

August 21, 2008

MINUTES
ILLINOIS CIVIL SERVICE COMMISSION
August 21, 2008

I. OPENING OF MEETING AT 9:03 A.M. AT 160 NORTH LASALLE STREET, SUITE S-901, CHICAGO, ILLINOIS

II. PRESENT

Chris Kolker, Chairman; Raymond W. Ewell, Barbara J. Peterson, Betty A. Bukraba, and Ares G. Dalianis, Commissioners; Daniel Stralka, Executive Director; Andrew Barris, Assistant Executive Director; Courtney O'Connell, Bob Arya, and Jan Oncken, Central Management Services.

III. APPROVAL OF MINUTES OF REGULAR MEETING HELD JULY 17, 2008

IT WAS MOVED BY COMMISSIONER PETERSON, SECONDED BY COMMISSIONER DALIANIS, AND THE MOTION ADOPTED 5-0 TO APPROVE THE MINUTES OF THE REGULAR MEETING HELD ON JULY 17, 2008.

IV. EXEMPTIONS UNDER SECTION 4d(3) OF THE PERSONNEL CODE

A. Report on Exempt Positions

<u>Agency</u>	<u>Total Employees</u>	<u>Number of Exempt Positions</u>
Aging	167.....	9
Agriculture	579.....	16
Arts Council.....	21.....	2
Capitol Development Board	36.....	0
Central Management Services	1,492.....	106
Children and Family Services.....	3,186.....	49
Civil Service Commission	4.....	0
Commerce & Economic Opportunity	430.....	67
Commerce Commission.....	70.....	0
Corrections.....	11,585.....	113
Criminal Justice Authority	55.....	6
Deaf and Hard of Hearing Comm.	6.....	1
Developmental Disabilities Council	9.....	1
Emergency Management Agency	100.....	3
Employment Security.....	1,675.....	24
Environmental Protection Agency	1,006.....	19
Financial & Professional Regulation	747.....	50
Guardianship and Advocacy	110.....	8
Healthcare and Family Services.....	2,455.....	29
Historic Preservation Agency	322.....	12
Human Rights Commission	12.....	2
Human Rights Department	158.....	10
Human Services	14,640.....	75
Investment Board.....	3.....	2
Juvenile Justice	1,175.....	19
Labor.....	85.....	7
Labor Relations Board Educational	13.....	2
Labor Relations Board State	20.....	2
Law Enforcement Training & Standards Bd.....	20.....	1
Medical District Commission	2.....	0
Military Affairs	127.....	3
Natural Resources	1,697.....	23
Pollution Control Board.....	19.....	2
Prisoner Review Board	21.....	0
Property Tax Appeal Board	26.....	1
Public Health.....	1,128.....	41
Revenue	2,108.....	71
State Fire Marshal.....	155.....	12
State Police	1,449.....	6
State Police Merit Board.....	5.....	1
State Retirement Systems	85.....	2
Transportation.....	2,462.....	0
Veterans' Affairs.....	1,141.....	7
Workers' Compensation Commission	172.....	10
TOTALS	50,778.....	814

B. Governing Rule - Jurisdiction B Exemptions

- a) Before a position shall qualify for exemption from Jurisdiction B under Section 4d(3) of the Personnel Code, the position shall be directly responsible to:
 - 1. The Governor, or
 - 2. A departmental director or assistant director appointed by the Governor, or
 - 3. A board or commission appointed by the Governor, or
 - 4. The head of an agency created by Executive Order, or the director or assistant director of an agency carrying out statutory powers, whose offices are created by the Governor subject to legislative veto under Article V, Section 11, of the Constitution of 1970, which agency head, director, or assistant director may themselves be subject to exemption under Section 4d(3), or
 - 5. In an agency having a statutory assistant director, a deputy director exercising full line authority under the director for all operating entities of the agency, provided the statutory role of assistant director is vacant or is assigned clearly distinct and separate duties from the deputy director and as a colleague to him, or
 - 6. A line position organizationally located between the director and/or assistant director and a subordinate statutorily exempt position(s), provided the position proposed for exemption has line authority over the statutory exempt position(s), or
 - 7. The elected head of an independent agency in the executive, legislative, or judicial branch of government.

- b) If a position meets the above criterion, it must, in addition, be responsible for one or more of the following before it shall be approved as exempt:
 - 1. Directs programs defined by statute and/or departmental, board, or commission policy or possess significant authority when acting in the capacity of a director of programs to bind the agency.
 - 2. Makes decisions in exercising principal responsibility for the determination or execution of policy which fix objectives or state the principles to control action toward operating objectives of one or more divisions, such decisions being subject to review or reversal only by the director, assistant director, board or commission.
 - 3. Participates in the planning and programming of departmental, board, or commission activities, integrating the plans and projections of related divisions, and the scheduling of projected work programs of those agencies.

* * *

C. Requests for 4d(3) Exemption

- With regard to Item C, this request, which was continued from last month, is for a Media Administrator for the Illinois Department of Public Health. Media Administrators were created as a result of Executive Order 2004-2 and are under the administration of the Illinois Office of Communication and Information (IOCI), a division of Central Management Services. The Deputy Director of the IOCI reports to the Director of Central Management Services. The vast majority of the Media Administrators were first granted 4d(3) exemption back in July 2004. At that time, they reported to the Deputy Director, a position that would be considered the equivalent of a statutory assistant director. Recently, an intermediate Division Manager position was created in the IOCI and all the Media Administrators now report to the Division Manager who reports to the Deputy Director. This pushed the Media Administrators one additional level down the organizational chart and this is the issue which led to the continuance of this request last month. Last week, Commission staff met with nine representatives from IOCI and Central Management Services to clarify the reporting structure in the IOCI and discuss the continued eligibility of the Media Administrators for exemption given this structural change. At that time, the need for the Division Manager – a position that is also 4d(3) exempt – in monitoring the activities of the 28 Media Administrators was set forth by the Deputy Director of the IOCI. It was noted that each Media Administrator has a dotted line reporting relationship to the Director of their assigned agency or agencies, and that the positions' responsibilities which justified their exemption four years ago remain essentially unchanged. The Deputy Director also noted that he does not anticipate an increase in the number of Media Administrators.

Staff also identified five current 4d(3) non-Media Administrator positions, possibly legacy Public Information Officer positions, which appear to have overlapping responsibilities with the Media Administrators. When the Media Administrators were first approved for exemption by the Commission, part of that process included the abolishment or rescission of exemption of the remaining legacy Public Information Officer positions. Central Management Services has requested each of the identified agencies to provide clarification of these positions' responsibilities so it can be determined whether they all still qualify for principal policy exemption.

For these reasons and given the unique characteristics of the Media Administrator positions, staff recommended approval of this request. For those reasons also, Central Management Services Technical Services Staff should not be relying on this approval recommendation when analyzing future exemption requests on behalf of their Director since the general rule regarding reporting relationships is still that the requested position report to an agency Director, a statutory Assistant Director, or their equivalent.

Bob Arya, Deputy Director of the IOCI, was present and indicated concurrence with the presentation. He noted that Media Administrators were unique in that they were organizationally situated in Central Management Services but spent the majority of their time in their assigned agencies. Their media-centric role necessitated that they maintain a close working relationship with their assigned agency director. He reiterated the essential role of the Division Manager in coordinating the work of the Media Administrators. Deputy Director Arya noted for the Commission how the consolidation has benefited the State since the number of employees performing this function has been reduced from 60 to 33 which is a \$2,000,000 annual savings.

- With regard to Items D2 and D3, Executive Director Stralka reported that these two requests from the Illinois Emergency Management Agency were also continued from last month. The first request is for a Policy Advisor, a position that reports to the Director. This position has significant policy formulation responsibilities as well as serves as the agency's strategic planner. The agency had responded to substantive questions last month, but questions remain about its bargaining unit status since it is a Public Service Administrator, Option 1 and representation petitions are pending before the Illinois Labor Relations Board. The second request is for a Community Outreach Officer, a position that reports to the Director. While there were some initial concerns regarding overlap with the Media Administrators, the agency indicated that this position conducts more outreach to governmental entities that need to be made aware of the agency's services, such as law enforcement agencies, fire departments and other disaster preparedness units of local government which differentiates it from Media Administrators. However, this position also is a Public Service Administrator, Option 1 and the same unionization issues that exist for the Policy Advisor exist for this request. As it is not anticipated that there will be any resolution in the immediate future, Commission staff suggested and the agency did not object to the recommendation of a limited term exemption to allow some time for the unionization issues to clear themselves up while not depriving the agency of its need to fill these otherwise qualifying positions. For these reasons, Staff recommended approval of these requests for 12-month periods.
- With regard to Item E, Executive Director Stralka reported that this request is for the Director of the Office of Special Events, Programs, and Promotions at the Department of Natural Resources, a position that reports to the Director. This position has principal policy responsibility for safety programs mandated by statute such as hunting, boating, and snowmobiling. The position also has principal responsibility for various special events put on by the agency, notably the Conservation World exhibit at the State Fair. There are other special events it has the same responsibility for at various venues throughout the State and throughout the year. For these reasons, Staff recommended approval of this request.

IT WAS MOVED BY CHAIRMAN KOLKER, SECONDED BY COMMISSIONER DALIANIS, AND THE MOTION ADOPTED 5-0 TO GRANT THE REQUESTS FOR 4D(3) EXEMPTION FOR THE FOLLOWING POSITIONS:

The following 4d(3) exemption requests were granted¹ on August 21, 2008:

C. Illinois Department of Central Management Services

Position Number	40070-37-80-100-01-19
Position Title	Senior Public Service Administrator
Bureau/Division	Office of Communications & Information (IOCI) / Statewide Media Services
Functional Title	Media Administrator #2 – for Department of Public Health
Incumbent	None
Supervisor	Division Manager of Statewide Media Relations, who reports to IOCI Deputy Director, who in turn reports to the Director
Location	Cook County

D2. Illinois Emergency Management Agency (Granted for 12 months)

Position Number	37015-50-17-000-00-03
Position Title	Public Service Administrator
Bureau/Division	Director's Office
Functional Title	Senior Policy Advisor
Incumbent	None
Supervisor	Director
Location	Sangamon County

D3. Illinois Emergency Management Agency (Granted for 12 months)

Position Number	37015-50-17-000-00-04
Position Title	Public Service Administrator
Bureau/Division	Director's Office
Functional Title	Community Outreach Officer
Incumbent	None
Supervisor	Director
Location	Sangamon County

¹ Items D2 and D3 were each granted for a period of 12 months.

E. Illinois Department of Natural Resources

Position Number	40070-12-08-000-00-01
Position Title	Senior Public Service Administrator
Bureau/Division	Special Events Programs and Promotions
Functional Title	Office Director, Special Events Programs & Promotions
Incumbent	Robert Ruff
Supervisor	Director
Location	Sangamon County

V. CLASS SPECIFICATIONS

- **None submitted.**

IT WAS MOVED BY CHAIRMAN KOLKER, SECONDED BY COMMISSIONER DALIANIS, AND THE MOTION ADOPTED 5-0 TO DISAPPROVE ANY CLASS SPECIFICATIONS RECEIVED BY THE COMMISSION NOT CONTAINED IN THIS REPORT TO ALLOW ADEQUATE STUDY.

VI. MOTION TO GO INTO EXECUTIVE SESSION

IT WAS MOVED BY CHAIRMAN KOLKER, SECONDED BY COMMISSIONER PETERSON, AND BY ROLL CALL VOTE THE MOTION ADOPTED 5-0 TO HOLD AN EXECUTIVE SESSION PURSUANT TO SUBSECTIONS 2(c)(1), 2(c)(4), AND 2(c)(11) OF THE OPEN MEETINGS ACT.

KOLKER	YES	EWELL	YES
PETERSON	YES	DALIANIS	YES
BUKRABA	YES		

VII. RECONVENE MEETING

Upon due and proper notice the regular meeting of the Illinois Civil Service Commission was reconvened at 160 North LaSalle Street, Suite S-901, Chicago, Illinois at 10:30 a.m.

PRESENT

Chris Kolker, Chairman; Raymond W. Ewell, Barbara J. Peterson, Betty A. Bukraba, and Ares G. Dalianis, Commissioners; Daniel Stralka, Executive Director; and Andrew Barris, Assistant Executive Director.

VIII. NON-MERIT APPOINTMENT REPORT

The Personnel Code permits non-merit appointments for a limited period of time, i.e., emergency appointments shall not exceed 60 days and shall not be renewed, and positions shall not be filled on a temporary or provisional basis for more than six months out of any twelve-month period. Consecutive non-merit appointments are not violative of the Code, however, they do present a possible evasion of merit principles and should be monitored. Set forth below is the number of consecutive non-merit appointments made by each department. These statistics are from the Department of Central Management Services' Consecutive Non-Merit Report.

Agency	6/30/08	7/31/08	7/31/07
Agriculture	1	2	8
Arts Council	0	1	1
Central Management Services	6	4	7
Children and Family Services	12	12	9
Employment Security	2	7	0
Healthcare and Family Services	16	9	16
Historic Preservation	2	9	24
Human Services	4	4	4
Natural Resources	25	26	34
Property Tax Appeal Board	1	1	0
State Police	1	1	0
State Retirement Systems	0	1	0
Transportation	6	5	69
Veteran's Affairs	3	2	0
Workers' Compensation Commission	1	3	0
Totals	80	87	172

IX. PUBLICLY ANNOUNCED DECISIONS RESULTING FROM APPEAL

• DISCHARGE

DA-11-08

Employee	Michael A. Sanders	Appeal Date	10/12/07
Agency	CMS	Decision Date	08/08/08
Type	Discharge	ALJ	Andrew Barris
Charge(s)	Insubordination, misuse of state working time, and conduct unbecoming	Recommended Decision	Charges not proven because CMS was not reasonable in ordering employee to attend the independent medical examination.

IT WAS MOVED BY COMMISSIONER EWELL, SECONDED BY COMMISSIONER BUKRABA, AND BY ROLL CALL VOTE OF 3-2 THE MOTION ADOPTED TO AFFIRM AND ADOPT THE ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION THAT THE WRITTEN CHARGES HAVE NOT BEEN PROVEN BECAUSE, IN LIGHT OF THE CIRCUMSTANCES OF THIS CASE, CENTRAL MANAGEMENT SERVICES WAS NOT REASONABLE IN ORDERING MICHAEL SANDERS TO ATTEND THE INDEPENDENT MEDICAL EXAMINATION (IME) SCHEDULED ON SEPTEMBER 5, 2007. IN THE ABSENCE OF ANY DEPARTMENT OR PERSONNEL RULE DETAILING THE AUTHORITY OF CENTRAL MANAGEMENT SERVICES TO ORDER AN EMPLOYEE TO ATTEND AN IME WITHOUT CONSENT, CENTRAL MANAGEMENT SERVICES WAS NOT REASONABLE IN ORDERING MICHAEL SANDERS TO ATTEND AN IME BECAUSE THERE IS NO CREDIBLE EVIDENCE THAT SANDERS EVER PHYSICALLY THREATENED ANYONE AT ANY TIME. IN ADDITION, THERE IS NO EVIDENCE THAT CENTRAL MANAGEMENT SERVICES CONDUCTED AN INVESTIGATION INTO THE EVENTS SURROUNDING VICTOR PUCKETT AND MICHAEL SANDERS – OTHER THAN SOLELY RELYING UPON A WRITTEN STATEMENT BY JAYME LEBSHIER.

KOLKER	NO	EWELL	YES
PETERSON	YES	DALIANIS	NO
BUKRABA	YES		

- **DISCHARGE**

DA-13-08

Employee	Patrick B. McGarry	Appeal Date	10/16/07
Agency	DPH	Decision Date	08/08/08
Type	Discharge	ALJ	Andrew Barris
Charge(s)	Inappropriate workplace conduct (hostile, antagonistic and threatening in a confrontation with supervisor)	Recommended Decision	Charges dismissed; employee was already disciplined for the same offense.

IT WAS MOVED BY COMMISSIONER DALIANIS, SECONDED BY COMMISSIONER EWELL AND BY ROLL CALL VOTE OF 5-0 THE MOTION ADOPTED TO AFFIRM AND ADOPT THE ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION THAT THE WRITTEN CHARGES SHOULD BE DISMISSED BECAUSE THE EMPLOYEE WAS ALREADY DISCIPLINED FOR THE SAME OFFENSE. THIS IS SUPPORTED BY THE ILLINOIS SUPREME COURT DECISION BURTON V. CIVIL SERVICE COMMISSION IN WHICH THE ILLINOIS SUPREME COURT HELD THAT AN EMPLOYEE CANNOT BE DISCIPLINED TWICE FOR THE SAME OFFENSE.

KOLKER	YES	EWELL	YES
PETERSON	YES	DALIANIS	YES
BUKRABA	YES		

X. **APPEALS TERMINATED WITHOUT DECISION ON THE MERITS**

- **DISMISSED**

D-42-08

Employee	Michael Monterubio	Appeal Date	4/10/08
Agency	DOT	Decision Date	7/31/08
Type	Demotion	ALJ	Andrew Barris
Charge(s)	Demoted from Lead Worker Emergency Traffic Patrol to Lead Maintenance Worker	Recommended Decision	Dismissed; default (failed to provide requested documentation).

- **DISMISSED**

DA-50-08

Employee	Joey C. Siglar	Appeal Date	5/30/08
Agency	DOT	Decision Date	8/08/08
Type	Discharge	ALJ	Andrew Barris
Charge(s)	Employee not certified	Recommended Decision	Dismissed; default (failed to appear on date set for hearing).

IT WAS MOVED BY COMMISSIONER DALIANIS, SECONDED BY COMMISSIONER PETERSON, AND BY ROLL CALL VOTE OF 5-0, THE MOTION ADOPTED TO AFFIRM AND ADOPT THE ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISIONS TO DISMISS THE MONTERUBIO AND SIGLAR APPEALS.

KOLKER	YES	EWELL	YES
PETERSON	YES	DALIANIS	YES
BUKRABA	YES		

XI. **STAFF REPORT**

No discussion.

XII. **CONSIDERATION OF CHANGING THE COMMISSION'S REGULARLY SCHEDULED MEETING DAYS AND TIMES**

Commissioner Dalianis led a discussion, in which all the Commissioners participated, addressing the potential benefits and drawbacks to changing the Commission's regularly scheduled meeting days and times. After considering the ways in which a change in the meeting days and times could benefit the State of Illinois and the work of the Commission by minimizing travel expenditures and allowing agency representatives to more easily attend Commission meetings, it was the consensus of the Commission that beginning in calendar year 2009 meetings would be scheduled for the third Friday of the month starting at 11:00 a.m. in Chicago and 1:00 p.m. in Springfield.

XIII. **ANNOUNCEMENT OF NEXT MEETING**

Announcement was made of the next regular meeting to be held on September 18, 2008 at 9:00 a.m. in the Commission's Chicago office.

August 21, 2008

XIV. MOTION TO ADJOURN

IT WAS MOVED BY CHAIRMAN KOLKER, SECONDED BY COMMISSIONER PETERSON, AND THE MOTION ADOPTED 5-0 TO ADJOURN THE MEETING AT 10:42 A.M.