IN THE EXECUTIVE ETHICS COMMISSION
OF THE STATE OF ILLINOIS

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EXECUTIVE
ETHICS COMMISSION

MARGARET A. HICKEY, in her capacity as EXECUTIVE INSPECTOR GENERAL for AGENCIES OF THE GOVERNOR, State Of Illinois, Petitioner,	)	
v.	)	No. 15-EEC-006
KENDRA ELBERSON, Respondent.	)	

DECISION

This cause is before the Executive Ethics Commission ("Commission") for purposes of considering petitioner's unopposed motion for summary judgment. This decision will also serve as the Commission's final administrative decision in this matter.

On February 6, 2015, petitioner filed a two-count complaint with the Commission. The first count alleged that respondent engaged in prohibited political activity. The second count alleged that respondent failed to cooperate in the investigation by making material and intentional omissions and knowingly false, misleading and evasive statements during the course of her interviews with investigators. An affidavit of service indicates that respondent was served a copy of the complaint on February 17, 2015. On April 15, 2015, the Commission entered an order finding the complaint sufficient to proceed.

On August 12, 2015, petitioner filed an unopposed motion for summary judgment with an attached joint stipulation of undisputed material facts.

Petitioner is represented by Assistant Attorney General Leigh J. Richie. Respondent is represented by Scott Miller.

FINDINGS OF FACT

The record of proceedings has been reviewed by the members of the Executive Ethics Commission. Based upon this record, the Commission makes the following findings of fact:

1. At all times relevant to the allegations in petitioner's complaint, respondent was employed by the Illinois Department of Corrections ("IDOC") as an Executive II at the Northern

Reception and Classification Center at Stateville Correctional Center ("Stateville") in Joliet, Illinois. Respondent's working job title was Records Office Supervisor.

2. As an IDOC employee, respondent had a duty to comply with the Illinois State Officials and Employees Ethics Act (the "Ethics Act") 5 ILCS 430/1 *et seq.*, and all the policies adopted and implemented pursuant to the Act.

3. At all times relevant to the allegations in petitioner's complaint, respondent annually completed IDOC's employee ethics training. Each of these IDOC ethics training programs included sections on the Ethics Act's prohibition on the misappropriation of State property or resources to conduct prohibited political activities.

4. At all times relevant to the allegations in petitioner's complaint, respondent had knowledge of the restrictions imposed by the Ethics Act's prohibition on the misappropriation of State property or resources to conduct prohibited political activities.

5. From February 2013 until November 2014, respondent served as campaign manager for Kenneth R. Briley, former warden of the Stateville Correctional Center and candidate for Sheriff of Grundy County.

6. On August 10, 2013, the Briley Campaign hosted the "IDOC Reunion," a fundraiser located in Joliet, Illinois at which items were raffled or auctioned for the purpose of raising campaign funds. Two of those items included: (1) a photo of a Stateville electric chair signed by past and present wardens and (2) a large quilt containing IDOC facility names and seals.

7. On August 8, 2013 and August 9, 2013, respondent transmitted three e-mails from her State-provided e-mail account during compensated time: two to IDOC Deputy Director and former Stateville Warden Marcus Hardy and one to former Stateville Warden Michael Lemke. In these e-mails, respondent asked Hardy and Lemke, respectively, to sign the electric chair photograph. Respondent then sent an additional e-mail from her State-provided account, during compensated time, to Hardy in which she thanked him for signing the photograph.

8. Following the IDOC Reunion, respondent used her State-issued e-mail account on August 26, 2013 and September 3, 2013, during compensated time, to discuss with fellow IDOC employee Wendy Briley (the campaign treasurer and wife of the candidate) a campaign reimbursement issue initially raised by Ms. Briley that pertained to the materials used to create the quilt raffled at the IDOC Reunion.

9. Respondent also used her State-provided e-mail account on September 3, 2013 to respond to a separate inquiry from another IDOC employee regarding the reimbursement issue referenced above in Paragraph 8.

STIPULATED UNDISPUTED CONCLUSIONS OF LAW AND MIXED QUESTIONS OF LAW AND FACT

10. Pursuant to 5 ILCS 430/20-5(d), the Illinois Executive Ethics Commission (the "Commission") has jurisdiction over "all officers and employees of State agencies" for purposes of any matter arising under or involving the Ethics Act. Consequently, the Commission's authority extends to officers and employees of IDOC.

11. As an IDOC employee, respondent was subject to the provisions of the Ethics Act, and therefore subject to the jurisdiction of the Commission with respect to matters arising under the Ethics Act. 5 ILCS 430/20-5(d).

12. The "ultimate jurisdictional authority" for IDOC officers and employees, including respondent, is the Governor of the State of Illinois. *Id.* § 1-5 (defining and identifying the "ultimate jurisdictional authority" for various state officers, employees, and the entities for which they work).

13. The Ethics Act provides, in relevant part, that the OEIG has jurisdiction over "all officers and employees of . . . executive branch State agencies under the jurisdiction of the Executive Ethics Commission," *id.* § 20-10(c), and authorizes the OEIG to investigate allegations of fraud, waste, abuse, mismanagement, misconduct, nonfeasance, misfeasance, malfeasance, violations of the Ethics Act, or violations of other related laws and rules. *Id.*; *accord id.* § 20-20. Accordingly, the OEIG's authority extends to IDOC and its officers and employees.

14. Under the Ethics Act, "State employees shall not intentionally misappropriate any State property or resources by engaging in any prohibited political activity for the benefit of any campaign for elective office or any political organization." *Id.* § 5-15(a).

15. On August 8, 2013, August 9, 2013, August 26, 2013, and September 3, 2013, respondent violated the Ethics Act by knowingly and intentionally misappropriating State property or resources to conduct and participate in prohibited political activity during time for which respondent was being compensated by the State of Illinois, when she sent e-mails related to the IDOC Reunion from her State-provided account.

16. The Ethics Act provides, in relevant part, that the Commission may levy an administrative fine of up to $5,000 against any person who violates the Ethics Act by knowingly

and intentionally misappropriating State property or resources for engaging in prohibited political activity. 5 ILCS 430/50-5(a); *id.* § 5-15.

STANDARD OF REVIEW

Granting summary disposition in an administrative proceeding is comparable to granting summary judgment under section 2-1005 of the Code of Civil Procedure. *Bloom Tp. High School v. Illinois Commerce Com'n* (1999), 309 Ill. App. 3d 163, 177; 242 Ill. Dec. 892, 903; *Cano v. Village of Dolton* (1993), 250 Ill.App.3d 130, 138; 189 Ill.Dec. 883, 620 N.E.2d 1200. Because of the similarities in the two procedures, it is appropriate to apply the standards applicable to granting summary judgment under section 2-1005 when reviewing a summary determination entered by an administrative agency. See *Cano,* 250 Ill.App.3d at 138, 189 Ill.Dec. 883, 620 N.E.2d 1200.

Summary judgment is appropriate only where "the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." 735 ILCS 5/2-1005(c)

In determining whether a genuine issue as to any material fact exists, a court must construe the pleadings, depositions, admissions, and affidavits strictly against the movant and liberally in favor of the opponent. A triable issue precluding summary judgment exists where the material facts are disputed, or where, the material facts being undisputed, reasonable persons might draw different inferences from the undisputed facts. The use of the summary judgment procedure is to be encouraged as an aid in the expeditious disposition of a lawsuit. However, it is a drastic means of disposing of litigation and, therefore, should be allowed only when the right of the moving party is clear and free from doubt. *Adams v. Northern Illinois Gas Company* (2004), 211 Ill. 2d 32, 43; 284 Ill. Dec. 302, 310.

ANALYSIS

Respondent stipulated to a series of facts from which the Commission concludes that respondent violated Section 5-15(a) of the State Officials and Employees Ethics Act (5 ILCS 430/5-15(a)). The parties have agreed to recommend a fine of $2,000.00. The Commission is not bound to accept this recommendation, but neither does it desire to prolong litigation unnecessarily.

The Ethics Act does not provide any guidance for the Commission to consider when levying a fine. The Commission, however, has adopted rules, found at 2 Ill. Admin. Code

1620.530(b), that outline 14 aggravating and mitigating factors that the Commission may consider in assessing an appropriate fine. These factors include: 2 Ill. Admin. Code § 1620.530(b)(2), (5), (9) and (13).

A. § 1620.530(b)(2)—**scope of the violations**—Respondent sent many campaign-related e-mails from her State-provided account spanning several days.

B. § 1620.530(b)(5)—**extent of Respondent's intent or knowledge of the facts surrounding the violation**—Respondent previously completed IDOC's annual ethics training numerous times and was familiar with the Ethics Act's ban on prohibited political activity at the time she sent the campaign-related emails referenced above.

C. § 1620.530(b)(9)—**involvement of others, especially other State employees**—Many of Respondent's campaign-related e-mails were sent to fellow IDOC employees.

D. § 1620.530(b)(13)—**prior disciplinary record or Ethics Act violation**—This is Respondent's first offense. She has not been previously disciplined for violations of the Ethics Act.

WHEREFORE, for the foregoing reasons, petitioner's unopposed motion for summary judgment is granted. The Commission levies an administrative fine of $2,000.00 against respondent Kendra Elberson for violation of 5 ILCS 430/5-15(a). This is a final administrative decision and subject to the Administrative Review Law.

ENTERED: September 16, 2015