

IN THE EXECUTIVE ETHICS COMMISSION  
OF THE STATE OF ILLINOIS

NATHAN MADDOX , in his capacity as	)	
EXECUTIVE INSPECTOR GENERAL for	)	
the SECRETARY OF STATE, State	)	
Of Illinois,	)	
Petitioner,	)	
	)	
v.	)	Nos. 18-EEC-002
	)	18-EEC-003
HENRY WESSELER,	)	(Consolidated)
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 September 15, 2017, Respondent filed a complaint with the Commission to appeal his August 2017 discharge. On November 2, 2017, Petitioner also filed a complaint with the Commission which alleged Respondent, Henry Wessler, engaged in prohibited political activity in violation of section 5-15(a) of the State Employees and Officials Ethics Act (“Ethics Act”) (5 ILCS 430/5-15(a)). An affidavit of service indicates Respondent was served a copy of the complaint on November 8, 2017. On December 21, 2017, the Commission entered an order consolidating the two complaints and finding them sufficient to proceed.

On February 5, 2018, Petitioner filed an unopposed motion for summary judgment with an attached joint stipulation of undisputed material facts. That same date, Respondent filed a letter to state mitigating circumstances with regard to the Commission’s potential imposition of a fine.

Petitioner is represented by Assistant Attorney General Francis Neil MacDonald. Respondent appear *pro se*.

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 as a Public Service Representative at an Illinois Secretary of State’s driver’s license facility located in Lombard, Illinois, from October 1, 2013, until August 21, 2017, the effective date of his discharge by the State.

2. On October 1, 2013, October 23, 2014, September 24, 2015, September 30, 2016, and April 27, 2017, Respondent completed the Secretary of State's 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, or misappropriating State property or resources to engage in prohibited political activity. Each annual training review also contained a module explaining every State employee's obligation to cooperate with an Inspector General's investigation, as well as the penalties available for violations of the Ethics Act.
3. In addition to his work for the Secretary of State, Respondent served as a Bensenville Village Trustee, a local elective office, from May 2009 through May 2017. Respondent also ran unsuccessfully for a second local elective office (Village President of Bensenville), in the April 2017 election cycle.
4. In February 2017, the Executive Inspector General for the Illinois Secretary of State ("EIG") received a complaint from another Bensenville Village Trustee and Village President candidate running against Respondent in the April 2017 election (the "Competing Candidate"), who asserted that Respondent may have accessed the Competing Candidate's driver's license records without his permission. More particularly, the Competing Candidate explained that he had become concerned, based on conversations with prospective voters, that Respondent had looked up and disclosed confidential Secretary of State residency information in an attempt to prejudice the electorate's views of his compliance with residency requirements for Village office election.
5. A search by EIG inspectors of the Competing Candidate's computerized records revealed that someone using Respondent's user ID had accessed the Competing Candidate's driver's license records and vehicle registration information on November 18, 2016, and again on January 27, 2017. There were no official Secretary of State transactions on either of those two dates that would have required Respondent to access the Competing Candidate's records.
6. EIG investigators interviewed Respondent on March 16, 2017, and again on April 11, 2017. Before commencing the interviews, the investigators reminded Respondent of his obligation to cooperate with the EIG's investigation. Nevertheless, Respondent intentionally made numerous false and materially misleading statements to the investigators, including the following, with the intent to obstruct and interfere with the EIG's investigation:

- a. Respondent stated that the Competing Candidate had given him his driver's license number and asked him to check his Secretary of State records to check his address, and to determine what he needed to do to renew his driver's license. EIG investigators determined, however, that the Competing Candidate had renewed his license in December 2015, i.e., almost a year prior to the first suspicious review of the Competing Candidate's driving records in November 2016, and that his driver's license would not expire until 2020;
  - b. when asked why, if he had the Competing Candidate's driver's license number, he had performed the searches using a name search (as the computer records showed) instead of a driver's license number search (which provides direct access to a specific individual's complete driving record), Respondent stated that he did not know why he had conducted a name search, rather than admit that he was looking at the Competing Candidate's records for an improper purpose; and
  - c. the Executive Inspector General's review of the Secretary's computer files referenced above also revealed that on November 18, 2016, and January 27, 2017, someone using Respondent's user ID had reviewed the driving records of four additional members of the Competing Candidate's political party. When asked about his review of these additional files, Respondent falsely stated that the Competing Candidate had asked him to examine his running mates' records to ensure that the members of his political ticket all lived in the Village of Bensenville (for election eligibility purposes); and that in retrospect, Respondent believed that the Competing Candidate was just trying to "set him up" because of their competition in the Bensenville mayoral election.
7. Respondent admits that he searched the Competing Candidate's driving records, as well as those of the additional members of the Competing Candidate's political party, during normal Secretary of State business hours on November 18, 2016 and January 27, 2017. These searches therefore took place during State compensated time. Respondent admits that he conducted these searches for the potential benefit of his own personal political campaign.
  8. In addition, Respondent admits that he intentionally misappropriated State resources and property—the Secretary's official driver and vehicle record databases, as well as the State's computer system, on which Respondent accessed and reviewed this information—to conduct these searches for the potential benefit of his own personal political campaign.
  9. EIG investigators interviewed Respondent on March 16, 2017, and again on April 11, 2017. During the course of these interviews, and in written follow-up statements submitted to the

Executive Inspector General in connection therewith, Respondent made materially false and intentionally misleading statements, with the intent to obstruct and interfere with the EIG's investigation. This includes those statements set out above at Paragraph 6 and its subparts.

10. Section 50-5(e) of the Ethics Act provides that “[a]n Ethics Commission may levy an administrative fine of up to \$5,000 against any person who violates this Act . . . .” 5 ILCS 430/50-5(e). As a result of Respondent’s violations of the Ethics Act, the Commission is authorized to levy on Respondent an administrative fine of up to \$5,000. 5 ILCS 430/50-5(e).

#### CONCLUSIONS OF LAW

1. 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 the Illinois Secretary of State (“SOS”).
2. As a SOS 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.*
3. As an employee at SOS, Respondent took annual Ethics Act training, which includes a section regarding the restrictions placed on State employees against participating in prohibited political activity. Respondent has been participating in annual Ethics Act training since at least 2013.
4. The “ultimate jurisdictional authority” for SOS officers and employees, including Respondent, is the Secretary of State. 5 ILCS 430/1-5 (defining and identifying the “ultimate jurisdictional authority” for various state officers, employees, and the entities for which they work).
5. The Ethics Act provides, in relevant part, that the EIG has jurisdiction over “all officers and employees of . . . executive branch State agencies under the jurisdiction of the Executive Ethics Commission,” 5 ILCS 430/20-10(c), and authorizes the EIG to investigate allegations of fraud, waste, abuse, mismanagement, misconduct, nonfeasance, misfeasance, malfeasance, violations of the Ethics Act, or violations of other related laws and rules. *Id.*; *accord* 5 ILCS 430/20-20. Accordingly, the EIG’s authority extends to SOS and its officers and employees.

6. Under the Ethics Act, “State employees shall not intentionally perform any prohibited political activity during any compensated time (other than vacation, personal, or compensatory time off).” 5 ILCS 430/5-15(a).
7. Under the Ethics Act, “State 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 office or any political organization.” *Id.*
8. “Prohibited political activity” is defined by the Ethics Act to mean, in relevant part, “Soliciting contributions, including but not limited to the purchase of, selling, distributing, or receiving payment for tickets for any political fundraiser, political meeting, or other political event” or “Soliciting, planning the solicitation of, or preparing any document or report regarding any thing of value intended as a campaign contribution.” 5 ILCS 430/1-5.
9. “Campaign for elective office” is defined by the Ethics Act to mean, “any activity in furtherance of an effort to influence the selection, nomination, election, or appointment of any individual to any federal, State, or local public office or office in a political organization, or the selection, nomination, or election of Presidential or Vice-Presidential electors, but does not include activities (i) relating to the support or opposition of any executive, legislative, or administrative action (as those terms are defined in Section 2 of the Lobbyist Registration Act), (ii) relating to collective bargaining, or (iii) that are otherwise in furtherance of the person’s official State duties.” *Id.*
10. When Respondent, searched the driving records of his competing candidate and associated party ticket supporters during compensated time for the intended benefit of his own personal political campaign, he intentionally performed “prohibited political activity” as defined in the Ethics Act and in violation of 5 ILCS 430/5-15(a).
11. When Respondent accessed and reviewed the driving records of his competing candidate and associated party ticket supporters using the SOS’s official driver and vehicle record databases and the State’s computer system for the intended benefit of his own personal political campaign, he intentionally misappropriated State property or resources to engage in “prohibited political activity” as defined in the Ethics Act and in violation of 5 ILCS 430/5-15(a).
12. Under the Ethics Act, “it is the duty of every officer and employee under the jurisdiction of an Executive Inspector General, including any inspector general serving in any State agency under the jurisdiction of that Executive Inspector General, to cooperate with the Executive Inspector General and the Attorney General in any investigation undertaken pursuant to this Act.” 5 ILCS 430/20-70.

13. Respondent violated Section 20-70 of the Ethics Act when he failed to cooperate in an investigation of the EIG, pursuant to the Ethics Act, by answering falsely several questions during interviews and in written submissions to the EIG thereafter. 5 ILCS 430/20-70.
14. Respondent violated Section 50-5(e) of the Ethics Act when he intentionally obstructed or interfered with an investigation of the EIG, pursuant to the Ethics Act, by answering falsely several questions during interviews and in written submissions to the EIG thereafter. 5 ILCS 430/50-5(e).
15. 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 Ethics 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 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 (1999); *Cano v. Vill. of Dolton*, 250 Ill. App. 3d 130, 138, 189 Ill. Dec. 883, 620 N.E.2d 1200 (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.

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.” 736 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. N. Ill. Gas Co.*, 211 Ill.2d 32, 43, 284 Ill. Dec. 302, 310 (2004).

### ANALYSIS

Respondent stipulated to a series of facts from which the Commission concludes he engaged in prohibited political activity and failed to cooperate with, and intentionally obstructed

and interfered with, an investigation of the Executive Inspector General in violation of the State Officials and Employees Ethics Act (5 ILCS 430/5-15(a)). Respondent does not dispute he searched the Competing Candidate's driving records, as well as those of the additional members of the Competing Candidate's political party, during normal Secretary of State business hours on November 18, 2016 and January 27, 2017. Respondent also does not dispute he intentionally misappropriated State resources and property when he accessed and reviewed this information. Further, Respondent admits he conducted these searches for the potential benefit of his own personal political campaign. Finally, Respondent does not dispute that during his interviews with the EIG on March 16, 2017, and again on April 11, 2017, and in written follow-up statements, he intentionally made false and misleading statements with the intent to obstruct and interfere with the EIG's 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(a). Respondent has submitted a statement of mitigating factors for the Commission to consider when determining what fine is appropriate. In that statement, Respondent states because of his actions he has already lost his job, been denied unemployment, been out of work for almost four months after his discharge, had to sign up for COBRA to maintain health insurance coverage, had to live on his savings and credit cards, and could not afford an attorney. Based upon this, the Respondent requests "that no Administrative fine be levied." The Petitioner has not specifically addressed what amount of fine is appropriate. 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 violation; the use of title or position; 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), (3), (4), (5) and (11).

WHEREFORE, for the foregoing reasons, Petitioner's motion for summary judgment is granted. The Commission levies an administrative fine of \$1,250.00 against Respondent, Henry Wessler, for violation of 5 ILCS 430/5-15(a). This is a final administrative decision subject to the Administrative Review Law.

ENTERED: March 21, 2018

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