

2. As a mandatory part of his state employment, Respondent participated in ethics training beginning shortly after he was hired and annually thereafter. This included training completed on or about May 25, 2017. Stip., ¶ 1. The ethics training specifically addresses the Ethics Act's prohibited political activities restriction. 5 ILCS 430/5-15. It also includes a section on each state employee's obligation to cooperate with the Executive Inspector General in connection with its investigations. *Id.* at 20-70; Stip., ¶ 1.

3. In addition to his job as an IDOT highway maintainer, Respondent was elected on March 20, 2018, to serve as a Republican Precinct Committeeman in Cumberland County, Illinois. The official campaign website of gubernatorial candidate Jeanne Ives listed Respondent as the campaign's Cumberland County contact. Respondent confirmed during his Executive Inspector General interview that a telephone number listed on Ives' website was to a cell phone that belongs to him. Stip., ¶ 3.

4. In connection with its investigation, the Executive Inspector General obtained four Facebook "posts" with the display name "Tim McMechan." The four posts at issue are as follows:

- a. Post 1, dated February 14, 2018, at 2:41 p.m.: "Come support your Republican Party!" The post included an invitation to the "Lincoln Day Dinner" to be held on February 24th, hosted by the Cumberland County Republican Party.
- b. Post 2, dated February 22, 2018, at 8:40 a.m.: "Getting closer! I'm so excited!" The post featured a "Jeanne Ives for Governor" banner and invited readers to attend a "Cumberland County Meet and Greet" opportunity.
- c. Post 3, dated March 1, 2018, at 12:33 p.m.: The post featured an "Ives for Illinois Governor" banner, and criticized the incumbent Governor.
- d. Post 4, dated March 5, 2018, at 11:57 a.m.: The post republished a prior transmission that had originally been sent on March 1, 2018, at 4:04 p.m., promoting the attendance at a Jeanne Ives campaign event, and identified the candidate's IvesForIllinois.com campaign website. Stip., ¶¶ 4(a)-(d).

5. A comparison of Posts 1 through 4 with Respondent's signed IDOT timesheets and daily work assignment sheets showed that the posts were made during his State-compensated time, and not during non-compensated lunch breaks. Stip., ¶ 5.

6. The Executive Inspector General conducted an examination of Facebook log-in and log-out session information for Respondent's two accounts, and compared them with

Respondent's mobile phone service carrier records, including the "internet protocol" or "IP" numbers assigned to Respondent's mobile phone by his phone service provider. The four posts referenced above were published during Facebook "login-logout" sessions associated with internet protocol identifiers assigned exclusively to Respondent's personal cell phone. Stip., ¶ 6.

7. Investigators from the Executive Inspector General's Office interviewed Respondent on August 14, 2018. During the course of his interview, Respondent acknowledged that he was a Republican Precinct Committeeman, a voluntary position. Stip., ¶ 7. When presented with Posts 1 through 4 individually, however, Respondent informed the investigators that:

- a. Posts 1 through 3 had come from what he characterized as a "joint account" he shared with his fiancée, and it was she, not he, who was solely responsible for publishing Posts 1 through 3. The display name for the joint account used only "Tim McMechan," because hackers had changed the display name from "Tim and Alisa McMechan" and he was unable to correct their manipulation of the account names.
- b. With respect to Post 4, Respondent acknowledged that the original transmission from March 1, at 4:04 p.m. was his, but denied responsibility for re-posting the transmission during work hours on March 5, indicating instead that the re-post must have come from a cloned or fake account. Stip., ¶¶ 7(a)-(b).

8. These statements and explanations were false and included intentional misstatements and omissions. Respondent made these false statements for the purpose of concealing his use of his Facebook accounts for prohibited political purposes during state-compensated time. Stip., ¶ 8.

9. Effective at the close of business on July 31, 2019, IDOT suspended Respondent for 30 days without pay, based on the conduct set out above. Respondent was further advised that any future incidents of this kind could result in the imposition of additional discipline, up to and including discharge. Stip., ¶ 9.

CONCLUSIONS OF LAW

1. Petitioner Susan M. Haling is the Executive Inspector General, appointed pursuant to 5 ILCS 430/20-10. Petitioner has broad authority "to investigate allegations of fraud, waste, abuse, mismanagement, misconduct, nonfeasance, misfeasance, malfeasance, or violations of [the Ethics Act] or violations of other related laws and rules." *Id.* at 20-10(c).

2. At all times relevant to the allegations in the Complaint, Respondent was a State employee and therefore subject to the provisions of the Ethics Act, and to the jurisdiction of the Executive Ethics Commission (the “Commission”) with respect to matters arising under the Ethics Act. *Id.* at 20-5(d).

3. As a state employee, Respondent’s “ultimate jurisdictional authority” is the Governor, and therefore Respondent is subject to the jurisdiction of the Executive Inspector General for the Governor. *Id.* at 1-5, 20-10(a), (c).

4. In relevant part, the Ethics Act provides, “State employees shall not intentionally perform any prohibited political activity during any compensated time (other than vacation, personal, or compensatory time off).” *Id.* at 5-15(a). In addition, the Ethics Act broadly defines the following terms:

“Campaign for elective office” means any activity in furtherance of an effort to influence the selection, nomination, election, or appointment of any individual to any . . . State . . . public office[.]

. . . .

“Compensated time” means any time worked by or credited to a State employee that counts toward any minimum work time requirement imposed as a condition of employment with a State agency, but does not include any designated State holidays or any period when the employee is on a leave of absence.

“Political” means any activity in support of or in connection with any campaign for elective office or any political organization[.]

. . .

“Prohibited political activity” means:

- (1) Preparing for, organizing, or participating in any political meeting, political rally, political demonstration, or other political event.

Id. at 1-5.

5. At all times relevant to the allegations in Petitioner’s Complaint, Respondent had a duty to comply with the provisions of the Ethics Act. This includes the duty to cooperate with an investigation conducted by the Executive Inspector General. 5 ILCS 430/20-70.

6. Respondent violated section 5-15(a) of the Ethics Act when he performed prohibited political activity during compensated time as described in the Findings of Fact, *supra*.

7. Respondent violated section 20-70 of the Ethics Act when he failed to cooperate with the Inspector General's investigation as described in the Findings of Fact, *supra*.

8. Section 50-5(e) of the Ethics Act provides, "An ethics commission may levy an administrative fine of up to \$5,000 against any person who violates this Act [or] who intentionally obstructs or interferes with an investigation conducted under this Act by an inspector general[.]" 5 ILCS 430/50-5(e).

STANDARD OF REVIEW

Granting summary judgment in an administrative procedure is comparable to granting summary judgment under section 2-1005 of the Code of Civil Procedure. *Bloom Tp. High School v. Illinois Commerce Comm'n*, 309 Ill. App. 3d 163, 177, 722 N.E.2d 676, 687 (1st Dist. 1999); *Cano v. Vill. Of Dolton*, 250 Ill. App. 3d 130, 138, 620 N.E.2d 1200, 1206 (1st Dist. 1993). Because of the similarities in the 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, 620 N.E.2d at 1206.

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

In determining whether a genuine issue as to any material fact exists, the Commission must construe the pleadings and admissions 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 matter, but 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. N. Ill. Gas. Co.*, 211 Ill.2d 32, 43, 809 N.E.2d 1248, 1256 (2004).

ANALYSIS

Respondent stipulated to a series of facts from which the Commission concludes he performed prohibited political activity during State-compensated time and failed to cooperate with the resulting Inspector General investigation. Consequently, the Commission may levy an administrative fine of up to \$5,000 against Respondent for each of his violations of the Ethics Act. 5 ILCS 430/50-5(e).

The Ethics Act does not provide guidance to the Commission to consider when levying a fine. The Commission has, however, adopted rules that outline fourteen aggravating and mitigating factors the Commission may consider in assessing an appropriate fine. 2 ILL. ADMIN. CODE 1620.530(b). These factors include the nature of the violations; “the scope of the violation or scheme of violations”; “the use of title or position”; “the extent of the use of resources, money, time to the State”; “the extent of a respondent’s intent or knowledge of the facts surrounding the violation”; “premeditation”; “the duration of any series of violations”; “position of authority”; “involvement of others, especially other State employees”; cooperation; “prior disciplinary record or Ethics Act violation”; and “years of service and type of service with the State.” *Id.* The Petitioner has not specifically addressed what level of fine is appropriate.

The scope and duration of Respondent’s prohibited political activity was limited to four Facebook posts over a period of approximately three weeks. The record shows that Respondent does not appear to have attempted to use or leverage his title or position at the State, and he is not in a supervisory position, so there is no evidence he attempted to abuse a position of authority. The extent to which Respondent used State resources is limited because Respondent evidently used his personal cell phone to make the Facebook posts. It is unclear how much State time or money was used; Respondent made the posts during State-compensated time, but the record is silent as to how long Respondent took to craft each post, so it is not possible to estimate how much the State paid Respondent while he posted. Respondent should have known that he could not engage in political activity during State-compensated time because of his annual ethics training. No other State employees appear to have been involved. While Respondent did not cooperate with the initial OEIG investigation, he appears to have cooperated after the Complaint was filed. The record is silent with respect to any previous disciplinary actions against Respondent during his five years of State employment. As discipline for the prohibited political activity, Respondent received an unpaid suspension of 30 days.

The Commission has considered the above factors. It has also considered recent Commission fines for prohibited political activity and, in some cases, failure to cooperate, including the \$1,500 fine levied in *Milano* (19-EEC-002); the \$1,500 fine in *Bartolomucci* (18-EEC-009); the \$1,250 fine in *Wessler* (18-EEC-002 and 18-EEC-003); the \$1,000 fine in *Winburn* (16-EEC-007); and the \$1,000 fine in *Slusser* (16-EEC-006). Like the instant case, *Bartolomucci* involved four instances of prohibited political activity using a personal cell phone during State-compensated time, but the respondent was suspended for just five days instead of 30. The respondent’s conduct in *Wessler* was more severe than Respondent’s and entailed using his State position not just for political activity, but to gather intelligence on his political opponent; the respondent’s State employment was terminated as a result. Though he did not cooperate with the EIG investigation, he argued for a lower fine based on the severity of the agency’s discipline and resulting financial hardship to him.

WHEREFORE, for the forgoing reasons, the Commission levies an administrative fine of \$750.00 against Respondent, Timothy McMechan, for violation of 5 ILCS 430/50-5(e).

This is a final administrative decision subject to the Administrative Review Law.

SO ORDERED.

Date: 3/18/2020



Commissioner

WHEREFORE, for the forgoing reasons, the Commission levies an administrative fine of \$750.00 against Respondent, Timothy McMechan, for violation of 5 ILCS 430/50-5(e).

This is a final administrative decision subject to the Administrative Review Law.

SO ORDERED.

Date: 3/18/20


Commissioner

Commissioner

WHEREFORE, for the forgoing reasons, the Commission levies an administrative fine of \$750.00 against Respondent, Timothy McMechan, for violation of 5 ILCS 430/50-5(e).

This is a final administrative decision subject to the Administrative Review Law.

SO ORDERED.

Date: March 18, 2020



Commissioner

Fax: 217.558.1399

WHEREFORE, for the forgoing reasons, the Commission levies an administrative fine of \$750.00 against Respondent, Timothy McMechan, for violation of 5 ILCS 430/50-5(e).

This is a final administrative decision subject to the Administrative Review Law.

SO ORDERED.

Date: 3/18/2020

[REDACTED]

Commissioner

Commissioner

WHEREFORE, for the forgoing reasons, the Commission levies an administrative fine of \$750.00 against Respondent, Timothy McMechan, for violation of 5 ILCS 430/50-5(e).

This is a final administrative decision subject to the Administrative Review Law.

SO ORDERED.

Date: 3.26.2020



Commissioner

Commissioner