the tanks. Southeast requested and received a waiver of the late payment penalties, which Department staff reported was consistent with a situation in which a successor property owner assumed responsibility for tanks for which a prior owner had not maintained tank registration files appropriately. Southeast did not, however, file the "manifest" documenting the oil removal with the Department.
12. It is in that context that the Department's assigned inspector for these tanks (a) issued a Notice of Recommendation for Enforcement Action on April 24, 2015; and (b) initially replied that a 90-day extension to respond to that Notice would be "unlikely" to be granted.

13. Once Moore sent the inspector the oil removal manifest on May 12, 2015, and the inspector realized that Southeast had actually taken prompt action to remove the oil in the tanks, the tenor of the conversation changed. With that oil removal in mind, the grant of a 90-day extension to respond to the Notice of Recommendation for Enforcement Action became much more likely and consistent with Department practice. As the head of the Department's Permits and Inspections Branch noted, closing USTs often requires hiring an environmental consultant, clearing any obstructing pavement, cleaning the tanks sufficiently, removing necessary dirt surrounding the tanks, evaluating soil samples at a qualified lab, and if necessary, removing the tanks themselves. That process can take many weeks, and a 90-day extension for an owner taking concrete steps to comply is not outside the norm of the Department's practice.
14. As noted in the complaint, Linda Culpepper wrote in an email on May 14, 2015, "Thanks for sending me the points we considered to make the extension." Culpepper wanted to prepare to explain the extension to her boss, then-Assistant Secretary Tom Reeder. As she explained in her interview with the Board's staff, Culpepper sometimes uses similar language forecasting what she hopes to happen in the near future, as when she says to her children after dinner, "Thanks for taking your dishes to the sink." She acknowledged that the language was imprecise in this context, but she was credible in explaining her thought process in her interview.
15. Finally, the Department personnel interviewed by the Board's staff said that Southeast was not given the 90-day extension because of Moore's role as a legislator, and also appeared credible on that score.
16. Pursuant to N.C.G.S. § 163A-156(f) and (h), on December 18, 2018, the Panel reviewed the complaint and information resulting from the staff's investigation. Both panel members voted to recommend to the Board that the complaint be dismissed.
17. The Board's deliberations and determinations are confidential pursuant to N.C.G.S. § 163A-156(p).

Written notice of dismissal of the complaint will be provided to all appropriate persons or entities listed in N.C.G.S. § 163A-156(n).

As provided by N.C.G.S. § 163A-156(p), the complaint, notice of dismissal, and all other related information and documentation are confidential and not public records.

This the 28th day of December, 2018.

N.C. STATE BOARD OF ELECTIONS AND
ETHICS ENFORCEMENT



Kim Westbrook Strach, Executive Director
For the Panel