

IN THE EXECUTIVE ETHICS COMMISSION
OF THE STATE OF ILLINOIS

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EXECUTIVE
ETHICS COMMISSION

JAMES A. WRIGHT, in his capacity as)
EXECUTIVE INSPECTOR GENERAL for)
AGENCIES OF THE GOVERNOR, State)
Of Illinois,)
Petitioner,)
v.)
ROBERT DANIEL,)
Respondent.)

No. 08-EEC-010

DECISION

This cause is before the Executive Ethics Commission ("Commission") following an evidentiary hearing. This decision will also serve as the Commission's final administrative decision in this matter.

Petitioner filed a petition for leave to file complaint ("petition") and verified complaint with the Commission on April 14, 2008. Respondent filed no response to this petition, which the Commission granted in part, but allowed petitioner to file an amended complaint. Subsequently, petitioner filed a verified amended complaint on August 14, 2008. Respondent filed objections on October 3 and petitioner filed a response on November 19. On December 3, 2008, the Commission determined that the amended complaint was sufficient to proceed.

An evidentiary hearing was conducted on November 19, 2009 at which petitioner was represented by Assistant Attorney General Thomas Klein. Respondent was represented by James Baker.

FINDINGS OF FACT

A complete copy of the record of proceedings 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 Robert Daniel began employment with the Illinois Department of Human Services (DHS) on June 1, 2006, as Chief Information Officer. He resigned effective November 20, 2008.

Alleged political activity

2. On October 12, 2006, Respondent received an email on his State computer from Thomas Lesiewicz inviting Respondent to an event for Adrian Fenty, the Democratic candidate

for Mayor of Washington, D.C. The email subject line contained the description: "Re: Networking event/Fundraiser next week." (Petitioner's exhibit 14).

3. Minutes after receiving this email, Respondent emailed back to Lesiewicz, "I would definitely like to attend." Minutes later, Lesiewicz responded, "Do you think Dr. Adams or Francisco or anyone else would like to go?" Respondent responded later that day "I am pretty sure that they would like to." (Petitioner's exhibit 14).
4. On October 17, 2006, Respondent emailed Lesiewicz again, asking, "Don't I need additional details relative to this event? I would like to attend, but am unaware of what steps to take to do so." Lesiewicz responded the following day, "Hi, Robert, You don't need to do anything. I'll just put you down at an RSVP=Yes and make sure we have a name badge. I want to be clear; donations are NOT necessary. So there is nothing additional you need to do. Unless there are other's [sic] you'd like to invite. We want to have the guest list finalized by COB today. Look forward to seeing you there." Respondent responded later that day, "I look forward to being there." (Petitioner's exhibit 14).
5. Respondent attended the event the following week, by himself, and made no political contribution to the Fenty campaign. (Tr. 67).
6. Respondent testified, without contradiction, that he viewed the event as a networking opportunity, and that he has never engaged in political activity, except on one occasion years earlier when he made a contribution to a candidate, at the request of a friend. (Tr. 238-9).

Alleged failure to cooperate/obstruction or interfering with an investigation

7. In the summer of 2006, respondent's work group was tasked with developing a presentation to the Governor's Office of Management and Budget in support of the Human Services Delivery Framework. Deputy Director Francis Depres recommended that respondent approach Blackwell Consulting Services (BCS) for assistance. (Tr. 14). BCS had earlier prepared an "assessment" to DHS related to this project. (Tr. 18).
8. Respondent met Robert Blackwell, Sr., the principal of BCS, at Blackwell's office soon thereafter. According to respondent, at this meeting Blackwell offered to help with the presentation pro bono, because this was an extension of the assessment his firm had done previously. (Tr. 21).
9. Robert Blackwell, Sr. testified that he has never offered to perform work on a pro bono basis. (Tr. 83). He also testified that his firm often begins work for a client before a contract is signed, and knowing that there is a risk that no contract will be signed. (Tr. 84).

10. Respondent testified that pro bono work from contractors is not unusual in his field and that Blackwell offered the services of Thomas Lesiewicz, who would be helping create the presentation. (Tr. 22).
11. Thomas Lesiewicz testified that he didn't remember a specific conversation about doing the DHS project pro bono, but might have done so "if it's a small project.. If it's just a day or two." (Tr. 105).
12. Respondent anticipated that work related to the presentation would involve "you sit in the room, you spend half a day to a day, you line up the nature of the components that need to be presented, support it with facts within the document, itself and perhaps supply a supplemental narrative." (Tr. 25).
13. Two or three weeks later, respondent found out that little progress had been made and that the presentation was going in a different direction than he anticipated. Respondent believed that a procurement vehicle needed to be established to pay for the amount of work that was done. (Tr. 24).
14. Respondent signed a Contract Agreement Approval Form (CAAF) on September 21, 2006 in an attempt to get BCS paid. (Tr. 56-57). The CAAF was not approved.
15. Thomas Lesiewicz testified that he remembered Daniel saying that the project is bigger than he thought and asked that an invoice be sent to Daniel. (Tr. 97). Lesiewicz also testified that BCS had several consultants "between projects" not earning any money for the company, so there was a decision to get them started working on the project even without a contract. (Tr. 99).
16. The Office of Executive Inspector General for Agencies of the Governor (OEIG) opened an investigation regarding a complaint that Respondent had allowed Blackwell Consulting Services to perform work on a DHS project without a contract.. As part of that investigation, respondent was interviewed for two or three hours in early November, 2007 by Gary Stone and Jarran Riley, investigators with the OEIG. (Tr. 143). This OEIG interview was not recorded. (Tr. 163).
17. During the interview, Stone asked respondent whether he socialized or had social interaction with Thomas Lesiewicz. Respondent answered that he had lunch with Lesiewicz a few times, but did not mention seeing Lesiewicz at the Fenty event. (Tr. 139).
18. During the interview, respondent claims that Stone asked him whether he had ever engaged in fundraising activities during State time. (Tr. 70). Stone recalls the question as if respondent "had ever discussed or got involved with talking about attending a political fund raiser during state work hours." (Tr. 138). Respondent stated that he had not..
19. During the interview, Stone asked respondent about the hiring of an employee at DHS. Respondent remembers being asked whether he had ever used his influence to get a

person hired in DHS. (Tr. 61). Stone remembers asking Daniel whether he would ever or had ever used his position or attempt to use his position to facilitate the hiring of a relative or acquaintance of a vendor.. (Tr. 136). Respondent stated that he had not done so.

20. At the request of Robert Blackwell, Jr., a vendor of the State of Illinois, respondent hand-delivered a resume of Nelida Smyser-DeLeon to the office of Carol Adams, Secretary of DHS. Nelida Smyser-DeLeon was subsequently hired by DHS. (Tr. 65-66). There is no evidence that respondent did anything further to facilitate or advocate for Smyser-DeLeon's hiring.
21. During the interview, respondent denied that he told DHS staff that Blackwell Consulting Services were supposed to perform services on a pro bono basis. Respondent had, however, sent an email to DHS staff on January 18, 2007, stating that "Blackwell services originated as pro bono, but the intention was to was to [sic] have them provide narrow scope assistance for IT initiatives" (Petitioner's exhibit 6). In another email the same day, respondent explained "Several months ago, Blackwell offered to assist with developing a presentation on a pro bono basis ... As the effort continued, it was clear that this could quickly go beyond their original expectations, so as not to exceed agreement was prepared (\$25,000)." (Petitioner's exhibit 7.)
22. The complaint alleges at paragraph 9(f) that respondent stated during the interview "he did not think that a Contract Agreement Approval Form ("CAAF") for BCS was completed when in fact a CAAF was completed and signed by Respondent." At hearing, Stone testified that respondent, when asked whether a CAAF had been completed, "said, no, not to his knowledge or that he wasn't aware of one." (Tr. 134).
23. A CAAF relative to Blackwell's involvement in the project was submitted for approval to DHS. Respondent's signature was on the CAAF. (Tr. 56-57). The CAAF was not approved.

CONCLUSIONS OF LAW

1. Respondent Robert Daniel 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 performance of prohibited political activity during compensated time and misappropriation of State property, or resources to engage in prohibited political activity. (5 ILCS 430/5-1 5(a)) and his alleged intentional obstruction of an investigation of an inspector general.. (5 ILCS 430/50-5(e)).

3. "Prohibited political activity" means, among other things, "(1) Preparing for, organizing, or participating in any political meeting, political rally, political demonstration, or other political event.." 5 ILCS 430/1-5.
4. "Political" is defined as "any activity in support of or in connection with any campaign for elective office or any political organization ..." 5 ILCS 430/1-5.
5. "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.
6. Between October 12 and October 17, 2006, respondent Robert Daniel intentionally misappropriated State property or resources to engage in prohibited political activity during compensated time by sending four emails in connection with preparation for a political event..
7. Respondent has violated Section 5-15(a) of the State Officials and Employees Ethics Act.. 5 ILCS 430/5-15(a).
8. Respondent's behavior during the November 1, 2007 interview does not constitute failure to cooperate in violation of Section 20-70 of the State Officials and Employees Ethics Act.. 5 ILCS 430/20-70.
9. Respondent's behavior during the November 1, 2007 interview does not constitute intentional obstruction or interference with an investigation in violation of Section 50-5(e) of the State Officials and Employees Ethics Act.. 5 ILCS 430/50-5(e).
10. 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

Between October 12 and 17, 2006, Robert Daniel sent four emails related to attending a fundraiser for Adrian Fenty, a candidate for mayor of Washington, D.C.. These emails were sent during compensated State time and from a State computer.. The question before the Commission is whether sending the emails violated the ban on engaging in prohibited political activities during compensated time or the ban on misappropriating State property or resources by engaging in prohibited political activities..

There is no question that Daniel sent the emails from a State computer during compensated time. There is also no question that Daniel sent the emails as part of his preparation for attending a political event.. Certainly, Daniel sent the emails "in connection with [a] campaign for elective office," (5 ILCS 430/1-5), even if he did not monetarily support the Fenty campaign..

Daniel's defense that he was motivated to attend the fundraiser because he saw it as a networking opportunity, does not change the fact that the Fenty event was a political fundraiser. Many unknown and unknowable desires motivate people to engage in political behavior. The Commission is not required to determine whether a person who participated in political activity was motivated to do so by support for the candidate or party, or for some other motivation.

The violation, however, is quite small in nature. The emails were short and there is no evidence that Daniel benefited personally from the violation or that he engaged in any other political activity, prohibited, or even permitted by the Ethics Act. Also weighing in Daniel's favor is the fact that he sent the emails in question only about four months after beginning State employment. No evidence was presented at hearing concerning Daniel's ethics training, but at the time he was hired, new employees were required to complete initial ethics training only within six months of employment. 5 ILCS 430/5-10.

As to the matter of Daniel's alleged failure to cooperate in the investigation in violation of Section 20-70 (5 ILCS 430/20-70) or alleged intentional obstruction or interference with an investigation in violation of Section 5-50(e) (5 ILCS 430/20-70), the Commission must rely upon the testimony of Daniel and OEIG investigator Stone, because no recording of the November 1, 2007 interview was made and the investigators' notes have been destroyed per OEIG practice.

This interview was conducted over one year after many of the relevant events took place. At first glance, it appears that some of Daniel's answers were at variance with the truth. Closer examination, however, suggests to the Commission that Daniel attempted to answer questions truthfully, but some of Stone's questions were worded vaguely and without context.

For example, Stone asked Daniel whether he socialized or had social interaction with Thomas Lesiewicz. Respondent answered that he had lunch with Lesiewicz a few times, but did not mention seeing Lesiewicz at the Fenty event. Seeing one person among, perhaps, hundreds of others, at an event that occurred over one year earlier, however, does not constitute social interaction that Daniel should have mentioned in response to this question. The Commission finds that Daniel's answer does not constitute a failure to cooperate or intentional obstruction or interference with an investigation.

In another example, Stone testified that he asked Daniel if he "had ever discussed or got involved with talking about attending a political fundraiser during state work hours." (Tr. 138). Daniel stated that he had not. There was no discussion or talking, but rather, an email exchange. Furthermore, the question, as recounted by Stone, is confusing. Did the alleged discussion take place during state work hours, or did the fundraiser allegedly take place during state work hours? Even assuming that Daniel remembered the brief email exchange that took place over one year earlier, he may have responded the way he did because in his mind he believed he was attending a networking event and not a political event or fundraiser.

In another example, Stone asked respondent about the hiring of an employee at DHS. Stone remembers asking Daniel whether he had ever been asked to use his influence to get a vendor's relative or associate hired within DHS. Daniel remembers being asked if he ever used his position or attempt to use his position to facilitate the hiring of a relative or acquaintance of a

vendor.. Respondent stated that he had not done so, but later acknowledged that he hand-delivered a resume to the office of the Secretary of DHS. But in either case, the Commission finds that hand-delivering a resume, the only evidence presented at hearing, does not constitute using one's position to facilitate hiring.

In each of these examples, Stone had the opportunity to prepare his questions for Daniel in advance. It appears that Stone had some evidence readily available to him about what truthful answers from Daniel should be, at least from Stone's point of view. But Stone asked vague questions without any meaningful context about events that occurred more than one year earlier. Stone's questions did not achieve a clearer understanding of the truth in this matter..

As to other matters discussed during the interview, it appears that there was some confusion about whether BCS services were to be provided to DHS pro bono. Robert Blackwell, Sr. insisted that they were not. Thomas Lesiewicz was much less certain, however, and acknowledged that BeS might have provided pro bono services for a small project of a day or two. As to the matter of the CAAF completion and approval, these are matters that occurred long before the interview. It appears that Daniel's denials were uncertain, and the truth of these matters was known to Stone in advance of the interview.

Respondent has failed to meet its burden of proof that Daniel failed to cooperate with an investigation or intentionally obstructed or interfered with an investigation.

CONCLUSION

WHEREFORE, for the foregoing reasons, the Commission finds that respondent Robert Daniel violated Section 5-15(a) of the State Officials and Employees Ethics Act. (5 ILCS 430/5-15(a)).

WHEREFORE, for the foregoing reasons, the Commission finds that respondent Robert Daniel did not violate Sections 20-70 or 50-5(e) of the State Officials and Employees Ethics Act. (5 ILCS 430/20-70, 5 ILCS 430/50-5(e)).

IT IS FURTHER ORDERED that an administrative fine of \$100.00 is levied against respondent Robert Daniel in accordance with his violation of Section 5-15(a) of the State Officials and Employees Ethics Act (5 ILCS 430/5-15(a)).

This is a final administrative decision and subject to the Administrative Review Law.

ENTERED: February 24, 2010