

IN THE EXECUTIVE ETHICS COMMISSION  
OF THE STATE OF ILLINOIS

IN RE: DONALD W. McBRIDE

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No. 13-EEC-012

Appeal of OEIG  
Revolving Door  
Determination

DECISION

This cause is before the Executive Ethics Commission (“Commission”) on appeal by Donald W. McBride from a revolving door determination by the Office of the Executive Inspector General for Agencies of the Illinois Governor (OEIGG).

FINDINGS OF FACT

The record of proceedings has been reviewed by the members of the Executive Ethics Commission. The record consists of Donald W. McBride’s December 24, 2012 appeal of the OEIGG’s December 21, 2012 Determination, Michael L. Woods’ December 24, 2012 Comment, the OEIGG’s December 28, 2012 Comment to Appeal of Revolving Door Determination, the Office of the Attorney General’s December 28, 2012 Response to Donald McBride’s Appeal, Donald McBride’s December 31, 2012 AG Packet Rebuttal, and the OEIGG’s December 31, 2012 Supplemental Comment to Appeal of Revolving Door Determination.

Based upon this record, the Commission makes the following findings of fact:

1. On December 21, 2012, the Office of the Executive Inspector General for Agencies of the Illinois Governor (OEIG) made a revolving door determination pursuant to 5 ILCS 430/5-45(f) with respect to Donald A. McBride’s (McBride) proposed employment with White Oak Resources, LLC (White Oak).
2. The determination concluded that “**you are restricted** from accepting the employment opportunity pursuant to 5 ILCS 430/5-45(b).” (emphasis in original).
3. On December 24, 2012, McBride filed an appeal of this determination with the Commission.
4. White Oak is a newly-formed company that is opening its first mine. It is anticipated that the mine will be fully operational by April of 2013.
5. McBride is employed with the Illinois Department of Natural Resources (IDNR), Office of Mines and Minerals. He has been employed by IDNR since April 1, 1989. He anticipated terminating State employment on December 31, 2012.

6. McBride is an Inspector at-Large for the Office of Mines and Minerals. Since 2011, the State has issued 18 inspection reports related to White Oak. Inspector reports are e-mailed to McBride for review on a weekly basis.
7. According to McBride's revolving door submission, he:
  - a. "provided information to agents of the company [White Oak] to assist them in State of Illinois compliance of laws regarding the installation of this new facility."
  - b. "had the authority to inspect the White Oak facility and certify it's (sic) people under Illinois' law..."
  - c. "supervise[d] inspectors that regularly visit the White Oak property and enforce the Coal Mining Act, and the Health & Safety Regulations."
  - d. "worked with the White Oak people while they were developing their mining plan proposal that was to be submitted to the Illinois Mining Board for approval, and offered suggestions bring [sic] the plan into compliance with the Illinois Coal Mining Act."
  - e. "was on site about 6 times to assist the regular inspectors certify hoistmen, and contractors that were involved in doing the actual work."
  - f. "supervised the inspectors assigned to the White Oak property, in that I read the inspection reports and assisted the inspectors if they had any special situations that might arise."
8. McBride also asserted in his submission that "[a]ny safety violations that were found by the inspectors that I supervise can be considered regulatory violations, and I, through the inspectors require that these violations be abated."
9. On June 6, 2012, McBride and another IDNR inspector participated in an on-site inspection of White Oak. As a result of that inspection, McBride and the other inspector:
  - a. certified four men on three different cranes;
  - b. certified five men on the emergency hoist; and
  - c. inspected the shaft and work platform, ventilation, machinery, surface roads, shafts and safety harnesses.
10. McBride was approached by a representative of White Oak about an employment opportunity in August or September of 2012. In October 2012, McBride reviewed and offered advice to White Oak concerning model development plans. These plans were submitted by White Oak and eventually approved by the State Mining Board on October 18, 2012.
11. The Commission has sought written public opinion on this matter by posting the appeal on its website and posting a public notice at its offices in the William Stratton Building.

### CONCLUSIONS OF LAW

1. An Executive Inspector General's determination regarding revolving door restrictions may be appealed to the Commission by the person subject to the decision or the Attorney

General no later than the 10<sup>th</sup> calendar day after the date of the determination. 5 ILCS 430/5-45(g).

2. The present appeal of the December 21, 2012 revolving door determination made by the OEIG pursuant to 5 ILCS 430/5-45(f) with respect to Donald A. McBride's proposed employment is properly before the Commission and the Commission has jurisdiction to consider the appeal.
3. Subsection (b) of the revolving door section of the State Officials and Employees Ethics Act provides:

(b) No former officer of the executive branch or State employee of the executive branch with regulatory or licensing authority, or spouse or immediate family member living with such person, shall, within a period of one year immediately after termination of State employment, knowingly accept employment or receive compensation or fees for services from a person or entity if the officer or State employee, during the year immediately preceding termination of State employment, participated personally and substantially in making a regulatory or licensing decision that directly applied to the person or entity, or its parent or subsidiary.

5 ILCS 430/5-45(b)

4. The Commission is not required to find evidence of a quid pro quo or an actual effect of the prospective employment upon a licensing decision made by the employee in order to uphold a determination by the Executive Inspector General that an employee is restricted from taking a position.
5. Subsection (g) of the same section provides:

(g)...In deciding whether to uphold an Inspector General's determination, the appropriate Ethics Commission or Auditor General shall assess, in addition to any other relevant information, the effect of the prospective employment or relationship upon the decisions referred to in subsections (a) and (b), based on the totality of the participation by the former officer, member, or State employee in those decisions.
6. During the year prior to his termination of State employment, McBride performed the acts listed below, which include acts constituting participation in making a regulatory or licensing decision that directly applied to his prospective employer:
  - a. participated in an on-site inspection of White Oak on June 6, 2012 ;
  - b. certified four men on three different cranes;
  - c. certified five men on the emergency hoist;
  - d. inspected the shaft and work platform, ventilation, machinery, surface roads, shafts and safety harnesses; and
  - e. advised White Oak concerning its application to the State Mining Board.


7. The Commission further notes that McBride had a close relationship with White Oak in that he reviewed and offered specific advice to White Oak concerning model development plans after White Oak representatives discussed with McBride the possibility of employment.
8. The Commission notes that the Office of the Attorney General and OEIGG differ, in some respects, concerning the legal significance of certain facts in this matter. Nonetheless, the Commission considers all relevant information and recognizes the overall, totality of the circumstances in reaching its decision.
9. Considering all relevant information and the effect of the prospective employment upon the regulatory or licensing decisions referred to in subsection (b) of 5 ILCS 430/5-45, based upon the totality of the participation by the employee in those decisions, the Commission finds that McBride participated personally and substantially in making regulatory or licensing decisions that directly applied to his prospective employer within one year of his termination of State employment.

WHEREFORE, for the foregoing reasons, the Commission denies Donald A. McBride's appeal and affirms the Office of the Executive Inspector General's December 21, 2012 determination. McBride's proposed employment with White Oak Resources would violate the State Officials and Employees Ethics Act's revolving door prohibition.

ENTERED: January 3, 2013

SO ORDERED.

The Executive Ethics Commission

By:   
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Chad D. Fornoff  
Executive Director