

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. 08-EEC-008
	)	
MARVIN SPRAGUE,	)	
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 January 7, 2008. Petitioner’s affidavit of service, filed on January 15, indicates that a copy of the petition and complaint was served on respondent on January 10, 2008. Respondent filed no objection to the petition or complaint.

On April 25, 2008 petitioner filed a motion for summary judgment. Respondent filed a response to petitioner’s motion on May 22, 2008 and filed supplemental documents and May 27, 2008.

An evidentiary hearing was conducted on May 5, 2008 in the offices of the Executive Ethics Commission. Petitioner was represented by Assistant Attorney General Thomas Klein. Respondent appeared pro se.

FINDINGS OF FACT

A complete copy of 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 Marvin Sprague was employed by the State of Illinois in various positions since 1978. He served as Equal Employment Officer and Ethics Officer for the Illinois Department of Natural Resources (“IDNR”) from February 1, 2006 until April 2, 2007.
2. N. Richard King is and was at all times relevant to this matter the President of King Technologies, Inc.

3. On September 7, 2006 respondent sent a letter to the Director of IDNR resigning his position at IDNR effective September 30, 2006. The letter cites both personal and business reasons for the resignation, including “daunting” responsibilities of his position and lack of resources available to him. On September 14, 2006 respondent sent another letter rescinding his letter of resignation.
4. On or about September 19, 2006 IDNR executed a contract with King Technologies, Inc. The purpose of the contract was to provide services to the newly-created EEO/Ethics Office at IDNR. The term of the contract was from September 6, 2006 to December 15, 2006. A copy of this contract was admitted into evidence during the evidentiary hearing as Exhibit #1.
5. Respondent signed the contract request form on August 25, 2006.
6. On or about October 6, 2006 Respondent contacted N. Richard King and told him that he wanted to speak to him concerning an important matter. Respondent and King agreed to meet at a coffee shop later that morning.
7. At the coffee shop Respondent asked King to lend him an amount of money until respondent’s hardship application for obtaining money in his deferred compensation account was approved. King testified that respondent solicited \$5,000 and later in the same conversation changed the amount to \$2,500. Respondent testified that he requested a loan of \$800 and denies soliciting a loan in any other amount.
8. At the meeting, King refused to provide the loan sought by respondent. Respondent apologized and acknowledged that such a loan would not be proper.
9. Some minutes after the meeting, King telephoned respondent and again refused to lend respondent any money. During this conversation respondent apologized profusely for asking for the loan. Respondent assured King that the conversation would not affect King Technology’s contract in any way.
10. The Office of the Executive Inspector General for Agencies of the Governor (“OEIG”) conducted an investigation into this matter. As part of this investigation, respondent drafted a statement on January 16, 2007. This statement was introduced into evidence at the evidentiary hearing as Exhibit #2. Respondent asserted at the hearing that the facts contained in his statement were true.
11. In December 2006 IDNR extended the duration of the King Technologies, Inc. contract to January 31, 2007. In January 2007, respondent sought to extend the duration of the contract again.
12. During the time in question, respondent faced a number of serious medical and personal problems and difficulties at work.

13. As a result of the outcome of the OEIG's investigation into this matter, respondent separated from State service effective April 2, 2007.
14. Respondent worked for the State of Illinois for approximately 29 years. His annual salary at the time of his resignation was approximately \$82,000. Respondent had intended to continue working for the State of Illinois until he would be eligible to receive a pension.
15. Respondent is currently unemployed and receiving public assistance.

#### CONCLUSIONS OF LAW

1. Respondent Marvin Sprague was at all times relevant to this matter a 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 Gift Ban. 5 ILCS 430/20-5(d); 5 ILCS 430/10-10.
3. The Gift Ban prohibits a State employee from intentionally soliciting or accepting any gift from any prohibited source. 5 ILCS 430/10-10.
4. The Ethics Act defines "prohibited source" to include a person or entity who "(2) does business or seeks to do business (i) with the member or officer or (ii) in the case of an employee, by the employee or by the member, officer, State agency, or other employee directing the employee. 5 ILCS 430/1-5.
5. N. Richard King began "doing business" with IDNR on September 6, 2006, the effective date of the contract between IDNR and King Technologies, Inc.
6. N. Richard King is a "prohibited source" with respect to respondent.
7. The Ethics Act defines "gift" to include, among other things, a loan. 5 ILCS 430/1-5.
8. On October 6, 2006 respondent intentionally solicited a loan from a prohibited source when he asked Richard King for a loan.
9. None of the twelve exceptions provided for in the Gift Ban apply to the present matter.
10. Respondent has violated Section 10-10 of the State Officials and Employees Ethics Act. 5 ILCS 430/10-10.
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).

### ANALYSIS

On October 6, 2006 respondent solicited a loan from a prohibited source. The parties dispute the exact amount of the solicitation, but the amount is not relevant for purposes of determining that the solicitation violated the Gift Ban. Respondent argued at the hearing that a loan is not the same as a gift. The General Assembly, however, has defined "gift" for purposes of the Gift Ban to include a loan. 5 ILCS 430/1-5.

While the Ethics Act provides that the Commission may levy an administrative fine of up to \$5,000, it does not provide any guidance concerning an appropriate fine, including any aggravating or mitigating factors for the Commission to consider. Also, since this is the first Gift Ban case to reach a conclusion before the Executive Ethics Commission, the Commission has little precedent to guide it.

After soliciting the loan and being rejected, respondent immediately acknowledged that his solicitation was inappropriate. Respondent has apologized for the violation and appears to be genuinely remorseful. He cooperated in the investigation and has accepted responsibility for his actions.

There is no evidence that respondent's solicitation affected the agency's relationship with this contractor. The contract was extended once and respondent attempted to extend it a second time. Also, there is no evidence that respondent's solicitation resulted in a direct loss of money to the agency, though there is a cost associated with the investigation and the present administrative action. Finally, respondent has already received a significant punishment in the loss of his State job.

One factor in aggravation is the fact that respondent served as Ethics Officer for IDNR. In that capacity, respondent was responsible for being aware of the provisions of the Ethics Act and for providing ethics guidance to employees of that agency. There is no question that he should have been aware of this prohibition, and should have held himself as an example for other employees.

As to petitioner's motion for summary judgment, the oral testimony received at the evidentiary hearing and respondent's subsequent written responses have created questions of fact that preclude the entry of summary judgment.

WHEREFORE, for the foregoing reasons, petitioner's motion for summary judgment is denied.

IT IS FURTHER ORDERED that an administrative fine of \$1,500.00 is levied against respondent Marvin Sprague for violation of 5 ILCS 430/10-10 the Gift Ban. This is a final administrative decision and subject to the Administrative Review Law.

ENTERED: June 25, 2008