



5. On April 24, 2014, the OEIG sent Schroeder a letter denying her request for a complete exemption from the revolving door requirements and suggesting that she “take immediate steps to bring yourself (belatedly) into compliance with Section 5-45(f) [of the Ethics Act].”
6. The same day, April 24, 2014, Schroeder sent an RD-101 to the OEIG seeking a determination as to her self-employment with Stephenson Schroeder LLC (SS LLC), but did not seek a determination as to her client, Ameren.
7. On May 12, 2014, the OEIG made a revolving door determination pursuant to 5 ILCS 430/5-45(f) with respect to Schroeder’s proposed self-employment with SS LLC, and proposed client relationship with Ameren Illinois Company (Ameren).
8. The OEIG determination letter concluded that “**you are not restricted** under the Ethics Act from accepting employment by SS LLC, as described in your materials. However, the OEIG has determined that you and your law firm are **restricted**... from accepting the client relationship with Ameren described in your materials.” (emphasis in original).
9. The OEIG determination letter also noted that it appeared that Schroeder sought the OEIG determination after beginning her self-employment at SS LLC and after accepting a client relationship with Ameren and after providing legal services to Ameren.
10. On May 22, 2014, Schroeder filed the present appeal with the Commission.
11. Schroeder was employed with the Illinois Commerce Commission (“ICC”) from December, 2000 until January 31, 2014. From November, 2005 until the effective date of her resignation, January 31, 2014, she served as the ICC’s General Counsel. She also served as the ICC’s Ethics Officer.
12. The ICC’s office of the General Counsel is responsible for representing ICC technical staff who appear in proceedings held before the ICC, represents the ICC itself in proceedings and other administrative tribunals, and provides legal advice to the ICC Commissioners, its Executive Director, and the Commission and its employees regarding regulatory and other matters. Schroeder was also responsible for directing and coordinating the functions and activities of Deputy General Counsel, ICC technical staff and other subordinate staff members.
13. While Schroeder was employed at the ICC, the Office of the Governor, pursuant to 5 ILCS 430/5-45(c), 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 Schroeder and her position as General Counsel.

14. The ICC is a regulatory agency and Ameren is among the entities it regulates. Interim General Counsel Nora Naughton identified 50 matters of the ICC's docket that pertain to Ameren during the period between February 1, 2013 and January 31, 2014.

#### Stipulated Settlement with Ameren

15. As part of its regulatory responsibilities, on November 28, 2012, the ICC initiated Docket No. 12-0636 concerning Ameren's alleged violation of the ICC's rules.

16. On June 26, 2013, the ICC entered a final order in Docket No. 12-0636 approving a stipulated settlement with Ameren. The order provided that Ameren was to pay \$100,000 and comply with the terms of the settlement. The order notes that the ICC has jurisdiction over Ameren and over the particular subject matter. It also notes that "[t]he filing indicates that Staff played an integral role in developing the terms of the settlement set forth in the Joint Motion and attached documents. Staff recommended that the [Illinois Commerce] Commission consider the Stipulation and that the Commission enter a Final Order in substantially the form of the agreed draft order proposed by the Parties."

17. The stipulation that formed the basis for the June 26, 2013 ICC final order was signed by Schroeder on behalf of ICC Staff on March 20, 2013. According to the stipulation preamble, it was to be submitted for consideration by the ICC to settle Docket No. 12-0636.

18. By agreeing to settle Docket No. 12-0636, Schroeder permitted Ameren to avoid a finding of liability and the imposition of a Commission-imposed fine.

19. According to ICC's Executive Director, Jonathan Feipel, Schroeder was required to sign off on the March 20, 2013 stipulation. He continued that even though no rule is specific to this practice, the General Counsel is the ultimate signatory on stipulations.

20. Matthew Harvey, ICC's Regulation Supervisor within the Office of the General Counsel, confirmed that as General Counsel, Schroeder was responsible for signing-off on stipulation agreements and that she had the authority to disagree with a stipulation agreement.

#### Divestiture of Non-Performing Assets by Ameren

21. In March, 2013, Ameren officials had discussions with ICC legal staff to discuss divestiture of certain assets to a related entity. Schroeder was aware of these discussions, and sent an email on March 12, 2013 to an ICC attorney about them in which she stated "Did you speak with Ameren? Mary Selvaggio? Are they going to meet? I want to move this along for them."

22. The issue of divestiture of assets was the subject of a meeting between Schroeder and Ameren staff at a December 11, 2013 meeting.

23. As a result of these meetings, the Office of the General Counsel advised that Ameren's proposed divestiture of assets did not require ICC Commissioners' approval.

#### Schroeder's Private Sector Business Plan

24. In late 2013, Schroeder drafted a confidential business plan in preparation for her pending departure from the ICC.
25. A draft of that plan, dated December 2, 2013, noted Schroeder's "key relationships that I have developed in my various roles at the ICC to generate business in private practice."
26. The draft continues: "The first set of contacts I would market my services to would include...Ed Fitzhenry, General Counsel, Ameren Illinois [and] Greg Nelson, General Counsel and Vice-President, Ameren..."
27. In accordance with 5 ILCS 430/5-45(g), the Executive Ethics 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 10th calendar day after the date of the determination. 5 ILCS 430/5-45(g).
2. Mary Stephenson Schroeder's appeal of the OEIG's May 12, 2014 revolving door determination 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. Schroeder is among those former State employees subject 5 ILCS 430/5-45(c), who, by the nature of her duties, may have the authority to participate personally and substantially in the award of State contracts or in regulatory or licensing decisions.

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.

5 ILCS 430/5-45(g)

6. Personal and substantial involvement requires more than ministerial activity.

7. A State employee may be personally and substantially involved in a regulatory decision even though he or she was not the final decision maker.

8. A "but for..." analysis is not determinative as to whether an employee was personally and substantially involved in a decision. The fact that the same decision might have been made without the employee's involvement does not necessarily mean that the employee could not have been personally and substantially involved in the decision.

9. During the year prior to her termination of State employment, January 31, 2014, Schroeder participated personally and substantially in a regulatory decision that directly applied to Ameren, when on March 20, 2013, she signed a stipulation on behalf of ICC Staff that formed the basis for the ICC's June 26, 2013 regulatory decision approving the settlement of Docket No. 12-0636.

10. The Commission considers "other relevant information" to include:

a. Schroeder's present OEIG notification, the subject of this appeal, appears to be seeking approval of an already-existing relationship between Schroeder and SS LLC and Schroeder and Ameren. To the extent that Schroeder should have notified the OEIG prior to entering into these relationships, she has already violated the revolving door prohibition.

b. As Ethics Officer for the ICC, Schroeder was aware of the revolving door prohibition and its requirement that certain former State employees must obtain an OEIG determination before entering into employment-related positions in the private sector. In fact, Schroeder sought such a determination from the OEIG for her proposed employment with Dykema Gossett PLLC, which demonstrates that

she was aware of the process and suggests that she intentionally did not seek a timely determination for her self-employment or her representation of Ameren

- c. In December, 2013, Schroeder was actively involved in providing advice to Ameren staff concerning Ameren's divestiture of non-performing assets.
- d. During December, 2013, Schroeder drafted a confidential business plan in preparation for her pending departure from the ICC. In this plan, Schroeder indicates that her first set of contacts to whom she would market her services would include two officials at Ameren.

11. 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 Mary Stephenson Schroeder participated personally and substantially in making regulatory or licensing decisions that directly applied to Ameren, within one year of her termination of State employment.

WHEREFORE, for the foregoing reasons, the Commission denies Mary Stephenson Schroeder's appeal and affirms the Office of the Executive Inspector General's May 12, 2014 determination.

According to 5 ILCS 430/5-45(f) and 2 Ill. Admin. Code 1620.610(c)(5), Schroeder is required to update a list of known clients with which she or her company intends to contract for a period of one year after her termination of State employment, by submitting the names of each additional client to both the ICC's Ethics Officer and the OEIG.

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 of the Ethics Act related to this matter.

ENTERED: June 2, 2014

SO ORDERED.

The Executive Ethics Commission