

IN THE EXECUTIVE ETHICS COMMISSION
OF THE STATE OF ILLINOIS

IN RE: ROLAND MARR

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No. 13-EEC-020

Appeal of OEIG
Revolving Door
Determination

DECISION

This cause is before the Executive Ethics Commission (“Commission”) on appeal by the Office of the Attorney General from a determination by the Office of the Executive Inspector General for Agencies of the Illinois Governor.

FINDINGS OF FACT

A complete copy of the record of proceedings has been reviewed by the members of the Executive Ethics Commission. The record consists of the Attorney General’s April 29, 2013 Brief in Support of Appeal, the Office of the Executive Inspector General for Agencies of the Illinois Governor’s May 6, 2013 Comment to the Illinois Attorney General’s Appeal of Its Revolving Door Determination, and Roland Marr’s May 6, 2013 response.

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

1. On April 19, 2013, the Office of the Executive Inspector General for Agencies of the Illinois Governor (OEIG) made a revolving door determination pursuant to 5 ILCS 430/5-45(f) with respect to Roland Marr’s (“Marr”) proposal to provide consulting services to the Illinois Petroleum Marketers Association (“IPMA”).
2. The determination concluded that “you are **not restricted** from accepting the employment with them.” (emphasis in original).
3. On April 29, 2013, the Office of the Illinois Attorney General filed a brief in support of its appeal.
4. Marr was employed with the Illinois Department of Revenue (“Revenue”) for a period of thirty years until his retirement on November 30, 2012. At the time of his retirement, Marr was responsible for managing Revenue’s Alcohol, Tobacco and Fuel Division (“ATFD”).
5. As the ATFD manager, Marr had regulatory and licensing responsibility over motor fuel suppliers, distributors and receivers, fuel carriers and transporters, and entities operating

motor vehicles exempt from paying motor fuel taxes. He also was involved in fuel tax decisions related to various entities.

6. For calendar year 2012, pursuant to 5 ILCS 430/5-45(c), the Office of the Governor filed a policy with the Executive Ethics Commission delineating which State positions under his jurisdiction and control, by the nature of their duties, may have the authority to participate personally and substantially in the award of State contracts or in regulatory or licensing decisions. This policy identified Marr and his position of Motor Fuel Division Manager.
7. IPMA is a lobbying organization that was formed in order to, among other reasons, “[f]oster a cooperative spirit between petroleum marketers and convenience store owners doing business in Illinois.” Attorney General Brief, p. 15.
8. IPMA is not licensed or regulated by Revenue, but some of its members are.
9. The Commission has sought written public opinion on this matter by posting the appeal on its website and posting a public notice at its offices in the William Stratton Building.

CONCLUSIONS OF LAW

1. An Executive Inspector General’s determination regarding revolving door restrictions may be appealed to the Commission by the person subject to the decision or the Attorney General no later than the 10th calendar day after the date of the determination. 5 ILCS 430/5-45(g).
2. The Office of the Attorney General’s appeal of the OEIG’s April 19, 2013 revolving door determination with respect to Roland Marr’s proposed employment is properly before the Commission and the Commission has jurisdiction to consider the appeal.
3. Subsection (b) of the revolving door section of the State Officials and Employees Ethics Act provides:

(b) No former officer of the executive branch or State employee of the executive branch with regulatory or licensing authority, or spouse or immediate family member living with such person, shall, within a period of one year immediately after termination of State employment, knowingly accept employment or receive compensation or fees for services from a person or entity if the officer or State employee, during the year immediately preceding termination of State employment, participated personally and substantially in making a regulatory or licensing decision that directly applied to the person or entity, or its parent or subsidiary.

5 ILCS 430/5-45(b)

4. Subsection (g) of the same section provides:

(g)...In deciding whether to uphold an Inspector General's determination, the appropriate Ethics Commission or Auditor General shall assess, in addition to any other relevant information, the effect of the prospective employment or relationship upon the decisions referred to in subsections (a) and (b), based on the totality of the participation by the former officer, member, or State employee in those decisions.

5 ILCS 430/5-45(g)

5. Respondent proposes to receive consulting fees from IPMA, an organization that he did not license or regulate. Some of the IPMA's members may have been regulated or licensed by respondent.
6. This matter is similar to the Commission's decision in Byerly, 12-EEC-008 (3/29/12), where a State employee sought employment with a consulting firm with clients she had regulated in the year prior to her termination of State employment. The Commission determined that such an arrangement did not violate the Revolving Door section of the Ethics Act.
7. During the year prior to his termination of State employment, Marr did not participate personally and substantially in any licensing or regulatory decisions that directly applied to IPMA. The record does not reflect Marr's interaction with specific IPMA members.
8. The Commission is concerned, however, that the record does not sufficiently illuminate important questions.¹ For example, the record does not reflect Marr's interaction with specific IMPA members, especially including the businesses, as well as individuals, in the leadership of IMPA. In addition, the record does not reflect the structure and funding of the trade association. The Commission has previously recognized, consistent with applicable law, that an entity's veil may be pierced where there is sufficient unity of interest and ownership between the entity and its owners or corporate affiliates. Although this case does not present a traditional piercing analysis, it does raise similar questions about whether observing the separate existence between the IMPA and its members would promote an unjust result. As the record now stands, however, the Commission has too little information to make a judgment about that issue.
9. The Commission encourages, as permitted by the very restrictive time constraints contained in the Ethics Act, the OEIG and the Office of the Attorney General in future matters of a similar nature to develop more facts for the record concerning the membership of the association, the employee's prior interaction with those members, and

¹ The Commission in no way faults the OEIG or the AG for the lack of information in this case given the time constraints imposed by the statute, and because the Commission has not previously identified its focus on this evidentiary point. Going forward, the Commission encourages the OEIG and the AG to attempt to determine these relevant facts, enter them into the record and explain how they should impact the revolving door determination in future such cases.

the source of funding for the compensation of the employee. Stakeholders may also want to consider legislative changes that address this and similar situations more specifically.

WHEREFORE, for the foregoing reasons, the Commission denies the Office of the Attorney General's appeal and affirms the Office of the Executive Inspector General's April 19, 2013 determination. Roland Marr's proposed consulting work with IPMA would not violate the State Officials and Employees Ethics Act's revolving door prohibition.

ENTERED: May 9, 2013

SO ORDERED.

The Executive Ethics Commission

By: 

Chad D. Fornoff
Executive Director