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State Police Commission

February 4, 2019

Mr. Jason Hannaman
State Police Commission
Baton Rouge, LA 70810

Re: Respondent: Commissioner Harold Pierite, Sr.

Dear Mr. Hannaman:

We represent Commissioner Harold Pierite, Sr. in this proceeding and have reviewed the complaint dated January 9, 2019 alleging that Commissioner Pierite may have violated Art. X, Sect. 47(a) of the Louisiana Constitution and Ch. 14 of the Rules of the State Police Commission regarding prohibited political activity.

For the reasons set forth below the allegations in the Complaint do not warrant further consideration. Commissioners are not prohibited from contributing to political committees. This is especially true in this case where not only are the contributions made to a political committee and not to a candidate but to a political committee that supports issues and **referenda** concerning the continued sovereignty of the Tunica-Biloxi Tribe, a Tribe of which Commissioner Pierite is a federally recognized member. Moreover, Commissioner Pierite is the Chief of Police and a payroll employee of the sovereign nation of the Tunica-Biloxi Tribe and the contributions of $20 a month through payroll deduction were authorized by Commissioner Pierite, as an employee of the Tribe and precede his service on the Commission.

I. Background

a. Chief Harold Pierite, Sr.

Commissioner Pierite was born in Louisiana and is a member of the Tunica Biloxi Tribe. Chief Pierite serves as a council member of the Tunica-Biloxi Tribe of Louisiana and has been a member of the tribal council for more than 15 years. He has been the chief of police for the Tunica-Biloxi Police Department for more than 20 years,

Prior to his role with the Tunica-Biloxi Police Department, Pierite was employed as a Mansura patrol officer, Avoyelles Parish Sheriff's Office patrol officer and a Tunica-Biloxi police officer. In March 2017, Governor John Bel Edwards has appointed Tunica-Biloxi Police Chief Harold Pierite, Sr. to the Louisiana State Police Commission, representing the State's 5th Congressional District. He was nominated by Loyola University New Orleans.

b. Tunica-Biloxi Tribe

The Tunica-Biloxi Tribe is one of four federally recognized Native American tribes in the state of Louisiana. There are 1,226 enrolled Tunica-Biloxi tribal members throughout Louisiana, Texas, Illinois and other parts of the United States. Approximately 42 percent live either on or in close proximity to the reservation and designated tribal lands located in central Louisiana. The majority of tribal families in Louisiana reside in Avoyelles and Rapides parishes. The reservation is located just south of Marksville in east-central Louisiana. Tribal lands comprise approximately 1,717 acres of Trust and Fee property in Avoyelles and Rapides Parishes.

Since gaining federal recognition in 1981, the Tunica-Biloxi developed municipal buildings including social and health services, police station, cultural and education center, gymnasium, and pow wow grounds amidst utility resources, paved roads and residential communities.[1]

c. Tunica Biloxi PAC

The Tunica-Biloxi Indians Political Action Committee (TBIPAC) was the first Native-American PAC established in the State of Louisiana. The TBIPAC is responsible for political and community outreach for the Tunica Biloxi Tribe and its enterprises while working with local, state, and federal officials on important issues to the tribe and its businesses. The TBIPAC's advocacy on behalf of the Tribe includes issues regarding sovereignty, taxes and any other issues that could impact the Tribe and its businesses.

The TBIPAC services all tribal member families by protecting sovereign rights and the day-to-day issues dealing with protecting the interests of the Tunica Biloxi Tribe such as taxation and social service issues.[2]

II. Law and Argument

The Complaint alleges that Commissioner Pierite may have violated Art. X, Sect. 47(a) of the Louisiana Constitution and Ch. 14 of the Rules of the State Police regarding alleged political activity. That is incorrect.

a. Neither the Constitution nor the Rules of the State Police Commission prohibit Commissioners from making contributions to a political committee

La. Const. Art. X, sect. 47 states: (A)"No member of the commission and no state police officer in the classified service shall participate or engage in political activity; be a candidate for nomination or election to public office except to seek election as the classified state police

[1] www.tunicabiloxi.org
[2] www.tbipac.com

officer serving on the State Police Commission; or be a member of any national, state, or local committee of a political party, faction, or candidate; or take active part in the management of the affairs of a political party, faction, candidate, or any political campaign, except to exercise his right as a citizen to express his opinion privately, to serve as a commissioner or official watcher at the polls, and to cast his vote as he desires.

Section (C) provides further: that "political activity" means "an effort to support or oppose the election of a candidate for political office or to support a particular political party in an election." The definition of "political activity" does not include contributions to a political committee. And explicitly exempts the support of "issues" involving tax referenda or constitutional amendments from the definition of "political activity".

Rule 14.2 of the Louisiana State Police Commission states: "No member of the state police commission shall participate or engage in political activity, including, but not limited to, any effort to support or oppose the election of a candidate for political officer or support or oppose a particular political party in an election or make or solicit contributions for any political purpose, party, faction, or candidate. And, similar to the exemption contained in the constitutional provision, Ch. 14 of the Rules for the SPC specifically exempt from the definition of "political activity" any "activity in support of or opposition to **any referendum**" or "**amendment of the state constitution**". Although "referendum" is not defined within the Rules the dictionary definition of referendum is "a general vote by the electorate on a single political question which has been referred to them for a direct decision."

As stated above, The TBIPAC's advocacy on behalf of the Tribe includes issues regarding sovereignty, taxes and any other issues that could impact the Tribe and its businesses. The TBIPAC services all tribal member families by protecting sovereign rights and the day-to-day issues dealing with protecting the interests of the Tunica Biloxi Tribe such as taxation and social service issues.[3]

b. The contributions were given to the political committee as a result of Pierite's membership in the Tunica-Biloxi Tribe not as a result of his service on the State Police Commission

As concluded by the Court of Appeal, Fourth Circuit in *Cannatella v. Dept. of Civil Service*, the purpose of the Constitutional provision and the Civil Rule is "to protect the integrity of **Civil Service employees** by prohibiting involvement in politics and political activities."[4] This is a unique case because as a member and elected Chief of Police of the Tunica-Biloxi Tribe, Commissioner Pierite involvement or contributions to the political committee stem from his membership in the Tribe and not from his position as a Commissioner. Further, his payroll deductions to the political committee began precede his service as Commissioner by more than 20 years. Also, Pierite served on the Board of TBIPAC many years prior to his appointment to

[3] www.tbipac.com

[4] *Cannatella v. Dept of Civil Service*, 592 So2d 1374(1992) [Emphasis added].

the State Police Commission. He does not currently – and has not in the past several years – served on the Board of TBIPAC.

In *Cannatella,* the Court held that a Police officer who was both a classified employee and president of police association endorsed mayoral candidate on behalf of the police association and thus did not violate prohibitions against political activity. Here, Commissioner Pierite is the elected Chief of Police of the sovereign nation of the Tunica- Biloxi Tribe. As a 20+ year employee of the Tunica-Biloxi Tribe and member of the Tribe, Chief Pierite authorized -- more than 20 years ago -- the payroll deduction of $20.00 a month to the Tunica-Biloxi PAC, an organization that serves its members through the protection of their sovereign rights. As in *Cannatella* the alleged "political activity" was in furtherance of Commissioner Pierite's registration as a member of the Tunica-Biloxi Tribe and was not given in his capacity as a Commissioner. Further, the contributions were authorized by Pierite more than 20 years ago and were automatically deducted, without any further action of Commissioner Pierite. Once he became aware that there may be some concern about the contributions, he immediately stopped them.

III. Conclusion

Underscoring the Commission's consideration of this matter is the overarching principle that "[P]olitical speech must prevail against laws that would suppress it, whether by design or inadvertence and therefore laws burdening political speech must be strictly scrutinized.[5] The U.S. Supreme Court has recognized that campaign contributions are tantamount to "political speech."[6]

Neither the Constitutional provision nor the Rules of the State Police Commission explicitly prohibit contributions to political committees. Moreover, the provision and the rules expressly permit a Commissioner to support "referenda." This issue is further complicated because any alleged "political activity" resulted from Commissioner Pierite's ancestry and employment with a sovereign nation.

More to the point, Commissioner Pierite has discontinued the payroll deductions and if the Commission determines such contributions to a political committee are prohibited – which they are not – the issue has been rendered moot and no interest is served in pursuing this inquiry further. For these reasons, we respectfully request that the Commission take no further action with respect to this inquiry.

Sincerely,

R. Gray Sexton

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[5] *Lake Charles Police Officers' Ass'n Local 830 AFL-CIO v. Roach*, 2016-719 (La. App. 3 Cir. 2/15/17), 211 So. 3d 1173, 1179, writ denied, 2017-0461 (La. 5/1/17), 221 So. 3d 70.

[6] *Citizens United v. Federal Election Commission*, 558 U.S. 310, 130 S.Ct. 876, 175 L.Ed.2d 753 (2010)