

IN THE EXECUTIVE ETHICS COMMISSION  
OF THE STATE OF ILLINOIS

IN RE: JOSEPH KOTAS, ) No. 16-EEC-002  
)  
) Appeal of OEIG  
) Revolving Door  
) Determination

DECISION

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

FINDINGS OF FACT

The record of proceedings has been reviewed by the members of the Executive Ethics Commission. The record consists of (i) Joseph Kotas’ September 8, 2015 appeal of an OEIG Revolving Door “Restricted” determination, (ii) Kotas’ supplemental email argument of September 9, 2015, (iii) the Office of the Attorney General’s September 11, 2015 Objection, (iv) a September 14, 2015 Entry of Appearance and Rebuttal from Joseph Kotas’ attorney, Carl Draper, (v) a September 15, 2015 Comment from the OEIG, and (vi) a September 15, 2015 Rebuttal to Comment from Draper on behalf of Kotas.

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

1. At all times relevant to this matter, Joseph Kotas was an employee of the Illinois Environmental Protection Agency (IEPA), serving in the capacity as Environmental Engineer III.
2. IEPA identified Mr. Kotas as an employee, who, by the nature of his duties, has the authority to participate personally and substantially in licensing or regulatory decisions, thereby subjecting him to revolving door restrictions found at 5 ILCS 430/5-45(c).
3. Mr. Kotas is seeking employment with NRG Energy, Inc. (NRG). It is undisputed that during the year prior to his proposed separation from State employment, Mr. Kotas conducted several inspections of NRG facilities. The precise nature of these inspections is not detailed in the record before the Commission.
4. On August 14, 2015, Mr. Kotas sent an email to the OEIG, attaching a completed form RD-101. RD-101 provides certain biographical and work-related information and information about the employee’s prospective employer. This information is used by the OEIG to determine whether certain employees may accept non-State employment within one year of termination of State employment. Mr. Kotas also copied the IEPA ethics officer on this email correspondence.

5. Also on August 14, 2015, Mr. Kotas forwarded a partially-completed ethics officer revolving door statement (RD-102) to the IEPA ethics officer, noting "I filled out some of the RD-102 to assist you with items which are better known to me than you. (Attached.) I would like to get these submitted today if at all possible as I have already given my two-weeks' notice."
6. On August 20, 2015, Mr. Kotas again emailed his ethics officer, asking "Did you submit my form yet?"
7. The ethics officer's statement (RD-102) was submitted on August 24.
8. On September 3, 2015, the OEIG issued a restricted revolving door determination, based upon four inspections Kotas conducted on NRG facilities.
9. 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. Joseph Kotas' appeal of the OEIG's September 3, 2015 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. Joseph Kotas was identified by IEPA as being among those State employees subject to 5 ILCS 430/5-45(c), who, by the nature of his duties, may have the authority to participate personally and substantially in the award of State contracts or in regulatory or licensing decisions.
5. “Any State employee in a position subject to the policies required by subsection (c) or to a determination under subsection (d), but who does not fall within the prohibition of subsection (h) below, who is offered non-State employment during State employment or within a period of one year immediately after termination of State employment shall, prior to accepting such non-State employment, notify the appropriate Inspector General. Within 10 calendar days after receiving notification from an employee in a position subject to the policies required by subsection (c), such Inspector General shall make a determination as to whether the State employee is restricted from accepting such employment by subsection (a) or (b)... A determination by an Inspector General must be in writing, signed and dated by the Inspector General, and delivered to the subject of the determination within 10 calendar days or the person is deemed eligible for the employment opportunity.” 5 ILCS 430/5-45(f).
6. Commission rules provide further that in addition to providing the OEIG biographical and work-related information, the employee is required to provide “a statement from the Ethics Officer or Officers of the State agency or agencies employing the employee in the last 12 months that identifies any contracts the prospective employer, or its parent or subsidiaries have had with the State agency or agencies in the last 12 months, the amounts of those contracts, any regulatory or licensing decisions made by the State agency or agencies in the last 12 months that applied to the prospective employer or its parent or subsidiary, whether the employee was involved in any regulatory, licensing or contracting decisions regarding the prospective employer or its parent or subsidiary within the last 12 months, and if the employee was involved, a description of that involvement. If the Ethics Officer is the employee seeking the determination or is unable for any reason to provide this statement, the Executive Inspector General may consider a statement provided by another appropriate employee or officer. The statement from the ethics officer must be submitted to the appropriate Executive Inspector General within 5 calendar days after receiving notification from the employee.” 2 Ill. Admin. Code 1620.610(c)(6) (emphasis added).
7. In the present matter, the statement from the ethics officer was not filed, as required, within five days of August 14, 2015, when Mr. Kotas informed the ethics officer. Mr. Kotas took the extraordinary steps of helping prepare the ethics officer’s statement (RD-102) and following up on August 20, 2015 to see whether it had been filed.
8. No explanation has been offered to justify or explain this delay.
9. In order to protect future employment opportunities for State employees, balanced against the important principles of the revolving door ban, the General Assembly has set very tight deadlines for revolving door determinations and appeals. The OEIG and EEC rely upon ethics officers to provide essential information in a very timely manner. Delays in

violation of the procedural time line, whether established in statute or Commission rules, with no apparent justification, deny employees the protections provided by the General Assembly and frustrate the State's interest in enforcing the revolving door ban.

10. The apparently unjustified delay in this matter violates the principles established by the General Assembly and violates a specific Commission rule, 2 Ill. Admin. Code 1620.610(c)(6), which has the force of law.
11. Since this decision is based upon procedural grounds, there is no reason to examine Mr. Kotas' involvement in licensing or regulatory decisions made with respect to his prospective employer, NRG Energy, Inc.

WHEREFORE, for the foregoing reasons, the Commission grants Joseph Kotas' appeal and reverses the Office of the Executive Inspector General's September 3, 2015 determination. Joseph Kotas may pursue his employment opportunity with NRG Energy, Inc.

ENTERED: September 18, 2014

The Executive Ethics Commission

By:   
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Chad D. Fornoff  
Executive Director