

IN THE EXECUTIVE ETHICS COMMISSION
OF THE STATE OF ILLINOIS

MARGARET A. HICKEY, in her capacity)
as EXECUTIVE INSPECTOR GENERAL)
FOR THE AGENCIES OF THE ILLINOIS)
GOVERNOR,)
)
Petitioner,)
)
v.) No. 17-EEC-006
)
)
LARRY FAIRBANKS,)
)
Respondent.)

DECISION

This matter is before the Executive Ethics Commission for purposes of considering Petitioner’s Unopposed Motion for Summary Judgment and the parties’ stipulation of facts. This decision will also serve as the Commission’s final administrative decision in this matter.

On June 14, 2017, Petitioner filed the present complaint with the Commission. The complaint alleged that respondent violated the State Officials and Employees Ethics Act when he failed to notify the Office of the Executive Inspector General and obtain a determination of eligibility prior to accepting non-State employment. An affidavit of service indicates that Respondent was served a copy of the complaint on June 30, 2017. On August 23, 2017, the Commission entered an order finding the complaint sufficient to proceed. On October 16, 2017, Petitioner filed the present Unopposed Motion for Summary Judgment and the parties’ stipulations.

Petitioner is represented by Assistant Attorney General Neil MacDonald and Respondent appears pro se.

FINDINGS OF FACT

The Commission, having reviewed the record of this case, makes the following findings of fact:

1. Between December 1, 2011, and November 30, 2015, Respondent was employed as a Principal Consultant in the Special Services Division of the Illinois State Board of Education

(“ISBE”), where he served as the Director of the Illinois Response to Intervention Network, which distributes federal educational grant funds to various Illinois school districts.

2. On or around the date of his hire by ISBE, Respondent signed an acknowledgement form indicating that he had received a copy of the ISBE Employee Handbook, which identified his specific position—Principal Consultant—as one that involved duties that “may include either contract, grant, regulatory, or licensing decision making, and thus must seek and receive OEIG approval prior to accepting non-State employment.”

3. On or about November 5, 2015, just prior to Respondent’s separation from State employment, ISBE’s Human Resources Department sent an email to Respondent (“Notice”) advising him that because of the nature of his responsibilities as the Director of the Illinois Response to Intervention Network, the Ethics Act’s revolving door requirements might be applicable to him for a period of one year after his separation from State employment. The Notice included a link to an OEIG website page detailing the Act’s revolving door proscriptions and requirements.

4. Respondent resigned from his position as an ISBE Principal Consultant on November 30, 2015.

5. Approximately 7 months later, on July 1, 2016, Respondent began work as a school psychologist with Jacksonville School District 117 (“Jacksonville”), a public school district in the Jacksonville, Illinois area.

6. A review of OEIG internal records confirms that Respondent did not provide OEIG with notice of Jacksonville’s offer of employment “prior to accepting such non-State employment.” 5 ILCS 430/5-45(f).

7. During an interview with OEIG investigators, Respondent confirmed that he had received and signed for a copy of the aforementioned ISBE Employee’s Handbook; had received the Notice from ISBE’s Human Resources Department prior to his departure from State employment; and that his position as a Principal Consultant was identified as a C-list position. Respondent also acknowledged during his interview that he did not notify OEIG prior to accepting Jacksonville’s offer of non-State employment.

CONCLUSIONS OF LAW

1. Petitioner Margaret A. Hickey is the Executive Inspector General for the Agencies of the Illinois Governor, duly appointed by the Governor of the State of Illinois. 5 ILCS 430/20-10(b).

2. At all times relevant to the allegations in this Complaint, Respondent Larry Fairbanks was an ISBE Principal Consultant or former Principal Consultant subject to the provisions of the Ethics Act, and therefore subject to the jurisdiction of the Executive Ethics Commission (the “Commission”) with respect to matters arising under the Ethics Act. 5 ILCS 430/20-5(d).

3. As an ISBE employee, Respondent was subject to OEIG’s jurisdiction with respect to possible violations of the Ethics Act. *Id.* § 20-10(c).

4. ISBE determined that Respondent was a State employee who, based on the nature of his job responsibilities, may have the authority to participate personally and substantially in the award of State contracts or in making regulatory or licensing decisions. 5 ILCS 430/5-45(c); *see also id.* §§ 5-45(a)-(b). Based on this determination, ISBE classified Respondent as a “C-list” employee, in reference to the Ethics Act subsection that provides for the identification of such positions. *Id.* § 5-45(c).

5. At all times relevant to the allegations in this Complaint, Respondent had a duty to comply with the provisions of the Ethics Act, and with the policies and rules adopted pursuant thereto. This duty required Respondent to provide notice to OEIG prior to accepting an offer of non-State employment, so that OEIG could determine whether or not he was eligible under the Ethics Act to accept the offer extended to him. The Ethics Act requires in this regard that:

[a]ny State employee in a position subject to the policies required by subsection (c) [of the Ethics Act] . . . 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[,] . . . [who] shall make a determination as to whether the State employee is restricted from accepting such employment by subsection (a) or (b) [of the Ethics Act]. 5 ILCS 430/5-45(f).

Consistent with Section 5-45(f), any C-list employee “who is offered non-State employment during State employment or within a period of one year immediately after termination of State employment, but fails to provide the required notice set forth in subsection (c), shall be subject to a fine pursuant to Subsection 50-5(e)” of the Ethics Act. 2 Ill. Admin. Code § 1620.610(g).

6. The Ethics Act required Respondent to notify OEIG of his offer of non-State employment, so that OEIG could determine whether Respondent was eligible to accept the employment opportunity extended to him by his new employer. 5 ILCS 430/5-45(c), (f). The record before the Commission, however, including the Stipulations, establishes that Respondent

never submitted such a request to OEIG prior to accepting the offer of non-State employment extended to him following his departure from ISBE.

7. The Executive Ethics Commission has jurisdiction over this matter.

8. The Ethics Act provides, in relevant part, that the Commission may levy an administrative fine of up to \$5,000 against any person who violates the Act. 5 ILCS 430/50-5(e).

STANDARD OF REVIEW

Granting summary disposition in an administrative proceeding is comparable to granting summary judgment under section 2-1005 of the Code of Civil Procedure. *Bloom Tp. High School v. Illinois Commerce Com'n* (1999), 309 Ill. App. 3d 163, 177; 242 Ill. Dec. 892, 903; *Cano v. Village of Dolton* (1993), 250 Ill.App.3d 130, 138; 189 Ill. Dec. 883, 620 N.E.2d 1200. Because of the similarities in the two procedures, it is appropriate to apply the standards applicable to granting summary judgment under section 2-1005 when reviewing a summary determination entered by an administrative agency. See *Cano*, 250 Ill.App.3d at 138, 189 Ill. Dec. 883, 620 N.E.2d 1200.

Summary judgment is appropriate only where “the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” 735 ILCS 5/2-1005(c)

In determining whether a genuine issue as to any material fact exists, a court must construe the pleadings, depositions, admissions, and affidavits strictly against the movant and liberally in favor of the opponent. A triable issue precluding summary judgment exists where the material facts are disputed, or where, the material facts being undisputed, reasonable persons might draw different inferences from the undisputed facts. The use of the summary judgment procedure is to be encouraged as an aid in the expeditious disposition of a lawsuit. However, it is a drastic means of disposing of litigation and, therefore, should be allowed only when the right of the moving party is clear and free from doubt. *Adams v. Northern Illinois Gas Company* (2004), 211 Ill. 2d 32, 43; 284 Ill. Dec. 302, 310.

ANALYSIS

Respondent stipulated to a series of facts from which the Commission concludes that respondent violated subsection 5-45(f) of the State Officials and Employees Ethics Act (5 ILCS 430/5-45(f)). Petitioner has agreed to recommend a fine of not more than \$500.00. The Commission is not bound to accept this recommendation, but neither does it desire to prolong litigation unnecessarily.

The Ethics Act does not provide any guidance for the Commission to consider when levying a fine. The Commission, however, has adopted rules, found at 2 Ill. Admin. Code 1620.530(b), that outline 14 aggravating and mitigating factors that the Commission may consider in assessing an appropriate fine. These factors include: 2 Ill. Admin. Code § 1620.530(b)(5), (11) and (13).

- A. § 1620.530(b)(5)—**extent of Respondent’s intent or knowledge of the facts surrounding the violation**—Prior to Respondent’s separation from from State service, ISBE’s Human Resources informed Respondent of his duties with respect to the revolving door.
- B. § 1620.530(b)(11)—**cooperation**—Respondent has acknowledged his violation and has not unduly delayed this matter.
- C. § 1620.530(b)(13)—**prior disciplinary record or Ethics Act violation**—There is no evidence that Respondent has been previously disciplined for violations of the Ethics Act.

WHEREFORE, for the foregoing reasons, petitioner’s unopposed motion for summary judgment is granted. The Commission levies an administrative fine of \$500.00 against respondent Larry Fairbanks for violation of 5 ILCS 430/5-45(f). This is a final administrative decision and subject to the Administrative Review Law.

ENTERED: October 25, 2017