

IN THE EXECUTIVE ETHICS COMMISSION
OF THE STATE OF ILLINOIS

IN RE: ROLAND MARR

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No. 14-EEC-001

Appeal of OEIG
Revolving Door
Determination

DECISION

This cause is before the Executive Ethics Commission (“Commission”) on appeal by the Office of the Attorney General from a determination by the Office of the Executive Inspector General for Agencies of the Illinois Governor.

FINDINGS OF FACT

A complete copy of the record of proceedings has been reviewed by the members of the Executive Ethics Commission. The record consists of the Attorney General’s July 11, 2013 Brief in Support of Appeal, the Office of the Executive Inspector General for Agencies of the Illinois Governor’s July 16, 2013 Comment to the Illinois Attorney General’s Appeal of Its Revolving Door Determination, and the Illinois Department of Revenue’s July 16, 2013 Statement in Support of Appeal.

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

1. On July 1, 2013, 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 Roland Marr’s (“Marr”) proposal to accept an employment opportunity with Lemont ATS (Lemont).
2. The determination concluded that “**you are not restricted** from accepting the employment opportunity described in your materials...” (emphasis in original).
3. On July 11, 2013, the Office of the Illinois Attorney General filed a brief in support of its appeal.
4. Marr was employed with the Illinois Department of Revenue (“Revenue”) for a period of thirty years until his retirement on November 30, 2012. At the time of his retirement, Marr was responsible for managing Revenue’s Alcohol, Tobacco and Fuel Division (“ATFD”).
5. As the ATFD manager, Marr had regulatory and licensing responsibility over motor fuel suppliers, distributors and receivers, fuel carriers and transporters, and entities operating

motor vehicles exempt from paying motor fuel taxes. He also was involved in fuel tax decisions related to various entities.

6. For calendar year 2012, pursuant to 5 ILCS 430/5-45(c), the Office of the Governor filed a policy with the Executive Ethics Commission delineating which State positions under his jurisdiction and control, by the nature of their duties, may have the authority to participate personally and substantially in the award of State contracts or in regulatory or licensing decisions. This policy identified Marr and his position of Motor Fuel Division Manager.
7. Lemont is a truck stop and retail gas station located in Bolingbrook, Illinois. Attorney General Brief, p. 2.
8. On or about August 9, 2012, Lemont submitted to Revenue an application for a license to blend fuel. Marr denied the application on October 29, 2012. Attorney General's Brief, Ex. 2, pp. 48-49.
9. Marr acknowledged that he had both regulatory and licensing responsibilities while employed at Revenue. *Id.* at p. 85.
10. Since Marr's retirement on November 30, 2012, he has had significant interactions with Lemont. Revenue staff stated that in February of 2013, Marr began requesting information from them on behalf of Lemont. *Id.* at 49. Marr submitted a power of attorney to Revenue on behalf of Lemont on February 15, 2013. Marr hand delivered Lemont's April 2, 2013 application to Revenue's Springfield office. *Id.* at pp. 49-50.
11. On May 9, 2013, the Commission upheld the OEIG's determination that Marr could engage in consulting work for the Illinois Petroleum Marketers Association (IPMA). No information concerning Marr's representation of Lemont or proposed representation of individual IPMA members was presented to the Commission at that time.
12. Marr's June 7, 2013 (Marr appears to date the notification 7-7-13, but 6-7-13 is handwritten below, initialed by "lk," which is probably more accurate) notification of prospective employment (RD-101), certified under oath, indicates that his prospective employer is Lemont ATS and his supervisor's name is Robin Puthusseril. In the notification, Marr marked "No" to all questions contained on the form, including:
 - a. "1) In the year prior to termination of State employment, have you had any interaction with employees or agents of the prospective employer (or its subsidiary, parent or affiliated entities?" *Id.* at p. 5.
 - b. "5) In the year prior to termination of State employment, did you have any signatory or actual authority to issue regulatory or licensing decisions? *Id.*
 - c. "1) In the year prior to termination of State employment, were you responsible for preparing, initiating, or in any way participating in a licensing or regulatory

decision with respect to your prospective employer (or its subsidiary, parent or affiliate entities) or the general type of industry to which it belongs?” *Id.* at p. 7.

- d. “6) In the year prior to termination of State employment, did you participate personally and substantially in making a regulatory or licensing decision that directly applied to the [sic] your prospective employer, or its parent or subsidiary?” *Id.*

13. Attached to Marr’s June 7, 2013 notification is a cover sheet entitled “OEIG REVOLVING DOOR FACT SHEET—RD #13-RD-0062” appearing under the OEIG’s letterhead. This fact sheet identifies Marr’s employer not as “Lemont ATS” as Marr indicated in his notification, but rather, as “Lemont ATS through the Illinois Petroleum Marketers Association.” *Id.* at p. 3.
14. The Vice President of Lemont stated that of July 1, 2013, Lemont was not a member of the IPMA, though it was “working on becoming a member.” *Id.* at p. 90. She further stated that Lemont ATS has not paid Marr for any services. *Id.*
15. On May 16, 2013, an employee of the OEIG sent Marr an email reminding him that if he wanted “to represent Illinois Petroleum Marketers Association members (as opposed to the Association itself), you would need to submit revolving door paperwork for each member you intend to represent as a client.” *Id.* at p. 12. At the time of this email, Marr had been significantly involved in Lemont’s regulatory affairs. See Finding of Fact #10, *supra*. Also, as noted above, Lemont, itself, was not at that time a member of the IPMA.
16. According to the IPMA executive director, if Marr is permitted to accept employment with IPMA, Marr would be under contract and be paid by the association on behalf of its members. *Id.* at p. 89. According to investigative reports related to his earlier revolving door notification, Marr intended to start his own consulting company called “Fuel Tax Are Us” and wished be paid \$75.00 per hour. Attorney General’s Brief, Exhibit #1, p. 36. Marr stated during that April 12, 2013 interview that he had already begun general consulting work with IPMA and was awaiting a revolving door determination from the OEIG in order to discuss his fee with IPMA. *Id.* According to June 28, 2013 interview of the Executive Director of IPMA, however, Marr had not performed any services for IPMA. Attorney General’s Brief, Exhibit #2, p. 89.
17. 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.
18. Brian Hamer, Director of the Illinois Department of Revenue, submitted a Statement in Support of Appeal. This statement notes that Marr “evaded direct questions about his duties with the Department, minimized or misrepresented his responsibilities with regard to licensing, shifted his explanation of the terms of his new-found employment to suit the exigencies of the moment, and exhibited troubling memory lapses when questioned about his conduct.” (internal citations removed)

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 10th calendar day after the date of the determination. 5 ILCS 430/5-45(g).
2. The Office of the Attorney General's appeal of the OEIG's July 1, 2013 revolving door determination with respect to Roland Marr'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. 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.

5 ILCS 430/5-45(g)

5. During the year prior to his termination of State employment, Marr participated personally and substantially in a regulatory or licensing decision that directly applied to Lemont, when Marr denied Lemont's application for a license to blend fuel on October 29, 2012.
6. Facts suggest that Marr engaged significantly in Lemont's regulatory affairs when in February of 2013, Marr began requesting information from Revenue staff on behalf of

Lemont. *Id.* at 49, when Marr submitted a power of attorney to Revenue on behalf of Lemont on February 15, 2013, and when Marr hand delivered Lemont's April 2, 2013 application to Revenue's Springfield office. *Id.* at pp. 49-50.

7. While the Vice President of Lemont states that Lemont has not paid Marr for any services, Marr has clearly been acting as Lemont's agent, receiving a power of attorney from it and acting on its behalf. Marr conducted these activities without notifying the OEIG and seeking its approval.
8. Marr's present OEIG notification, the subject of this appeal is, in effect, seeking approval of an already-existing relationship between Marr and Lemont. To the extent that Marr should have notified the OEIG prior to entering into that relationship, he has already violated the revolving door prohibition.
9. Marr's notification identifies his prospective employer as Lemont ATS and his supervisor as Robin Puthuserril, Vice President of Lemont ATS. Based upon that identification, Marr's negative answers to the following questions appearing on his notification are false:
 - a. "1) In the year prior to termination of State employment, have you had any interaction with employees or agents of the prospective employer (or its subsidiary, parent or affiliated entities?" Attorney General's Brief, Exhibit #2 at p. 5.
 - b. "5) In the year prior to termination of State employment, did you have any signatory or actual authority to issue regulatory or licensing decisions? *Id.*
 - c. "1) In the year prior to termination of State employment, were you responsible for preparing, initiating, or in any way participating in a licensing or regulatory decision with respect to your prospective employer (or its subsidiary, parent or affiliate entities) or the general type of industry to which it belongs?" *Id.* at p. 7.
 - d. "6) In the year prior to termination of State employment, did you participate personally and substantially in making a regulatory or licensing decision that directly applied to the [sic] your prospective employer, or its parent or subsidiary?" *Id.*
10. 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 Marr participated personally and substantially in making regulatory or licensing decisions that directly applied to Lemont, his prospective employer, within one year of his termination of State employment.
11. The OEIG argues that despite Marr's clear designation of Lemont as his prospective employer and his designation of Lemont's vice president as his prospective supervisor, Marr's true prospective employer is not Lemont, but rather, IPMA. The OEIG argues

that since IPMA would be the source of Marr's compensation, IPMA is the prospective employer. Therefore, since Marr did not license or regulate IPMA during the year prior to his termination of State service, Marr would not be subject to the revolving door prohibition.

12. The record here, however, is replete with deception. Marr appears to be engaging in an effort to reach a result that would otherwise have been prohibited: namely, to perform consulting work for an entity that he regulated directly within the previous year. Such an arrangement would be a subterfuge that cannot be countenanced under the law.
13. Marr's proposed part-time, contractual work for IPMA appears to be compensation for an hourly rate for specific tasks for specific IPMA members, or in the case of Lemont, non-IPMA members, some of which he may have regulated during his employment at the Department of Revenue. Under such an arrangement, IPMA would be merely a conduit for payment for specific entities. With respect to each entity, a separate analysis is required as to whether the revolving door ban would be implicated. The necessity of such an analysis was clearly contemplated by the OEIG employee who alerted Marr on May 16, 2013 of the "need to submit revolving door paperwork for each member you intend to represent as a client." See Finding of Fact #15, *supra*.
14. The Commission is particularly troubled by:
 - a. what appears to be Marr's unapproved previous representation of Lemont in early 2013;
 - b. Marr's and IPMA's apparent disagreement about whether Marr had already done some work for IPMA;
 - c. The fact that IPMA is willing to act as a conduit for payment for services rendered by Marr to a non-member;
 - d. Marr's untruthful, certified under oath statements in his revolving door notification; and
 - e. Marr's uncooperative and evasive responses to the Department of Revenue's inquiries.
15. Both the Attorney General and OEIG have raised questions about the interpretation of the Commission's administrative rule 2 Ill. Admin. Code 1620.610 (c)(5). This rule defines information that a State employee must submit to the OEIG when contemplating self-employment. The rule is procedural in nature and does not affect the analysis of the application of the revolving door prohibition to a particular matter.

WHEREFORE, for the foregoing reasons, the Commission grants the Office of the Attorney General's appeal and reverses the Office of the Executive Inspector General's July 1, 2013 determination. Roland Marr's proposed consulting work with Lemont, paid by IPMA, would violate the State Officials and Employees Ethics Act's revolving door prohibition.

The Commission also refers this matter to the Office of the Executive Inspector General for purposes of investigating possible violations of the revolving door prohibition related to this matter.

ENTERED: July 22, 2013

SO ORDERED.

The Executive Ethics Commission

By: 

Chad D. Fornoff
Executive Director