

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

STATE ETHICS COMMISSION,

Petitioner,

v.

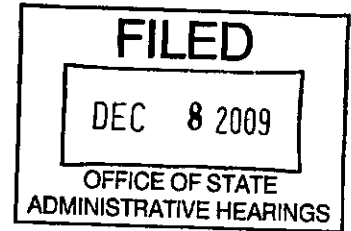
**ROBERT L. PITTS and,
ROBB PITTS CAMPAIGN '01,**

Respondents.

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OSAH-SEC-CAN-1007861-60-Malihi

**Agency Reference Nos. 2002-0058
and 2002-0059**



ORDER

I. INTRODUCTION

This matter comes before this Court pursuant to a complaint filed by Plaintiff State Ethics Commission (“Commission”) against Respondent Robert L. Pitts and Robb Pitts Campaign 2001 charging him and his campaign committee with alleged violations of the Ethics in Government Act (“Act”), O.C.G.A. §§ 21-5-1 to 21-5-76. Respondents filed a Motion for Summary Determination on October 22, 2009, to which Petitioner responded on November 10, 2009. Having reviewed the submissions of the parties and for the reasons indicated below, the Motion for Summary Determination is **DENIED**.

II. STATEMENT OF UNDISPUTED FACTS¹

1.

Robert L. Pitts (“Pitts” or “Respondent”) was an unsuccessful candidate for election to the office of Mayor of the City of Atlanta, Georgia, in 2001. Election day in 2001 was on Tuesday, November 6, 2001.

2.

Respondent is currently serving his second term as a Fulton County Commissioner. He was first elected in November 2002 and was re-elected in November 2006. Prior to running for the office of Mayor of Atlanta in 2001, Respondent had been elected to the City Council of Atlanta numerous times. He was a member of the Atlanta City Council for twenty years.

3.

¹ Petitioner did not dispute any of Respondents’ Undisputed Material Facts. See Petitioner’s Brief in Opposition to Respondent’s Motion for Summary Determination.

As part of the 2001 Atlanta mayoral election, Respondent formed the Robb Pitts Campaign '01 ("Campaign" or "Respondent") and opened a campaign checking account at Citizens Trust Bank.

4.

The Commission alleges that Respondents violated the Act by accepting seven contributions in violation of O.C.G.A. § 21-5-41(b)(3) between November 5 and November 9, 2001. (See Petitioner's Amended Statement of Matters Asserted.)

5.

The allegations at issue in this proceeding were known to the Commission by no later than November 12, 2003.

6.

The Commission did not commence this action until on or about September 22, 2009.

7.

The Commission is authorized and seeks to impose a civil penalty of up to \$1,000 for each violation of the Act. Additionally, the Commission is authorized to enter an order requiring Respondents to cease and desist from committing any future violations of the Act. O.C.G.A. § 21-5-6(a)(14)(2001).

8.

Respondents argue that this proceeding is time-barred as a matter of law based on O.C.G.A. § 21-5-13, the statute of limitations currently in effect for alleged violations of the Act, and pursuant to the provisions of O.C.G.A. § 9-3-28. (Respondent's Motion for Summary Determination.)

III. CONCLUSIONS OF LAW

The Ethics in Government Act was enacted in 1981 to "protect the integrity of the democratic process and to ensure fair elections..." O.C.G.A. § 21-5-2; see State Ethics Comm'n v. Long, 223 Ga. App. 621, 625 (1996). If a violation of the Act occurs, the Commission has the authority to require the violator to: make corrected public statements or reports; make public the conclusion that a violation occurred; or issue an order that the violator cease and desist from further violations. O.C.G.A. § 21-5-6(b)(14)(A)-(B). The Commission may also assess a civil penalty not to exceed \$1,000 per violation for each violation. See O.C.G.A. § 21-5-6(b)(14)(C)(i).

In 2006, the Georgia Legislature enacted a new version of the Act, which included a five-year statute of limitations on the adjudication of claims, starting from the date of conduct. O.C.G.A. § 21-5-13. Respondents raised this five-year statute of limitations as grounds that this action should be time

barred. However, the Court concludes that the five-year limitation period does not act as a bar to this action. See Ga. L. 2005, p. 859, § 28 (although not codified by the General Assembly, provides that the Act shall not apply to any violation occurring prior to January 9, 2006); see also Ford Motor Co. v. Gibson, 283 Ga. 398, 404 (2008) (“A statute is [impermissibly] retroactive in its legal sense [when it] creates a new obligation on transactions or considerations already past, or destroys or impairs vested rights.”). Therefore, because all of the violations alleged occurred in 2001 and prior to the 2005 revision, the statute of limitations contained in O.C.G.A. § 21-5-13 does not apply.

Respondents assert that in the absence of O.C.G.A. § 21-5-13, the applicable statute of limitations is O.C.G.A. § 9-3-28, which states: “All actions by informers to recover any fine, forfeiture, or penalty shall be commenced within one year from the time the defendant’s liability thereto is discovered or by reasonable diligence could have been discovered.”

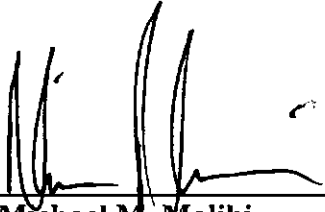
First, the Civil Practice Act (“CPA”) does not apply to contested cases under the Administrative Procedures Act (“APA”). See O.C.G.A. § 9-11-1 (CPA only applies to courts of record); Gladowski v. Dep’t of Family & Children Svcs, 281 Ga. App. 299 (2006); Dep’t of Public Safety v. Ramey, 215 Ga. App. 334 (1994). The Court may, in its discretion and as justice requires, consult and utilize the CPA to assist in the resolution of procedural questions not addressed in the APA; however, the Court finds the exercise of this discretion is not appropriate in this case. Ga. Comp. R. & Reg. r. 626-1-2-.02.

Neither the Commission’s rules, the governing statutes nor the APA require that the hearing in this matter be held within a certain period of time. Although this Court is troubled by the eight year delay between the events that gave rise to this action and referral to OSAH, there is no statutory bar to bringing this action at this time.

IV. CONCLUSION

IT IS ORDERED that Respondent’s Motion for Summary Determination is **DENIED**. A hearing will be held on Thursday, January 21, 2010, at 9 am at the Office of State Administrative Hearings

SO ORDERED this 8th day of December 2009.



Michael M. Malihi
Administrative Law Judge