

IN THE EXECUTIVE ETHICS COMMISSION
OF THE STATE OF ILLINOIS

SUSAN M. HALING, in her capacity as the)
ACTING EXECUTIVE INSPECTOR)
GENERAL, for the AGENCIES OF THE)
ILLINOIS GOVERNOR,)
Petitioner,)
v.) No. 18-EEC-009
JOEL B. BARTOLOMUCCI,)
Respondent.)

DECISION

This cause is before the Executive Ethics Commission (“Commission”) for purposes of considering the Petitioner’s unopposed motion for summary judgment. This decision will also serve as the Commission’s final administrative decision in this matter.

On April 11, 2018, Petitioner filed a complaint with the Commission which alleged Respondent, Joel Bartolomucci, intentionally engaged in prohibited political activity during State-compensated time in violation of Section 5-15(a) of the State Employees and Officials Ethics Act (“Ethics Act”) (5 ILCS 430/5-15(a)). Respondent consented to receive service of the complaint on April 20, 2018. On May 24, 2018, Petitioner filed an unopposed motion for summary judgment with an attached joint stipulation of undisputed material facts. On May 29, 2018, Respondent filed a Statement of Mitigating Facts.

Petitioner is represented by Assistant Attorney General Francis Neil MacDonald. Respondent is represented by Bradley B. Wilson.

FINDINGS OF FACT

The record of proceedings has been reviewed by the members of the Executive Ethics Commission. Based upon the record, including the parties’ joint stipulation of undisputed material facts, the Commission makes the following findings of fact:

1. Respondent was employed by the Illinois Department of Transportation (“IDOT”) as a Highway Maintainer from June 2014 to October 2017.
2. Respondent’s approved work hours were from 7:00 a.m. until 3:30 p.m., with an unpaid lunch break from 11:00 a.m. to 11:30 a.m.

3. On June 19, 2014, Respondent received and read IDOT's Personnel Policies Manual, which provides that IDOT employees may not engage in prohibited political activities while on State time.

4. On May 15, 2015, and May 10, 2016, Respondent completed the annual ethics training program for State employees. Each annual Ethics Act training review contained a module explaining the prohibition against engaging in prohibited political activities during State-compensated time, as well as the penalties available for violations of the Ethics Act.

5. On September 28, 2016, at 1:48 p.m.; October 7, 2016, at 3:03 p.m.; October 12, 2016, at 9:07 a.m.; and October 14, 2016, at 3:20 p.m.; Respondent sent text messages from his personal cellular phone to his co-workers, in which he engaged in preparations for, and the organization of, meetings, rallies, and demonstrations in furtherance of an effort to influence the election of Mike Mathis for State Representative of the 95th District in the general election held on November 8, 2016.

6. Investigators from the Office of the Executive Inspector General ("OEIG") interviewed Respondent on October 26, 2016, in connection with his transmission of political text messages during State-compensated time. In this interview, Respondent admitted that he sent a series of text messages from his personal cellular phone to seek help in connection with a political candidate's campaign activities. Respondent further admitted that he sent each text message while at work during State-compensated time.

7. Respondent admits that on September 28, 2016, October 7, 2016, October 12, 2016, and October 14, 2016, he violated the Ethics Act by intentionally performing prohibited political activity during State-compensated time, in violation of 5 ILCS 430/5-15(a).

CONCLUSIONS OF LAW

1. Petitioner Susan M. Haling is the Acting Executive Inspector General for the Agencies of the Illinois Governor, duly appointed by the Governor for the State of Illinois 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.* § 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.* § 20-5(d).

3. As a State employee, Respondent's "ultimate jurisdictional authority" was the Governor, and therefore Respondent was subject to the jurisdiction of the Executive Inspector General for the Governor. *Id.* §§ 1-5, 20-10(a), (c).

4. Pursuant to 5 ILCS 430/20-5(d), the Commission has jurisdiction over “all officers and employees of State agencies” for purposes of any matter arising under or involving the Ethics Act. Consequently, the Commission’s authority extends to officers and employees of IDOT.

5. As a State employee, Respondent was subject to the provisions of the Ethics Act, and therefore subject to the jurisdiction of the Commission with respect to matters arising under the Ethics Act. *Id.*

6. 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. § 430/5-15(a). In addition, the Ethics Act expressly 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, or local 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. § 430/1-5.

7. At all times relevant to the allegations in Petitioner’s Complaint, Respondent had a duty to comply with the provisions of the Ethics Act, and with all policies adopted and implemented pursuant thereto.

8. Respondent violated Section 5-15(a) of the Ethics Act when on September 28, 2016, at 1:48 p.m.; October 7, 2016, at 3:03 p.m.; October 12, 2016, at 9:07 a.m.; and October 14, 2016, at 3:20 p.m.; Respondent sent text messages from his personal cellular phone to his co-workers, in which he engaged in preparations for, and the organization of, meetings, rallies, and

demonstrations in furtherance of an effort to influence the election of Mike Mathis for State Representative of the 95th District in the general election held on November 8, 2016.

9. 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, who intentionally obstructs or interferes with an investigation conducted under this Act by an inspector general, or who intentionally makes a false, frivolous, or bad faith allegation. 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. Ill. Commerce Comm’n*, 309 Ill. App. 3d 163, 177, 242 Ill. Dec. 892, 903, 722 N.E.2d 676, 687 (1st Dist. 1999); *Cano v. Vill. of Dolton*, 250 Ill. App. 3d 130, 138, 189 Ill. Dec. 883, 889, 620 N.E.2d 1200, 1206 (1st Dist. 1993). 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 at 889, 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, 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 matter. 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. N. Ill. Gas Co.*, 211 Ill.2d 32, 43, 284 Ill. Dec. 302, 310, 809 N.E.2d 1248, 1256 (2004).

ANALYSIS

Respondent stipulated to a series of facts from which the Commission concludes he intentionally performed prohibited political activity during State-compensated time in violation of the State Officials and Employees Ethics Act (5 ILCS 430/5-15(a)).

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(a). Respondent submitted a statement of mitigating factors with attached letters of support.

The Ethics Act does not provide any guidance for the Commission to consider when levying a fine. The Commission has, however, adopted rules, found at 2 ILL. ADMIN, CODE 1620.530(b), that outline fourteen aggravating and mitigating factors the Commission may consider in assessing an appropriate fine. In relevant part, these factors include: the nature of the violations; the extent of the use of resources, money, time to the State; the extent of the Respondent's intent or knowledge of the facts surrounding the violation; and Respondent's cooperation in the matter. 2 ILL. ADMIN. CODE 1620.530(b)(1), (4), (5) and (11).

Respondent's Statement of Mitigating Facts notes that Respondent has admitted that he violated the relevant provisions of the Ethics Act, but did not misuse his title or position or State resources. The misuse of State time to send four political texts was nominal. Respondent cooperated in the investigation, and while he had faced disciplinary action twice during the previous two years, neither incident involved a violation of the Ethics Act. As a result of the present matter, Respondent was suspended for five days.

WHEREFORE, for the foregoing reasons, Petitioner's motion for summary judgment is granted. The Commission levies an administrative fine of \$1500.00 against Respondent, Joel B. Bartolomucci, for violation of 5 ILCS 430/5-15(a). This is a final administrative decision subject to the Administrative Review Law.

ENTERED: June 6, 2018