

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. 19-EEC-002  
WILLIAM MILANO, )  
Respondent. )

DECISION

This matter is now before the Commission on Petitioner’s unopposed motion for summary judgment.

Petitioner filed the present complaint on September 11, 2018. An affidavit of service indicates that Respondent was personally served a copy of the complaint on September 17, 2018. Respondent filed no objections to the complaint, which the Commission found sufficient to proceed on October 18, 2018. Petitioner filed the present unopposed motion for summary judgment with the parties’ stipulation of material facts on November 7, 2018. Respondent filed a statement of mitigation on November 4, 2018.

Petitioner is represented by Assistant Attorney General Neil MacDonald. Respondent is represented by Terrence P. LeFevour.

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. At all times relevant to the allegations in Petitioner’s Complaint, Respondent was employed by the Illinois Department of Transportation (“IDOT”), where he has served as an Operations Supervisor II since September 1, 2013. In that role, Respondent oversees the operations of IDOT’s Northside Sign Shop, which manufactures road signs such as speed limit signs and traffic control signs.

2. The State has assigned Respondent a desk phone and a cellular phone to use for official business and emergencies only.

3. Respondent's normal work hours are from 6:30 a.m. to 3:00 p.m. on Tuesdays through Saturdays. Respondent is allowed an unpaid 30-minute lunch break and two paid 15-minute breaks.

4. Respondent signs in and signs out on a log for each day of work. The time spent on the lunch break is also recorded. Respondent verifies the accuracy of the hours by signing the record.

5. On June 11, 2014, Respondent received and read IDOT's Personnel Policies Manual (the "Manual"), which provides in Chapter 16-3(A) that IDOT employees "may not engage in any prohibited political activities while on 'state time/premises.'" Chapter 16-3(B) of the Manual further provides that IDOT employees "may not misappropriate any state property or resources for the benefit of a campaign for elective office or for any political organization."

6. On May 17, 2016, Respondent completed the 2016 Ethics Training Program for State Employees as part of IDOT's annual employee ethics training. 5 ILCS 430/5 10(a)-(b).

7. Respondent ran for alderman of Ward Two in the City of Wood Dale in the election held on April 4, 2017.

8. As part of his campaign for alderman, Respondent hired DiCianni Graphics, Inc., to print campaign materials such as yard signs, flyers, and door hangers. Pete DiCianni owns and operates DiCianni Graphics.

9. In the months leading up to the election, Respondent used his State-issued desk phone and State-issued cellular phone to make or receive the following ten phone calls that were sent or received in support of his campaign for elective office.

a. on January 17, 2017, Respondent used his desk phone to call DiCianni Graphics from 10:16 a.m. to 10:33 a.m. Respondent began his lunch break at 10:30 a.m., so 14 of the 17 minutes were during State-compensated time;

b. on January 23, 2017, during State-compensated time, Respondent used his desk phone to call DiCianni Graphics from 9:36 a.m. to 9:37 a.m.;

c. on January 23, 2017, during State-compensated time, Respondent used his desk phone to call the DuPage County Election Commission from 9:38 a.m. to 9:41 a.m. The general line for the DuPage County Election Commission is 630-407-5600;

- d. on February 4, 2017, during State-compensated time, Respondent received on his State-issued cellular phone a call from Mr. DiCianni from 10:17 a.m. to 10:22 a.m.;
- e. on February 19, 2017, Respondent received on his State-issued cellular phone a call from Mr. DiCianni from 9:56 a.m. to 10:22 a.m. Respondent did not work that day;
- f. on February 24, 2017, Respondent received on his State-issued cellular phone a call from Mr. DiCianni from 10:26 a.m. to 10:47 a.m. Respondent began his lunch break at 10:30 a.m., so 4 of the 21 minutes took place during State-compensated time;
- g. on March 3, 2017, Respondent received on his State-issued cellular phone a call from Mr. DiCianni from 5:00 p.m. to 5:04 p.m. Respondent did not work that day;
- h. on March 15, 2017, Respondent received on his State-issued cellular phone a call from Mr. DiCianni from 12:00 p.m. to 12:04 p.m. Respondent had already finished working for the day by the time Mr. DiCianni called;
- i. on March 15, 2017, Respondent received on his State-issued cellular phone a call from Mr. DiCianni from 12:37 p.m. to 12:39 p.m. Respondent had already finished working for the day by the time Mr. DiCianni called; and
- j. on March 23, 2017, during State-compensated time, Respondent received on his State-issued cellular phone a call from Mr. DiCianni from 11:42 a.m. to 11:45 a.m.

10. The total amount of time for the ten phone calls was 86 minutes, 30 minutes of which took place during State-compensated time. All ten of the phone calls were made or received using State-issued phones.

11. On June 22, 2017, Respondent was interviewed by investigators from the Office of the Executive Inspector General (“OEIG”) in connection with his campaign-related activities.

12. Respondent reviewed his time records and call logs during the OEIG interview. Respondent admitted that the phone calls were made or received with a State-issued phone and that the phone calls took place during State compensated time, with the exception of those calls (or parts of calls) that took place during uncompensated time.

13. Respondent further admitted during his OEIG interview that: the above-referenced phone calls were political in nature; the phone calls with DiCianni Graphics and Mr.

DiCianni were made to prepare for the distribution of materials for his campaign for alderman; and the phone call to the DuPage County Election Commission was a campaign-related call to correct the spelling of his name on the ballot.

14. Based on OEIG's subsequent finding that Respondent had engaged in prohibited political activity in violation of Chapter 16-3 of IDOT's Manual, Respondent was suspended from work for 5 days, effective close of business on October 8, 2017.

#### 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. Section 5-15(a) of the Ethics Act provides that "[S]tate employees shall not intentionally perform any prohibited political activity during any compensated time." Furthermore, "[S]tate employees shall not intentionally misappropriate any State property or resources by engaging in any prohibited political activity for the benefit of any campaign for elective officer or any political organization. 5 ILCS 430/5-15(a).

6. Section 50-5(e) of 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).

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. Respond violated Section 5-15(a) of the Ethics Act when he intentionally performed prohibited political activity during compensated time and intentionally misappropriated State property or resources by engaging in prohibited political activity as described in Findings of Fact, *supra*.

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 and intentionally misappropriated State property or resources by engaging in prohibited political activity 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(e).

Respondent submitted a statement of mitigation in which he states that his conduct was careless and that he is now cognizant of his duties under the Ethics Act. Respondent argues that he did not abuse his title or position, did not act with premeditation, and cooperated in resolving this matter. He is a thirty-year employee without prior blemishes.

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).

WHEREFORE, for the foregoing reasons, the Commission levies an administrative fine of \$1500.00 against Respondent, William Milano, for violation of 5 ILCS 430/50-5(e). This is a final administrative decision subject to the Administrative Review Law.

SO ORDERED.

ENTERED: December 20, 2018