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In the Matter of SPC Investigation
of LSTA Political Contributions

State of Louisiana
State Police Commission
Docket No. 16-221-I
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RULING ON MOTION FOR SUMMARY DISPOSITION

On July 14, 2016, at its regularly scheduled meeting, the State Police Commission (hereafter referred to as the “Commission”), on its own motion, voted to dismiss the investigation bearing Docket No.: 16-221-I. At the outset, we would note that this dismissal was not based on a decision that the conduct at issue is permissible under the Rules applicable to the State Troopers who allegedly engaged in the conduct. However, for the narrow reasons stated below, specifically, that the classified State Troopers, who voted that the LSTA should endorse a candidate and make political contributions, did so when legal counsel advised them that neither their votes nor the actions by the LSTA was prohibited, the Commission finds that the matter should be summarily dismissed.¹ State Police Commission Rule 16.7(e) authorizes this Commission to dispose summarily of an investigation based on any of the grounds listed in State Police Commission Rule 16.7(a). This Ruling serves as the written decision of the summary disposition of the investigation.

In a letter dated December 13, 2015, Jesse Scott Perry asked this Commission for permission to address it at the Commission’s January 14, 2016 meeting, indicating that the address would concern alleged prohibited activities of current, active and classified members of State Police. Specifically, Mr. Perry cited violations of State Police Commission Rules 14.2(a)(1),

¹ Nor does this Commission render any other opinions about the propriety of the manner in which the contributions at issue were first paid by the LSTA’s executive director and he was then reimbursed the amounts expended. The Louisiana State Board of Ethics has already opined on that issue.

14.2(a)(4) and 14.2(a)(8)² regarding political endorsements and contributions, and he noted that “during the 2015 Campaign, numerous candidates received financial contributions and one major candidate for office received a public political endorsement.” At the January 14, 2016 meeting of this Commission, both Mr. Perry and Mr. Leon Millet addressed the Commission and alleged that the Louisiana State Trooper’s Association (hereafter “LSTA”) was the organization that through its membership of current and former state troopers made political contributions and endorsements. They further explained that their complaint was not against the organization, LSTA; rather, their complaint was against “classified members of the State Police.” Mr. Perry stated that he learned the decision to endorse a political candidate was made “over the phone.” He further stated that there was an LSTA meeting at Troop I on December 7 that was attended by David Young, Executive Director of LSTA, and counsel for LSTA, Floyd Falcon in addition to members. Perry opined that during that meeting, Mr. Young stated that political contributions were made in his name, through personal check, on behalf of the LSTA, and he was reimbursed by the LSTA Treasurer and President through use of an LSTA check. Mr. Perry alleged that this act was an indirect contribution for “financial political play.” Mr. Perry stated that when Mr. Young was asked how it was determined which candidate would be endorsed and the amount of the

² State Police Commission Rule 14.2 provides in pertinent part:

- (a) Except as provided in subsection (b) (below), no member of the State Police Commission and no classified member of the State Police Service shall:
 - 1. Participate or engage in political activity, including, but not limited to, any effort to support or oppose the election of a candidate for political office or support or oppose a particular political party in an election;
 - 4. Make or solicit contributions for any political purpose, party, faction, or candidate;
 - 8. Directly or indirectly, pay or promise to pay any assessment, subscription, or contribution for any political party, faction or candidate, nor solicit or take part in soliciting any such assessment, subscription or contribution, and no person shall solicit any such assessment, subscription or contribution of any classified employee in the State Police Service.

contribution, Mr. Young replied that he, the president, and the treasurer made that decision. Mr. Perry also stated that LSTA's legal counsel, Mr. Falcon provided "an explanation as to what happened" and he brought up the *Canatella*³ case as support for their actions. During that meeting, this Commission determined that it would investigate the complaint.

An investigation was conducted, and it was determined that the facts were not in dispute: the LSTA endorsed a political candidate, and the executive director, David Young, made contributions to political campaigns and was reimbursed by the organization. The LSTA, a nonprofit organization, organized under section 501(c)(5) of the Internal Revenue Code, is an entity separate and apart from its members. Its membership is comprised of commissioned full-time law enforcement officers employed by the Department of Public Safety and Corrections, Office of State Police who are in the classified service,⁴ and retired law enforcement officers who are not in the classified service. Neither the LSTA nor its executive director is subject to the State Police Service Article or otherwise governed by the rules of this Commission, including State Police Commission Rule 4.1. Accordingly, the State Police Commission has no jurisdiction to consider any wrongdoing of either the LSTA or its executive director, David Young. Nor does this Commission, have jurisdiction to consider any wrongdoing of the retired troopers who are members or officers of the LSTA. Of course, this Commission does have jurisdiction and the obligation to consider and investigate conduct by active classified State Troopers.

With respect to the members and officers of the LSTA who are covered by SPC Rule 4.1

³ *Cannatella v. Dept. of Civil Service*, 592 So.2d 1374 (La. App. 4 Cir. 1/31/92), writ denied, 596 So.2d 215 (La. 4/10/92). Though not relied upon by Mr. Falcon, there is an opinion from another court of appeals which can be read as reaching a different result from *Cannatella*. See *Kenner Police Dept. v. Kenner Mun. Fire & Police Civil Service Bd.*, 783 So.2d 392 (La. App. 5 Cir. 1/23/01), writ denied, 790 So.2d 635 (La. 4/20/01).

⁴ State Police Commission Rule 4.1

and the State Police Service Article, the investigation revealed that there was no rule adopted by the LSTA that prohibited political activity, and the action taken by the organization through its members and officers was taken after advice from legal counsel. There is, however, a Rule, Louisiana State Commission Rule 14.2, which prohibits political activity as defined in that rule by classified State Troopers. However, there was no allegation that any such State Troopers made personal political contributions or endorsements, and during the January 14, 2016 State Police Commission meeting, Mr. Falcon, addressed the Commission and stated that "There was no contribution that I'm aware of or no contribution that was discussed by an individual. It would be inappropriate for a trooper to make a contribution on his personal behalf to a political candidate." Mr. Falcon advised the Commission that it was his opinion that an individual trooper who votes that the association should make a political contribution or endorse a candidate while acting as a member of an organization is exempt from rules prohibiting a trooper from doing so as an individual and that he so advised the members of the Executive Committee voting to make the endorsement and the political contributions.

Besides the *Cannatella, supra*, and *Kenner Police Department, supra*, decisions concerning this issue, there is a 1999 Attorney General Opinion interpreting a statute similar to the State Police Service Article and rules which concluded that the endorsement of a political candidate by a union is not proscribed by any law, and the endorsement by a union is not a personal endorsement by its spokesperson. La. Atty. Gen. Op. No. 98-464 (La. A.G.). A recent Third Circuit decision, *Lake Charles Police Officers' Association Local 830 AFL-CIO v. Roach*, 211 So.3d 1173 (La. App. 3 Cir. 2/15/17), considered the *Cannatella, supra*, decision and the Louisiana Attorney General Opinion, *supra*, to be persuasive authority, and concluded that an endorsement of a political candidate by the Local 830 through its president was not a personal

endorsement of that candidate by him. Significantly, in reaching its decision, the Third Circuit cited a United States Supreme Court decision, *Citizens United v. Federal Election Commission*, 558 U.S. 310, 130 S.Ct. 876, 175 L.Ed. 2d 753 (2010), and noted that the Supreme Court concluded that unions, other associations and both for-profit and non-profit corporations are entitled to the First Amendment protection guaranteeing freedom of expression, which included spending money in elections as part of free speech.⁵ The Supreme Court stated, "Speech is an essential mechanism of democracy, for it is the means to hold officials accountable to the people." *Id.* at 898 and "The right of citizens to inquire, to hear, to speak, and to use information to reach consensus is a precondition to enlightened self-government and a necessary means to protect it." *Id.* "[P]olitical speech must prevail against laws that would suppress it, whether by design or inadvertence." *Id.* "Laws burdening political speech, therefore, must be strictly scrutinized." *Id.*

There is a conflict in the decisions issued by various Louisiana Courts of Appeal, and there are no decisions from the Louisiana Supreme Court or the First Circuit Court of Appeal, the appellate court responsible for reviewing the actions of this Commission, that have addressed the specific issue of whether members and officers of an association who vote to have the association make political contributions or endorsements violate rules such as those governing State Police which prohibit them from engaging in political activity as defined under the rule. It is the opinion of the Commission that where there is unsettled law and no decisions concerning the issue from the controlling appellate court or the Louisiana Supreme Court, and the members of the LSTA relied on the advice of counsel, there is no violation of the State Police Service Article or the rules of this Commission.

⁵ Of note, however, the *Citizens United* case did not involve associations of state employees, who have traditionally been limited in their political activities.

For the above reasons, assuming the charges to be true, the charges would not constitute a violation of the State Police Article or the State Police Commission Rules, and as such the investigation is hereby summarily dismissed.

Baton Rouge, Louisiana this ____ day of _____, 2018.

Eulis Simien, Jr., Member

Harold Pierite, Sr., Member

Michael W. Neustrom, Ph.D, Member

Brian Crawford, Member

Jared J. Caruso-Riecke, Member

Jeffrey C. Foss, Member