

November 19, 2010

MINUTES
ILLINOIS CIVIL SERVICE COMMISSION
November 19, 2010

I. OPENING OF MEETING AT 1:00 P.M. AT 400 W. MONROE STREET, SUITE 306, SPRINGFIELD, ILLINOIS

II. PRESENT

Chris Kolker, Chairman; Raymond W. Ewell, Barbara J. Peterson, Betty A. Bukraba (by telephone), and Ares G. Dalianis (by telephone), Commissioners; Daniel Stralka, Executive Director; Andrew Barris, Assistant Executive Director; Margaret van Dijk (by telephone), Roneta Taylor, Mark Magill, Mike Quinlan, and Christopher Nickols, Illinois Department of Central Management Services; Siobhan Johnson and Teresa Garate (by telephone), Illinois Department of Public Health; Bridget Devlin, Illinois Department of Commerce and Economic Development; Mark Pruitt, Illinois Power Agency; Patricia Brown Holmes and her Assistant, Jeannice Williams (by telephone), Illinois Torture Inquiry and Relief Commission; Susan Gold, Illinois Department of Financial and Professional Regulation (by telephone); and Ted Berger and William Barnes, Office of the State Fire Marshal.

III. APPROVAL OF MINUTES OF REGULAR MEETING HELD OCTOBER 15, 2010

IT WAS MOVED BY COMMISSIONER PETERSON, SECONDED BY COMMISSIONER EWELL, AND THE MOTION ADOPTED 5-0 TO APPROVE THE MINUTES OF THE REGULAR MEETING HELD ON OCTOBER 15, 2010.

IV. EXEMPTIONS UNDER SECTION 4d(3) OF THE PERSONNEL CODE

A. Report on Exempt Positions

<u>Agency</u>	<u>Total Employees</u>	<u>No. of Exempt Positions</u>
Aging	140.....	10
Agriculture	434.....	16
Arts Council.....	19.....	2
Capitol Development Board.....	45.....	0
Central Management Services.....	1,403.....	113
Children and Family Services.....	2,982.....	48
Civil Service Commission	3.....	0
Commerce & Economic Opportunity	419.....	67
Commerce Commission.....	71.....	0
Corrections.....	11,249.....	104
Criminal Justice Authority	60.....	5
Deaf and Hard of Hearing Comm.	7.....	1
Developmental Disabilities Council.....	9.....	1
Emergency Management Agency	93.....	7
Employment Security.....	1,926.....	29
Environmental Protection Agency	916.....	16
Financial & Professional Regulation.....	487.....	41
Gaming Board.....	80.....	5
Guardianship and Advocacy	109.....	7
Healthcare and Family Services.....	2,279.....	25
Historic Preservation Agency	223.....	9
Human Rights Commission	14.....	2
Human Rights Department.....	138.....	8
Human Services	13,255.....	77
Insurance	243.....	11
Investment Board	3.....	1
Juvenile Justice	1,182.....	19
Labor	79.....	7
Labor Relations Board Educational	12.....	2
Labor Relations Board State	18.....	2
Law Enforcement Training & Standards Bd.	18.....	2
Medical District Commission	2.....	0
Military Affairs	124.....	3
Natural Resources	1,283.....	26
Pollution Control Board.....	20.....	1
Prisoner Review Board	20.....	0
Property Tax Appeal Board	22.....	1
Public Health.....	1,076.....	41
Racing Board	2.....	0
Revenue	2,003.....	57
State Fire Marshal	137.....	12
State Police.....	1,318.....	4
State Police Merit Board	6.....	1
State Retirement Systems.....	82.....	2
Transportation	2,353.....	0
Veterans' Affairs.....	1,183.....	7
Workers' Compensation Commission	173.....	8
TOTALS	47,720.....	800

B. Governing Rule – Section 1.142 Jurisdiction B Exemptions

- a) The Civil Service Commission shall exercise its judgment when determining whether a position qualifies for exemption from Jurisdiction B under Section 4d(3) of the Personnel Code. The Commission will consider any or all of the following factors inherent in the position and any other factors deemed relevant to the request for exemption:
- 1) The amount and scope of principal policy making authority;
 - 2) The amount and scope of principal policy administering authority;
 - 3) The amount of independent authority to represent the agency, board or commission to individuals, legislators, organizations or other agencies relative to programmatic responsibilities;
 - 4) The capability to bind the agency, board or commission to a course of action;
 - 5) The nature of the program for which the position has principal policy responsibility;
 - 6) The placement of the position on the organizational chart of the agency, board or commission;
 - 7) The mission, size and geographical scope of the organizational entity or program within the agency, board or commission to which the position is allocated or detailed.
- b) The Commission may, upon its own action after 30 days notice to the Director of Central Management Services or upon the recommendation of the Director of the Department of Central Management Services, rescind the exemption of any position that no longer meets the requirements for exemption set forth in subsection (a). However, rescission of an exemption shall be approved after the Commission has determined that an adequate level of managerial control exists in exempt status that will insure responsive and accountable administrative control of the programs of the agency, board or commission.
- c) For all positions currently exempt by action of the Commission, the Director of Central Management Services shall inform the Commission promptly in writing of all changes in essential functions, reporting structure, working title, work location, position title, position number or specialized knowledge, skills, abilities, licensure or certification.
- d) Prior to granting an exemption from Jurisdiction B under Section 4d(3) of the Personnel Code, the Commission will notify the incumbent of the position, if any, of its proposed action. The incumbent may appear at the Commission meeting at which action is to be taken and present objections to the exemption request.

(Source: Amended at 34 Ill. Reg. 3485, effective March 3, 2010)

* * *

C. Requests for 4d(3) Exemption

- As to Item C, this request is for the Managing Director of Community Outreach for the Department of Public Health, a position that reports to the Assistant Director who reports to the Director. This matter was first presented in July and has been continued since. There has been much discussion between the agency and Commission Staff and it appears that the issues which precluded the Staff from recommending approval have been cleared up with the submission of a new position description. This position has principal policy responsibilities for ensuring that agency resources are being distributed according to the demographics of the State so that residents of various demographics are able to benefit from the agency's programs. The obstacle that prevented an approval recommendation previously – conducting outreach for ensuring the agency has a diverse workforce – has been purged from the position description. For these reasons, Staff recommended approval of this request. Chairman Kolker noted that while this language was removed from part of the new position description, it was still contained in the preamble. Teresa Garate, Assistant Director, Illinois Department of Public Health, indicated that a new position description would be prepared that eliminated this language.
- As to Item D, this request is for the Project Manager for Economic Development in the Department of Agriculture, a position that reports to the Director. The agency requested another continuance to December. Staff had no objection to that request.
- As to Items E and F, these requests are for the Chief Legal Counsel and Chief Fiscal Officer for the Illinois Power Agency, positions that report to the Director. The Illinois Power Agency was created in 2007, but up to now, the Director has been the only employee. The agency has received approval for six positions, two of which will be filled in 2011. These requests are for positions that have historically been approved for principal policy exemption by the Commission. For that reason, Staff recommended approval of these requests. Chairman Kolker inquired whether these positions are vacant. Mark Pruitt, Director of Illinois Power Agency, indicated they are. Chairman Kolker then asked about how the general counsel work is presently being performed. Mark Pruitt indicated that they are using outside counsel and Illinois Commerce Commission resources.
- As to Item G, this request is for the Executive Director of the Illinois Torture Inquiry and Relief Commission (ITIRC). This Commission was established by P.A. 96-0223 to investigate and determine factual claims of torture allegations leading to confession of a crime under the supervision of Chicago Police Commander Jon Burge. Claims under its enabling Act may only be filed for a five year period ending in August 2014. Considering the wide scope of authority granted to the Director under the Act to develop rules, manage the investigations and workload of the Commission, prepare reports and recommendations, as well as be primarily responsible for all other functions of the Commission, Staff

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recommended approval of this request. Jeannice Williams, Assistant to Patricia Brown Holmes, Chair of the ITIRC, noted for the Commissioners that additional employees would be hired, primarily investigators and attorneys. Commissioner Peterson inquired as to the number of employees the Illinois Torture Inquiry and Relief Commission would have. Jeannice Williams indicated that it was unknown at this time as it would be dependent on its workload.

IT WAS MOVED BY COMMISSIONER PETERSON, SECONDED BY COMMISSIONER EWELL, AND THE MOTION ADOPTED 5-0 TO GRANT AND CONTINUE THE REQUESTS FOR 4D(3) EXEMPTION FOR THE FOLLOWING POSITIONS:

The following 4d(3) exemption requests were granted on November 19, 2010:

C. Illinois Department of Public Health

Position Number	40070-20-01-100-20-81
Position Title	Senior Public Service Administrator
Bureau/Division	Community Public Health Outreach
Functional Title	Managing Director of Community Public Health Outreach
Incumbent	Vacant
Supervisor	Assistant Director who reports to the Director
Location	Cook County

E. Illinois Power Agency

Position Number	40070-26-01-000-10-01
Position Title	Senior Public Service Administrator
Bureau/Division	Legal Services
Functional Title	Chief Legal Counsel
Incumbent	Vacant
Supervisor	Director
Location	Cook County

F. Illinois Power Agency

Position Number	40070-26-01-100-00-01
Position Title	Senior Public Service Administrator
Bureau/Division	Director's Office
Functional Title	Chief Fiscal Officer
Incumbent	Vacant
Supervisor	Director
Location	Cook County

G. Illinois Torture Inquiry and Relief Commission

Position Number	40070-50-02-000-00-01
Position Title	Senior Public Service Administrator
Functional Title	Director
Incumbent	Vacant
Supervisor	Chairperson
Location	Cook County

The following 4d(3) exemption request was continued on November 19, 2010:

D. Illinois Department of Agriculture

Position Number	40070-11-01-000-00-02
Position Title	Senior Public Service Administrator
Bureau/Division	Director's Office
Functional Title	Project Manager for Economic Development
Incumbent	Vacant
Supervisor	Director
Location	Perry County

H. Proposed rescissions in accordance with Section 1.142 (b) of the Rules of the Civil Service Commission

As to the proposed rescissions, Executive Director Stralka first noted that the reason most of these positions were included for proposed rescission was due to extended vacancy in excess of two years. With regard to the State Fire Marshal positions, they were included on the Auditor General's survey of positions the agency indicated no longer met the criteria for exemption or were no longer needed.

On October 13, 2010 Executive Director Stralka provided notice to the Director of Central Management Services in accordance with Commission rules followed by letters to all affected agency directors notifying them of which positions may be placed on this month's agenda for rescission and why. These notices included 31 positions. Since that time, many telephone calls occurred and e-mails and correspondence exchanged with agency representatives regarding these proposed rescissions. Many issues were resolved during this initial period so that when it came time to finalize the agenda only 14 positions were included for the Commission to determine if their 4d(3) exemption should be rescinded. Unless otherwise noted, these positions are all vacant.

Executive Director Stralka reminded the Commissioners that Commission rules provide that rescissions shall be approved only after the Commission has determined that an adequate level of managerial control exists in exempt status which will insure responsive and accountable administrative control of agency programs.

It was Commission Staff's position that such control existed for all these proposed rescissions.

- As to Item H1, the agency indicated it had no objection to the proposed rescission.
- As to Item H7, the agency never responded to the notice of proposed rescission.
- As to Items H2-H6 & H8, the agencies all provided a variety of reasons as to why the positions remained unfilled but that they all have been proceeding with efforts to fill them and wish to retain the exemption. Staff had no objection to these responses and noted for each agency that if these positions remain vacant they will be proposed for rescission at the February 2011 Commission meeting.
- As to Items H9-H14, these were continued from the August meeting. Some of these positions have incumbents. The Fire Marshal recently sent written correspondence to the Auditor General stating that its initial response to their survey was incorrect and had been mailed before it had been properly reviewed. The agency indicated that its position is that all these positions have met the criteria for exemption at all relevant times and continue to do so today. With that clarification, Staff recommended denial of these proposed rescissions. William Barnes, Acting General Counsel for the Office of the State Fire Marshal, confirmed these representations and that the agency's response to the survey from the Auditor General was inaccurate.

Executive Director Stralka also noted that there were eight positions with the Lottery that had been included on the initial notice, but because the Management Agreement has yet to be signed, they were withheld from the agenda as premature and may reappear on February's agenda.

IT WAS MOVED BY COMMISSIONER EWELL, SECONDED BY COMMISSIONER DALIANIS, AND THE MOTION ADOPTED 5-0 TO APPROVE AND DENY THE PROPOSED RESCISSIONS FROM 4D(3) EXEMPTION FOR THE FOLLOWING POSITIONS:

The following 4d(3) exemptions were rescinded on November 19, 2010:

Item	Agency	Position Number	Functional Title
H1	AG	40070-11-01-800-00-01	State Purchasing Officer
H7	DNR	40070-12-01-000-00-01	Manager, Office of Community Outreach

The following 4d(3) exemption rescissions were denied on November 19, 2010:

Item	Agency	Position Number	Functional Title
H2	AG	40070-11-60-000-00-01	Manager, Administrative Services
H3	CEO	40070-42-00-094-00-01	Manager, ITO (Europe, Middle East, Africa & Asia)
H4	FPR	40070-13-10-400-00-01	Manager, Residential Finance
H5	DHS	40070-10-12-200-00-29	Manager of Latino Worker Safety and Immigration Office
H6	DHS	40070-10-76-600-00-01	Deputy Director, Clinical Operations
H8	DPH	40070-20-40-000-00-01	Deputy Director, Healthcare Regulation
H9	SFM ¹	37015-50-50-000-20-16	Fire Safety Compliance Manager
H10	SFM	40070-50-50-000-10-16	Director, Elevator Safety
H11	SFM	40070-50-50-024-00-01	Chief Information Officer
H12	SFM	40070-50-50-100-00-01	Director, Fire Prevention
H13	SFM	40070-50-50-200-00-01	Director, Boiler & Pressure Vessel Safety
H14	SFM	40070-50-50-500-00-01	Director, Petroleum & Chemical Safety

V. CONSIDERATION OF THE STATUS OF PRIVATE SECRETARIES AND CONFIDENTIAL ASSISTANTS EXEMPT FROM JURISDICTION B PURSUANT TO SECTION 4D(1) OF THE PERSONNEL CODE

Executive Director Stralka presented his updated Report on Section 4d(1) Exempt Positions to the Commissioners. The Report was modified after subsequent meetings with representatives of Central Management Services. Margaret van Dijk and Mark Magill, Central Management Services, were present at the meeting and agreed with the updated Report. A copy of the updated report is attached to these Minutes.

IT WAS MOVED BY COMMISSIONER PETERSON, SECONDED BY COMMISSIONER EWELL, AND THE MOTION ADOPTED 5-0 TO APPROVE THE STAFF REPORT ON SECTION 4D(1) EXEMPT POSITIONS.

VI. CONSIDERATION OF THE CONTINUED EXEMPTION OF PROCUREMENT POSITIONS SUBSEQUENT TO SB51

Executive Director Stralka reported that he met with representatives of the Executive Ethics Commission and Central Management Services to discuss the status of Personnel Code-covered statewide 4d(3) exempt procurement positions in light of the new procurement model set forth in SB51 that went into effect on September 1, 2010. At that time, these representatives had indicated that they would need several months to

¹ The six Office of the State Fire Marshal positions were continued from August 20, 2010 meeting.

transition to the new model. While there has been significant progress, it is still too early to ascertain whether the new model will be removing the principal policy authority from these positions. Legitimate differences exist as to how much control the positions under the Executive Ethics Commission will exert over procurement policy and decisions that traditionally have been reserved to Central Management Services and individual agencies. Since a legitimate evaluation of this cannot yet be conducted, it was the Staff recommendation that this matter next be placed on the Commission's August 2011 agenda for consideration. The Commissioners concurred with this suggestion.

VII. CLASS SPECIFICATIONS

The following class titles were submitted for revision by the Director of Central Management Services:

Juvenile Justice Youth & Family Specialist – Option 1
Juvenile Justice Youth & Family Specialist – Option 2
Juvenile Justice Youth & Family Specialist Supervisor

Analysis: Assistant Executive Director Andrew Barris questioned the effect the revisions might have on current employees who do not have a driver's license or had their license revoked. Chris Nickols from Central Management Services Technical Services stated that there was no one currently in the class whom the change would disqualify from the class specification.

IT WAS MOVED BY COMMISSIONER DALIANIS, SECONDED BY COMMISSIONER EWELL, AND THE MOTION ADOPTED 5-0 TO APPROVE THE REVISION OF THE FOLLOWING CLASS TITLES TO BE EFFECTIVE DECEMBER 1, 2010:

Juvenile Justice Youth & Family Specialist – Option 1
Juvenile Justice Youth & Family Specialist – Option 2
Juvenile Justice Youth & Family Specialist Supervisor

IT WAS MOVED BY CHAIRMAN KOLKER, SECONDED BY COMMISSIONER PETERSON, AND THE MOTION ADOPTED 5-0 TO DISAPPROVE ANY CLASS SPECIFICATIONS RECEIVED BY THE COMMISSION NOT CONTAINED IN THIS REPORT TO ALLOW ADEQUATE STUDY.

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VIII. MOTION TO GO INTO EXECUTIVE SESSION

IT WAS MOVED BY COMMISSIONER PETERSON, SECONDED BY COMMISSIONER DALIANIS, AND BY ROLL CALL VOTE THE MOTION ADOPTED 5-0 TO HOLD AN EXECUTIVE SESSION PURSUANT TO SUBSECTIONS 2(c)(1), 2(c)(4), AND 2(c)(11) OF THE OPEN MEETINGS ACT.

KOLKER	YES	EWELL	YES
PETERSON	YES	DALIANIS	YES
BUKRABA	YES		

IX. RECONVENE MEETING

Upon due and proper notice the regular meeting of the Illinois Civil Service Commission was reconvened at 400 W. Monroe Street, Suite 306, Springfield, Illinois at 2:08 p.m.

PRESENT

Chris Kolker, Chairman; Raymond W. Ewell, Barbara J. Peterson, Betty A. Bukraba (by telephone), and Ares G. Dalianis (by telephone), Commissioners; Daniel Stralka, Executive Director; and Andrew Barris, Assistant Executive Director.

X. NON-MERIT APPOINTMENT REPORT

The Personnel Code permits non-merit appointments for a limited period of time, i.e., emergency appointments shall not exceed 60 days and shall not be renewed, and positions shall not be filled on a temporary or provisional basis for more than six months out of any twelve-month period. Consecutive non-merit appointments are not violative of the Code; however, they do present a possible evasion of merit principles and should be monitored. Set forth below is the number of consecutive non-merit appointments made by each department. These statistics are from the Department of Central Management Services' Consecutive Non-Merit Report.

Agency	9/30/10	10/31/10	10/31/09
Aging	0	0	1
Agriculture	0	3	4
Central Management Services	0	0	1
Children and Family Services	0	1	11
Employment Security	0	3	6
Healthcare and Family Services	0	1	4
Historic Preservation Agency	1	7	1
Human Services	0	0	1
Natural Resources	8	5	36
State Fire Marshal	0	0	1
Transportation	0	1	11
Totals	9	21	77

XI. INTERLOCUTORY APPEAL

DA-4-11

Employee	Oscar W. Tames	Appeal Date	07/16/10
Agency	DHS	Decision Date	11/05/10
Type	Discharge	ALJ	Daniel Stralka
Charge(s)	Abuse of time (failure to report to work or to provide medical documentation to extend Leave of Absence)	Proposal for Decision	Dismissed subject to Commission approval; default (no show at hearing).

IT WAS MOVED BY CHAIRMAN KOLKER, SECONDED BY COMMISSIONER BUKRABA, AND BY ROLL CALL VOTE OF 4-1 THE MOTION ADOPTED TO NOT APPROVE THE DISMISSAL OF THE APPEAL FOR TAMES' FAILURE TO APPEAR AT THE HEARING SET FOR NOVEMBER 3, 2010. ALTHOUGH HIS FAILURE TO APPEAR IS SUFFICIENT GROUNDS FOR DEFAULT, SOME OF THE ACTIONS TAKEN BY TAMES INDICATE THAT HE HAD A GOOD FAITH INTENT TO PROCEED WITH HIS APPEAL. THIS MATTER IS REFERRED BACK TO THE ADMINISTRATIVE LAW JUDGE TO PROCEED WITH THE HEARING ON THE APPEAL.

KOLKER	YES	EWELL	YES
PETERSON	YES	DALIANIS	NO
BUKRABA	YES		

XII. PUBLICLY ANNOUNCED DECISIONS RESULTING FROM APPEAL

DA-31-10

Employee	Patricia A. Simms	Appeal Date	01/27/10
Agency	DVA	Decision Date	11/05/10
Type	Discharge	ALJ	Andrew Barris
Charge(s)	Failure to perform job duties; conduct unbecoming	Proposal for Decision	Charges are proven and warrant 60-day suspension.

IT WAS MOVED BY COMMISSIONER EWELL, SECONDED BY COMMISSIONER DALIANIS, AND BY ROLL CALL VOTE OF 5-0 THE MOTION ADOPTED TO AFFIRM, MODIFY, AND ADOPT THE ADMINISTRATIVE LAW JUDGE'S PROPOSAL FOR DECISION THAT THE CHARGES HAVE BEEN PROVEN AND WARRANT A 60-DAY SUSPENSION IN LIEU OF DISCHARGE. THE UNIQUE FACTUAL CIRCUMSTANCES SURROUNDING THE DISCHARGE DO NOT RISE TO THE LEVEL WHICH SOUND PUBLIC OPINION RECOGNIZES AS GOOD CAUSE FOR THE EMPLOYEE TO NO LONGER HOLD THE POSITION. SIMMS' SERVICE IN

HER POSITION AT THE FACILITY AND THE FACT THAT THE PREPONDERANCE OF THE EVIDENCE INDICATES THAT SHE WAS GOOD AT WORKING WITH VETERANS IN HER ROLE AS ADJUTANT ARE FACTORS THAT SUPPORT A 30-DAY SUSPENSION IN LIEU OF DISCHARGE.

KOLKER YES EWELL YES
 PETERSON YES DALIANIS YES
 BUKRABA YES

DA-35-10

Employee	Timothy L. Wolfe	Appeal Date	02/03/10
Agency	DOC	Decision Date	11/05/10
Type	Discharge	ALJ	Andrew Barris
Charge(s)	Conduct unbecoming	Proposal for Decision	Chares are partially proven and warrant discharge.

IT WAS MOVED BY COMMISSIONER PETERSON, SECONDED BY COMMISSIONER EWELL, AND BY ROLL CALL VOTE OF 5-0 THE MOTION ADOPTED TO AFFIRM AND ADOPT THE ADMINISTRATIVE LAW JUDGE'S PROPOSAL FOR DECISION THAT THE CHARGES HAVE BEEN PARTIALLY PROVEN AND DO WARRANT DISCHARGE FOR THE REASONS SET FORTH IN THE PROPOSAL FOR DECISION DATED NOVEMBER 5, 2010.

KOLKER YES EWELL YES
 PETERSON YES DALIANIS YES
 BUKRABA YES

DA-47-10

Employee	Ryan T. McKeone	Appeal Date	03/24/10
Agency	DOR	Decision Date	11/05/10
Type	Discharge	ALJ	Daniel Stralka
Charge(s)	Unfit to drive State vehicle; failure to safely operate State vehicle	Proposal for Decision	Charges are partially proven and warrant 90-day suspension.

IT WAS MOVED BY COMMISSIONER PETERSON, SECONDED BY COMMISSIONER EWELL, AND BY ROLL CALL VOTE OF 5-0 THE MOTION ADOPTED TO AFFIRM AND ADOPT THE ADMINISTRATIVE LAW JUDGE'S PROPOSAL FOR DECISION THAT THE CHARGES HAVE BEEN PARTIALLY PROVEN AND DO WARRANT 90-DAY SUSPENSION IN LIEU OF DISCHARGE FOR THE REASONS SET FORTH IN THE PROPOSAL FOR DECISION DATED NOVEMBER 5, 2010.

KOLKER	YES	EWELL	YES
PETERSON	YES	DALIANIS	YES
BUKRABA	YES		

XIII. APPEALS TERMINATED WITHOUT DECISION ON THE MERITS

DA-36-10

Employee	Kathy S. Cunningham	Appeal Date	02/04/10
Agency	DOC	Decision Date	10/27/10
Type	Discharge	ALJ	Andrew Barris
Charge(s)	Failure to successfully complete firearms training	Proposal for Decision	Dismissed subject to approval of Commission; withdrawn (settled).

DA-17-11

Employee	Victor Flores	Appeal Date	08/18/10
Agency	DOC	Decision Date	10/19/10
Type	Discharge	ALJ	Daniel Stralka
Charge(s)	Conduct unbecoming	Proposal for Decision	Dismissed subject to approval of Commission; withdrawn (settled).

DA-19-11

Employee	Amber L. Garr	Appeal Date	09/14/10
Agency	DVA	Decision Date	10/08/10
Type	Discharge	ALJ	Andrew Barris
Charge(s)	Conduct unbecoming; unauthorized absence	Proposal for Decision	Dismissed subject to approval of Commission; withdrawn.

IT WAS MOVED BY COMMISSIONER DALIANIS, SECONDED BY COMMISSIONER PETERSON, AND BY ROLL CALL VOTE OF 5-0 THE MOTION ADOPTED TO AFFIRM AND ADOPT THE ADMINISTRATIVE LAW JUDGES' PROPOSALS FOR DECISION TO DISMISS THE APPEALS OF KATHY CUNNINGHAM, VICTOR FLORES, AND AMBER GARR.

KOLKER	YES	EWELL	YES
PETERSON	YES	DALIANIS	YES
BUKRABA	YES		

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XIV. FISCAL YEAR 2010 ANNUAL REPORT

Chairman Kolker suggested several changes to the proposed Annual Report. It was the consensus of the Commission to continue this matter until the December meeting.

XV. STAFF REPORT

Executive Director Daniel Stralka reported that contributions to SECA were still being accepted.

XVI. ANNOUNCEMENT OF NEXT MEETING

Announcement was made of the next regular meeting to be held on Friday, December 17, 2010 in the Commission's Chicago office.

XVII. MOTION TO ADJOURN

IT WAS MOVED BY COMMISSIONER PETERSON, SECONDED BY COMMISSIONER DALIANIS, AND THE MOTION ADOPTED 5-0 TO ADJOURN THE MEETING AT 2:20 P.M.

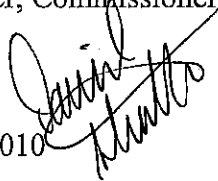


Daniel Stralka
EXECUTIVE DIRECTOR

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Chris Kolker
CHAIRMAN

COMMISSIONERS
Raymond W. Ewell
Barbara J. Peterson
Betty A. Bukraba
Ares G. Dalianis

To: Chairman Kolker; Commissioners Ewell, Peterson, Bukraba, and Dalianis
From: Daniel Stralka 
Date: November 19, 2010
Subject: Report on Section 4d(1) Exempt Positions.

This is an update of a Report initially prepared on August 11, 2010. It has been modified after subsequent meetings with representatives of Central Management Services (CMS).

Section 4d(1) of the Personnel Code provides as follows:

In each department, board or commission that now maintains or may hereafter maintain a major administrative division, service or office in both Sangamon County and Cook County, 2 private secretaries for the director or chairman thereof, one located in the Cook County office and the other located in the Sangamon County office, shall be exempt from jurisdiction B; in all other departments, boards and commissions one private secretary for the director or chairman thereof shall be exempt from jurisdiction B. In all departments, boards and commissions one confidential assistant for the director or chairman thereof shall be exempt from jurisdiction B. This paragraph is subject to such modifications or waiver of the exemptions as may be necessary to assure the continuity of federal contributions in those agencies supported in whole or in part by federal funds.

In essence, each major State agency is allowed a total of three partially exempt positions to serve as private secretaries/confidential assistants. One must be in Sangamon County; one must be in Cook County; and there are no geographical restrictions on the third.

Commission Staff first started monitoring this provision in 2005 by requesting a listing of all 4d(1) coded positions from CMS. Informal monitoring continued over the years until earlier this year when it was determined that a formal report be presented to the Commission to make a record of these activities.

Staff obtained an updated listing of all 4d(1) positions prior to meeting with representatives of CMS to discuss issues related to the positions classified as 4d(1) exempt in various agencies. The following is a summation of issues addressed at this meeting.

1. Initially, it must be noted that according to the listing provided by CMS, the vast majority of agencies are utilizing Section 4d(1) exemptions in accordance with this provision of the Personnel Code.
2. The Illinois Department of Employment Security has three 4d(1) positions, all of which are located in Cook County. Ostensibly, two of these positions are private secretaries and only one of them may be located in Cook County – the other by statute must be in Sangamon County. Staff intends to notify the agency of this nonconformance and direct it to come in compliance by locating one of its private secretaries in Sangamon County.
3. The Department of Revenue has seven 4d(1) positions, six of which are located in Cook County. (Out of these seven positions, three are currently vacant.) Assuming that the Lottery accounts for three of these seven 4d(1) positions, this is still one more than allowed by the statute. In addition, no more than four of the six allowed by Section 4d(1) may be located in Cook County. Staff initially intended to notify the agency of this nonconformance and direct it to come in compliance by abolishing one of its 4d(1) positions and ensuring that no more than four of its 4d(1) positions are located in Cook County. However, it was subsequently discovered that this number includes positions for the Liquor Control Commission. Therefore, these positions comply with the provisions of Section 4d(1).
4. The Department of Financial and Professional Regulation was created in 2004 by consolidating four previously independent agencies: the Department of Professional Regulation; the Department of Insurance; the Office of Banks and Real Estate; and the Department of Financial Institutions. (At the time of the consolidation, CMS inquired as to how this consolidation would affect the status of employees in existing 4d(1) positions in these four legacy agencies. After discussion with CMS, it was agreed that the legacy agencies would be allowed to maintain their own 4d(1) exempt positions. See below for additional discussion on this issue.) It was the consensus of CMS and Commission Staff that the legacy agencies would be allowed to maintain their 4d(1) exemptions in the new DFPR. That is why DFPR has twelve 4d(1) positions. However, nine of them are located in Cook County. Again, no more than eight of the twelve allowed by Section 4d(1) may be located in Cook County. Staff intends to notify the agency of this nonconformance and direct it to come in compliance by locating one of its private secretaries in Sangamon County.
5. The Pollution Control Board (PCB) has five members and according to Section 4d(1) would be entitled to three exempt positions for the Chairman. However, it has fifteen positions listed for the PCB which allows three exempt positions for each member. CMS produced a 1972 Attorney General opinion (copy attached) to support its action. This opinion references Section 5(a) of the Environmental Protection Act which states: "Each Board member may employ one secretary and one assistant, and the Chairman one secretary and 2 assistants." On pages 8-9, the opinion draws a parallel to Section 4d(1) in finding that these employees referenced in Section 5(a) are exempt from Jurisdiction B of the Personnel Code.

Commission Staff has the following concerns with this characterization:

- a. Classifying these positions as 4d(1) exempt is misleading. Under Section 4d(1), the PCB is entitled to three exempt positions for its Chairman. It may be entitled to additional exempt positions in accordance with Section 5(a) of the Environmental Protection Act, but such additional positions should then be coded as exempt for a reason other than Section 4d(1). They should not be appearing on a listing of positions exempt pursuant to Section 4d(1).
- b. The PCB is only entitled to a maximum of eleven exempt positions, not fifteen. Section 5(a) allows for two exempt positions per PCB member ($2 \times 4 = 8$) and three for the Chairman. This totals eleven. Nowhere in the opinion does it indicate that each member of the PCB is entitled to the three exempt positions Section 4d(1) reserves for the Chairman.

Staff intended to notify the agency and CMS of this nonconformance and direct them to come in compliance by properly classifying the PCB's positions and/or reducing the number of positions classified as Section 4d(1) exempt. After meeting with CMS, it remains the Staff position that classifying these positions as 4d(1) is misleading. However, to avoid creating a new coding exclusively for these PCB positions, it was agreed that they may remain classified as 4d(1) even though their exemption originates from the Environmental Protection Act. This also applies to the positions referenced in ¶b above as these are hearing officer/attorney positions assigned to each Commissioner in the Act. It was agreed that these are not technically exempt positions under Section 4d(1) of the Personnel Code.

There are two more issues that are more global in nature with respect to the administration of 4d(1) exempt positions. The first is addressing which State entities are eligible to create 4d(1) exempt positions. The Personnel Code references "department, board or commission" as those being entitled to 4d(1) exempt positions. However, that term is not further identified in the Personnel Code. The next source for assistance in defining this term is the Civil Administrative Code (20 ILCS 5/1-1). Section 5-15 sets forth the "Departments of State government" and lists 22 agencies. However, that cannot be considered a comprehensive list as there is conflicting information within Section 5. For example, while not listed under Section 5-15 as a "Department," Section 5-130 creates an Assistant Director in the "Department of Financial Institutions." There is no Department of Financial Institutions listed as one of the 22 agencies in Section 5-15, yet it is specifically identified in a later provision of the Section 5. The same issue arises with the Departments of Insurance and Professional Regulation. That is why the list in Section 5-15 cannot be considered to be comprehensive and Section 4d(1) exemptions cannot be limited solely to those 22 agencies listed in Section 5-15.

In addition, the use of Executive Orders has further confused this issue with the creation of the Department of Financial and Professional Regulation being a prime example of why strict adherence to Section 5-15 has the potential to – for all practical purposes – create unnecessary complications in personnel management.

Prior to July 1, 2004 the following four independent agencies existed in the State:

Department of Professional Regulation
Department of Insurance
Department of Financial Institutions

Office of Banks and Real Estate

Effective that date, Executive Order 2004-6 consolidated these four agencies into the Department of Financial and Professional Regulation.¹ (The Office of Banks and Real Estate was renamed the Division of Banking.)

On June 1, 2009 the Department of Insurance was reconstituted as a State agency independent of the Department of Financial and Professional Responsibility by Executive Order 2009-4.

A strict interpretation of the 2004 consolidation would have had a significant negative impact on the number of Section 4d(1) exemptions, reducing them from twelve to three. As indicated previously, such a strict interpretation was rejected by both CMS and Commission Staff since the Directors of the legacy agencies remained as State officers subject to Senate confirmation. Since the initial determination was to allow the Department of Insurance to retain its 4d(1) exempt positions, there was minimal disruption in staffing needs.

In further support of adopting this interpretation is the language of both these Executive Orders which states, "The status and rights of such employees under the Personnel Code shall not be affected by the transfers."

Therefore, it is Staff's recommendation that for purposes of ascertaining which Departments of the State are entitled to 4d(1) exempt positions, the primary source shall be those set forth in the Civil Administrative Code. If not specifically listed, it shall include those specifically referenced in the Civil Administrative Code so long as the head of the Department is subject to Senate confirmation. For any other entity to be considered a "Department" as set forth in Section 4d(1) of the Personnel Code, it must have some statutory basis for that designation outside the Civil Administrative Code. This would preclude entities such as the "Divisions of Shared Services" referenced in Executive Order 2006-6 from being allowed to create exempt positions under Section 4d(1).

The final issue is raised more as a point of information. With the increased unionization of State positions, existing private secretaries and confidential assistants have been included in this process. From the listing provided by CMS, it appears there has been a lack of uniform treatment of Section 4d(1) positions. Some have been excluded from collective bargaining agreements as confidential; some have been excluded as managerial; and others have been included in collective bargaining units. As initially indicated, this is being raised for informational purposes only and no Commission action is required.

¹ This Executive Order also attempted to remove the Directors of these four agencies as State Officers subject to Senate confirmation. This was rejected by the legislature.