

IN THE EXECUTIVE ETHICS COMMISSION
OF THE STATE OF ILLINOIS

JAMES A. WRIGHT, in his capacity as)	
EXECUTIVE INSPECTOR GENERAL for)	
AGENCIES OF THE GOVERNOR, State)	
of Illinois,)	
Petitioner,)	
)	
v.)	No. 07-EEC-010
)	
JOHN P. NOVAK,)	
Respondent.)	

DECISION

This cause is before the Executive Ethics Commission for purposes of issuing a final administrative decision.

Petitioner filed the present Petition for Leave to File Complaint (“petition”) and Verified Complaint with the Commission on June 25, 2007. Petitioner’s affidavit of service, filed June 29, 2007, indicates that a copy of the petition and complaint was served on respondent on June 28, 2007.

Respondent filed an Answer to the Complaint on October 3, 2007 and the parties filed a joint stipulation of facts on November 5, 2007. In the attached motion to accept the joint stipulation of facts, respondent waived his right to a formal hearing on the issue of liability, and indicated that he would not otherwise contest the issue of liability.

A hearing on the issue of an appropriate sanction, if any, was conducted on January 31, 2008 in the offices of the Executive Ethics Commission. Petitioner was represented by Assistant Attorney General Matthew Bilinsky. Respondent was represented by Michael F. McClain.

FINDINGS OF FACT

A complete copy the record of proceedings, including a transcript of hearing, has been reviewed by all members of the Executive Ethics Commission. Based upon this record, the Commission makes the following findings of fact:

1. Respondent John P. Novak served as Chairman of the Illinois Pollution Control Board (“PCB”) from December 2003 until November 30, 2005.
2. On June 2, 2004 Commonwealth Edison (“ComEd”) filed a petition with the PCB seeking to reverse a decision by the Illinois Environmental Protection Agency that certain

information submitted by ComEd was not entitled to trade secret or confidential protection.

3. On June 3, 2004 Midwest Generation, LLC (“Midwest”) filed a separate petition with the PCB that also concerned trade secret or confidential protection of information.
4. On June 17, 2004 Respondent, along with the other members of the PCB, voted 5-0 to accept the ComEd petition for review of the trade secret decision. ComEd and Midwest were directed to brief whether their cases should be consolidated.
5. On June 21, 2004 the Sierra Club filed a petition with the PCB to intervene in the ComEd case.
6. On July 7, 2005 Respondent, along with the other members of the PCB voted 4-0 in support of the position taken by ComEd not to consolidate the cases involving ComEd and Midwest.
7. On August 18, 2005 Respondent, along with the other members of the PCB voted 4-0 in support of the position taken by ComEd not to permit the Sierra Club to intervene in the ComEd case.
8. On November 30, 2005 Respondent resigned as Chairman of the PCB.
9. In January 2006 Respondent began a consulting business.
10. On January 9, 2006 Respondent registered with the Illinois Secretary of State as a lobbyist. His only client is ComEd.
11. Respondent did not seek a waiver of the revolving door prohibition and no waiver has been granted in his case.
12. Respondent has stipulated to the issue of liability and does not contest it.

CONCLUSIONS OF LAW

1. Respondent John P. Novak is a former State employee, as “employee” is defined in the State Officials and Employees Ethics 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 the revolving door prohibition. 5 ILCS 430/20-5(d).
3. On July 7, 2005 Respondent made a regulatory decision that directly applied to ComEd when he voted as Chairman of the PCB not to consolidate PCB cases involving ComEd and Midwest.

4. On August 18, 2005 Respondent made a regulatory decision that directly applied to ComEd when he voted as Chairman of the PCB not to permit the Sierra Club to intervene in a PCB case involving ComEd.
5. Respondent made these two regulatory decisions within one year of his termination of State employment on November 30, 2005.
6. Having made these two regulatory decisions that directly applied to ComEd within one year of his termination of State employment on November 30, 2005, Respondent knowingly accepted employment with ComEd in January 2006, within one year immediately after his termination of State employment.
7. Respondent has violated Section 5/45(b) of the State Officials and Employees Ethics Act. 5 ILCS 430/5-45(b)
8. Respondent has neither sought nor received a waiver of the revolving door prohibition provided for at 5 ILCS 430/5-45(c).
9. 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).

ANALYSIS

Respondent stipulated to a violation of the revolving door prohibition quite early in the proceedings. The parties were unable to reach an agreement about an appropriate sanction partly because the statute does not provide any aggravating or mitigating factors for the Commission to consider. Also, since this is the first revolving door prohibition case to reach a conclusion before the Executive Ethics Commission and therefore the first opportunity for the Commission to consider levying an administrative fine, the Commission has no precedent to guide it.

During the January 31, 2008 evidentiary hearing, the parties were permitted to present evidence and argument concerning an appropriate sanction, if any, for the present stipulated violation.

The parties have offered several factors that may be considered in mitigation of any sanction the Commission might impose. First, the regulatory decisions made by Respondent that formed the basis of the violation were not dispositive of the matters before the PCB. Respondent voted not to consolidate cases and not to permit a third party to intervene. The votes in question were not final decisions.

Second, the regulatory decisions made by Respondent were unanimously supported by all PCB members voting on those measures. Therefore, Respondent's votes, though in favor of his prospective employer's position, appear not to have affected the outcome of any decision made by the PCB.

Third, Respondent has apologized for the violation and appears to be genuinely remorseful. He cooperated with the investigation, admitted the violation early in the process and has accepted responsibility for his actions.

Fourth, there is no evidence before the Commission that the prospect of future employment with ComEd influenced Respondent's regulatory decisions. There is no other evidence before the Commission that would have rendered Respondent ineligible to obtain a waiver of the revolving door prohibition, had he applied for one.

The record is silent as to the amount of compensation Respondent received from ComEd during the time the revolving door prohibition was in effect. This is an important factor that the Commission may consider when levying fines in future revolving door matters.

One argument against mitigation is the fact that Respondent served in the General Assembly while the State Officials and Employees Ethics Act was debated. The Commission takes judicial notice of a November 20, 2003 roll call vote, indicating that Respondent voted in favor of SB 0702 (later to become P.A. 93-0167), which contains the present revolving door language.

Another consideration that the parties did not raise is the amount of the criminal fine that attaches to a violation of the revolving door prohibition. Section 50-5 of the Ethics Act provides that the intentional violation of Section 5-45 (the revolving door prohibition) is a Class A misdemeanor. 5 ILCS 430/50-5(a). Class A misdemeanors are punishable by a fine that shall not exceed \$2,500 or the amount specified in the offense, whichever is greater. 730 ILCS 5/5-9-1(a)(2). No amount is specified in the section of the State Officials and Employees Ethics Act that defines this offense. See 5 ILCS 430/50-5(a). Although, as mentioned above, the Commission has the authority to levy an administrative fine of up to \$5,000, it believes that fines in excess of the maximum criminal fine should be levied only for the most serious violations.

WHEREFORE, for the foregoing reasons, the Commission levies an administrative fine of \$2,500.00 against Respondent John P. Novak for violation of 5 ILCS 430/5-45(b), the revolving door prohibition. If either party objects to the Commission taking judicial notice of Respondent's November 20, 2003 roll call vote described in this order, that party may petition the Commission for a hearing within 30 days on this matter. This is a final administrative decision and subject to the Administrative Review Law.

ENTERED: March 27, 2008