

IN THE EXECUTIVE ETHICS COMMISSION
OF THE STATE OF ILLINOIS

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RICARDO MEZA, in his capacity as)
EXECUTIVE INSPECTOR GENERAL for)
AGENCIES OF THE GOVERNOR, State)
of Illinois,)
) Petitioner,)
))
v.)
))
STEPHEN THURSTON,)
) Respondent.)

**EXECUTIVE
ETHICS COMMISSION**

No. 13-EEC-005

DECISION

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

Petitioner filed the present complaint with the Commission on September 25, 2012 and respondent was served via his attorney, Donna Otis, on October 3, 2012.

Respondent filed no response to the complaint and the Commission determined that the complaint was sufficient to proceed on November 14, 2012. The parties entered into a stipulation of facts, which formed the basis for petitioner’s motion for summary judgment, both of which were filed on December 20, 2012. Respondent’s attorney indicated during a December 27, 2012 teleconference that she did not intend to file a response to the motion for summary judgment. Both parties were afforded an opportunity to file a brief addressing an appropriate sanction, if any.

Petitioner is represented by Assistant Attorney General Barbara Delano. Respondent is represented by Donna Otis.

FINDINGS OF FACT

The record of proceedings has been reviewed by the members of the Executive Ethics Commission. Based upon this record, the Commission makes the following findings of fact:

1. Respondent Stephen Thurston served as Commissioner of the Illinois Executive Ethics Commission from his appointment on November 5, 2008 until October 24, 2011.
2. Illinois Attorney General Opinion Number 05-001, a copy of which was provided to all EEC Commissioners, including Respondent, on January 7, 2009, interprets subsection

20-5(f)(4) of the Ethics Act to prohibit commissioners from making campaign contributions to a candidate for elective office or to a political party and from attending a political event relating to a campaign for elective office. The opinion also clarifies that Commissioners and employees are prohibited “from engaging in any and all activities that may further an effort to influence the selection of a person to fill a public or political office.” Ill. AG Opinion 05-001 (January 12, 2005).

3. On March 25, 2011, Respondent attended a prayer breakfast held at First Greater Bethlehem M.B. Church in Chicago, Illinois for candidate, David Moore, who also attended the prayer breakfast.
4. Respondent was invited to the prayer breakfast by Delmarie Cobb, Moore’s campaign manager.
5. The Illinois Daybook entry dated March 24, 2011 (a copy of which is attached as Exhibit 3 to the complaint) states for Friday, March 25, 2011, that “Evangelist and civil rights leader Rev. Clay Evans hosts a prayer breakfast for 17th Ward runoff candidate David Moore.”
6. At the prayer breakfast, Moore sought political support and campaign contributions.
7. Other individuals attended the prayer breakfast, spoke in support of Moore’s candidacy, and encouraged others to support Moore.
8. After others spoke in support of Moore, respondent spoke at the Prayer Breakfast about issues related directly to the African American community. On June 13, 2011, Respondent told OEIG investigators that he did not believe his attendance at the Prayer Breakfast was a violation of the Ethics Act.
9. Respondent spoke at the Prayer Breakfast about Moore’s Christian character, the need for everyone to get involved in the election process, and that Moore would be a good Alderman for the area in which Moore was running, and that it was a “critical time in the African American community, which [was] suffering from low voter participation.”
10. On June 13, 2011, respondent told OEIG investigators that he felt the need to make a disclaimer at the breakfast after Moore’s Campaign Manager asked those present to participate in group photos, provide contributions, and take an active role in Moore’s campaign.
11. After the prayer breakfast, Moore’s campaign posted on its website and issued a press release entitled, “Runoff Candidate David Moore gets support from 17th Ward Ministers,” a copy of which is attached as Exhibit 6 to the complaint.
12. On April 5, 2011, Moore’s campaign issued an apology to respondent by email and letter for including his name as endorsing Moore.

13. Respondent does not contest petitioner's motion for summary judgment and has not filed a brief concerning an appropriate sanction, if any, for respondent.

CONCLUSIONS OF LAW

1. Respondent Stephen Thurston was at all times relevant to this complaint a State employee, as "employee" is defined in the State Officials and Employees Ethics Act ("Act") to include regular employees and appointees. 5 ILCS 430/1-5.
2. The Executive Ethics Commission has jurisdiction over respondent in the matter of his alleged violation of 5 ILCS 430/20-5(f). According to this subsection, "No commissioner or employee of the Executive Ethics Commissioner may... (4) advocate for the appointment of another person to an appointed or elected office or position or actively participate in any campaign for any elective office." Id.
3. "Campaign for elective office" is defined as "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..." 5 ILCS 430/1-5.
4. Illinois Attorney General Opinion Number 05-001, a copy of which was provided to all EEC Commissioner including Respondent on January 7, 2009, interprets subsection 20-5(f)(4) of the Ethics Act to prohibit commissioners from making campaign contributions to a candidate for elective office or a political party and from attending a political event relating to a campaign for elective office. The opinion also clarifies that Commissioners and employees are prohibited "from engaging in any and all activities that may further an effort to influence the selection of a person to fill a public or political office." Ill. AG Opinion 05-001 (January 12, 2005).
5. Respondent Stephen Thurston intentionally engaged in activity in violation of 20-5(f)(4) of the Ethics Act when, on March 25, 2011, he attended a political event relating to a campaign for elective office. 5 ILCS 430/20-5(f)(4).
6. Respondent Stephen Thurston intentionally engaged in activity in violation of 20-5(f)(4) of the Ethics Act when, on March 25, 2011, he furthered an effort to select a person to fill a public or political office by making statements in support of a candidate. 5 ILCS 430/20-5(f)(4).
7. There is no genuine issue of material fact that respondent engaged in activity in violation of 20-5(f)(4) of the Ethics Act. 5 ILCS 430/20-5(f)(4).
8. Petitioner is entitled to summary judgment as a matter of law.
9. Respondent has violated subsection 20-5(f)(4) of the State Officials and Employees Ethics Act. 5 ILCS 430/20-5(f)(4).

10. Respondent cooperated in the investigation.
11. The Executive Ethics Commission may levy an administrative fine of up to \$5,000 for a violation of the State Officials and Employees Ethics Act. 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. Illinois Commerce Com'n* (1999), 309 Ill. App. 3d 163, 177; 242 Ill. Dec. 892, 903; *Cano v. Village of Dolton* (1993), 250 Ill.App.3d 130, 138; 189 Ill.Dec. 883, 620 N.E.2d 1200. 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. 883, 620 N.E.2d 1200.

Summary judgment is appropriate only where “the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” 735 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. Northern Illinois Gas Company* (2004), 211 Ill. 2d 32, 43; 284 Ill. Dec. 302, 310.

ANALYSIS

Respondent Stephen Thurston stipulated to a series of facts from which the Commission concludes that he violated 5 ILCS 430/20-5(f). According to this subsection, “No commissioner or employee of the Executive Ethics Commissioner may... (4) advocate for the appointment of another person to an appointed or elected office or position or actively participate in any campaign for any elective office.” *Id.* Respondent signed this stipulation of facts and his attorney stated that she would file no objection to the motion for summary judgment. Respondent seeks a fine of up to \$5,000 and any other relief that the Commission deems just and proper.

Respondent is no longer a State appointee. Therefore, the only sanction available to the Commission in this matter is the imposition of a fine. The Ethics Act does not provide any aggravating or mitigating factors for the Commission to consider when levying a fine, but the

Commission has adopted rules concerning relevant mitigating and aggravating factors at 2 Ill. Admin. Code 1620.530(b) that it may consider. Petitioner has asked the Commission to consider that respondent cooperated fully with the Office of the Executive Inspector General in its investigation and with the Office of the Attorney General.

In addition to his cooperation, other mitigating factors include respondent's lack of prior disciplinary or Ethics Act violations and the limited scope and nature of the violation, which consists of statements respondent made during the prayer breakfast. The Commission also notes that respondent's statements do not appear to have been premeditated; rather, respondent found himself trying to walk a fine line when the prayer breakfast took a political turn. Although the respondent attempted to make a disclaimer limiting the political nature of his comments at the prayer breakfast, he crossed the line into advocacy for a candidate.

Aggravating factors include respondent's position of authority as a Commissioner of the Executive Ethics Commission and the fact that limitations on political activity, as interpreted by an opinion of the Office of the Attorney General, were circulated to all Commissioners and discussed prior to respondent's violation.

WHEREFORE, for the foregoing reasons, petitioner's motion for summary judgment is granted. The Commission levies an administrative fine of \$2,500.00 against Respondent Stephen Thurston for violation of 5 ILCS 430/5-15(a), prohibited political activities. This is a final administrative decision and subject to the Administrative Review Law.

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