

St. Petersburg Times

ELECTION DEFLATES ETHICS CHARGE

[2 TAMPA Edition]

St. Petersburg Times - St. Petersburg, Fla.
Author: ALEX LEARY
Date: Jun 9, 2007
Section: TAMPA & STATE
Text Word Count: 657

Document Text

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The prosecutor says he still thinks Tom Gallagher's stock trades were illegal.

Tom Gallagher won his ethics case Friday, mainly because he lost his bid for governor.

The Commission on Ethics dropped a stock trading case against Gallagher, the state's former chief financial officer, but not before the prosecuting attorney said he still thinks Gallagher broke the law.

Scott Tozian, a Tampa lawyer brought in to prosecute the case, recommended dropping the charges that Gallagher improperly invested in insurance companies while he was Florida's insurance commissioner.

"I haven't receded from my belief that what he did was technically wrong," Tozian said. "The fact that there was no evil apparent intent in what he did and the fact that he's no longer in office leads me to the conclusion that the public interest will not be served by prosecuting him any further. In my view, it would simply be punitive."

But two members, both Democrats, disagreed that the case was not worth pursuing.

"If it was wrong then, it's wrong now," Commissioner Tom Scarritt said. "Now to back away from it because someone loses an election seems, to me, unprincipled."

Norman Ostrau, chairman of the commission, said he saw no remorse from Gallagher, who conceded in the formal agreement that ended the case that in hindsight he should have sought a legal opinion before buying the insurance stock.

When Scarritt asked Tozian if he would still be recommending that the case be dropped if Gallagher had won, Tozian said probably not.

"I believe if you vote me down (on the deal to drop the charges), I'll prosecute him and I believe that he will be found guilty of violation of the statutes," Tozian said.

In 2006, Tozian contributed to the campaign of Skip Campbell, a Democrat who was running for attorney general.

Gallagher invested in two insurance companies, Conseco Inc. and Penn Treaty American Corp., while serving as Florida's insurance commissioner. He had invested in other companies with business before the state, but the Ethics Commission had previously ruled that those investments were not a problem.

Last summer, the commission found probable cause that Gallagher's two insurance investments violated state law. Gallagher traded stock using his own computer and an online account from his state office.

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The amount of stock he owned was less than 1 percent of the outstanding shares of the companies - the threshold that often guides state rulings on potential conflicts of interest.

Tozian said Gallagher's relatively small investment in the two companies - between \$9,630 and \$13,000 in Conseco and between \$121,000 and \$182,000 in Penn Treaty - was far below the 1 percent threshold.

The trading, first disclosed by the St. Petersburg Times, cast a shadow on Gallagher's bid for the Republican nomination for governor, especially after the probable cause ruling, which led to a deeper investigation of the investments.

Gallagher lost badly to Charlie Crist in the GOP primary on Sept. 5 and has left public view.

Commissioner Chris McRae, one of the panel's Republicans, suggested the final turn of events confirmed that the entire case was about politics.

"This might have been poor judgment," he said, "but I don't think it rises to the level of probable cause."

The composition of the commission is political, with the governor, the Senate president and the House speaker appointing members of both parties.

The vote was 5-2, with Ostrau joining Scarritt in opposition. Ostrau faulted a stipulation in which Gallagher said in hindsight he should have gotten a legal opinion on owning the stock. "I see no remorse," Ostrau said.

Gallagher, 63, did not attend the 8:30 a.m. hearing. He did not return messages left by the Times.

His attorney, Richard Coates, told the commission Friday that Gallagher's 30-year career of public service should be taken into account and his full disclosure and cooperation in the case.

"As he said, 'In hindsight I should have gotten the opinion.' "

Credit: Times Staff Writer

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Abstract (Document Summary)

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