

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.

FINDINGS OF FACT

Based upon a review of the record, the Commission makes the following findings of fact:

1. Respondent was employed as Director of Project Development, Bureau of Pharmacy and Clinical Support, for the Illinois Department of Human Services (“DHS”) from July or August 2003 until his termination on December 28, 2006, and at all times relevant to this matter.
2. Respondent was president of an organization called the “Arab American Democratic Club” (“AADC”) while he was employed by DHS.
3. The AADC makes political contributions to candidates and sponsors political fundraising activities.
4. Respondent was a member of a committee of the AADC that organized a fundraising event for Governor Rod Blagojevich. The date of the fundraising event was September 12, 2006.
5. Respondent sent e-mail messages from his DHS e-mail account concerning the September 12, 2006 fundraiser.
6. On June 9, 2006 respondent sent an e-mail containing a draft invitation for the September 12, 2006 fundraiser from his DHS e-mail account to what appears to be his personal e-mail account.
7. On June 26, 2006 respondent sent an e-mail from his DHS e-mail account to what appears to be his personal e-mail account. The email contains attachments of what appears to be a committee meeting agenda and sign-in sheet for the AADC committee organizing the September 12, 2006 fundraiser.
8. On June 29, 2006 respondent sent an e-mail from his DHS e-mail account to five individuals as well as what appears to be his personal e-mail account. The email contains an attachment that is entitled “Minutes of Host Committee Meeting 06/28/06” and

describes activities including the Governor's agreement to attend the September 12, 2006 fundraising event and the prices for tickets to the event.

9. During an August 1, 2007 interview with an investigator from the Office of the Executive Inspector General for the Governor, respondent acknowledged using the e-mail system four or five times to notify people of the Governor's fundraising event.
10. During the same August 1, 2007 interview, the investigator noted additional e-mail messages discovered on respondent's DHS computer were e-mails with attachments containing a PowerPoint presentation concerning the AADC and flyers and invitations to AADC events created during compensated State time. When the investigator asked respondent whether he agreed that this was all political activity that was done on State time using State equipment, respondent agreed.
11. Petitioner filed the present motion for summary judgment on January 15, 2008. On January 18, 2008, the administrative law judge entered an order granting respondent 21 days to respond to the motion. Respondent has not responded to this motion.
12. Respondent has been properly served a copy of the petition for leave to file a complaint and the verified complaint, but has never contacted the Commission concerning this case or responded in any way.

CONCLUSIONS OF LAW

1. Respondent Khalil Shalabi is a former State employee, as "employee" is defined in the State Officials and Employees Ethics Act. 5 ILCS 430/1-5.
2. The Executive Ethics Commission has jurisdiction over Respondent in the matter of his alleged violation of the prohibition of political activity. 5 ILCS 430/20-5(d).
3. Respondent engaged in "prohibited political activity" as that phrase is defined in the Ethics Act by "(1) Preparing for, organizing, or participating in any political meeting, political rally, political demonstration, or other political event." 5 ILCS 430/1-5 ("Prohibited Political Activity").
4. Respondent engaged in "prohibited political activity," as that phrase is defined in the Ethics Act, during the month of June 2006 when he sent e-mail messages from his DHS e-mail account containing invitations to a political fundraiser, an agenda for an AADC committee meeting related to preparations for a political fundraiser, and minutes from the same meeting.
5. There is no genuine issue of material fact that respondent intentionally misappropriated State property by engaging in prohibited political activity for the benefit of a campaign for elective office or a political organization. 5 ILCS 430/5-15(a).
6. Petitioner is entitled to summary judgment as a matter of law.

7. The Executive Ethics Commission may levy an administrative fine of up to \$5,000 against any person who violates the State Officials and Employees Ethics Act. 5 ILCS 430/50-5(e).

ANALYSIS

The first section of petitioner's summary judgment motion deals with respondent's alleged prohibited political activity related to Respondent's use of State property and resources during compensated time. The second section of petitioner's motion deals with respondent's alleged failure to cooperate with an investigation by an Executive Inspector General.

Part I of Petitioner's motion and the attached exhibits clearly demonstrate that respondent has engaged in prohibited political activity in violation of Section 5-15(a) of the Ethics Act. 5 ILCS 430/5-15(a). Petitioner asserts that the exhibits demonstrate that respondent engaged in at least 11 separate violations of that section and that therefore, respondent is eligible for an administrative fine of 11 times the \$5,000 provided for in Section 50-5(e) of the Ethics Act. 5 ILCS 430/50-5(e). Petitioner does not enumerate or identify these specific 11 violations, but suggests "that the actual number is in all likelihood much higher than 11."

While petitioner may be correct that a careful review of the exhibits could identify 11 or more violations, petitioner has the burden to establish each of these violations in a summary judgment motion.

The Commission's authority to levy administrative fines is found at 5 ILCS 430/50-5(e), which provides:

(e) 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.

On February 27, 2008 the Commission directed the parties to submit briefs on the issue of the Commission's authority to impose a fine in excess of \$5,000 against an individual. Respondent briefed this issue and the Commission reviewed that brief, the legislative history of the State Officials and Employees Ethics Act, and other Illinois statutes that permit State agencies to levy administrative fines. Based upon this review, the Commission concludes that the General Assembly did not intend for the Commission to levy an administrative fine of greater than \$5,000 for offenses that arise out of the same course of action.

For these reasons, the Commission grants petitioner's motion for summary judgment as to part I of the motion and levies an administrative fine of \$5,000. The Commission welcomes any additional direction the General Assembly might offer in this matter.

As to part II of petitioner's motion for summary judgment, petitioner seeks an administrative fine of \$5,000 for respondent's failure to cooperate with an investigation of the Executive Inspector General pursuant to Section 20-70 of the Act. (5 ILCS 430/20-70). As petitioner notes, a failure to cooperate in violation of Section 20-70 "is grounds for disciplinary action, including dismissal." Id.

Petitioner did not plead in any detail respondent's actions related to Section 50-5(e), which provides for a fine of up to \$5,000 against any person "who intentionally obstructs or interferes with an investigation conducted under this Act by an inspector general." infra.

Failure to cooperate in an investigation is a different offense from intentionally obstructing or interfering with an investigation. These different offenses subject an offender to different sanctions. The discipline provided for in Section 20-70, namely disciplinary action, including dismissal, is moot because respondent is no longer employed by the State of Illinois. Since petitioner did not plead the elements of Section 50-5(e), i.e. intentional obstruction or interference with an investigation, this part of Respondent's motion fails.

WHEREFORE, for the foregoing reasons, the Commission grants petitioner's motion for summary judgment in part and denies it in part. The Commission levies an administrative fine in the amount of \$5,000.00 against Respondent Khalil Shalabi for violation of 5 ILCS 430/5-15(a). This is a final administrative decision and subject to the Administrative Review Law.

ENTERED: May 15, 2008