

IN THE EXECUTIVE ETHICS COMMISSION  
OF THE STATE OF ILLINOIS

MARGARET A. HICKEY, in her capacity as )  
EXECUTIVE INSPECTOR GENERAL for )  
AGENCIES OF THE GOVERNOR, State )  
Of Illinois, )  
Petitioner, )  
v. )  
KIM A. PERIMAN, )  
Respondent. )

No. 16-EEC-005

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 January 26, 2016, Petitioner filed a Complaint with the Commission. The Complaint alleged that Respondent violated the gift ban prohibition of the State Officials and Employees Ethics Act. An affidavit of service indicates that Respondent was served a copy of the Complaint on January 29, 2016. On March 9, 2016, the Commission entered an order finding the Complaint sufficient to proceed.

On April 25, 2016, Petitioner filed an unopposed motion for summary judgment with an attached joint stipulation of undisputed material facts.

Petitioner is represented by Assistant Attorney General Christopher G. Wells. Respondent appears pro se.

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. Respondent is employed by the Illinois Department of Transportation (“IDOT”). Respondent has been employed in various positions within IDOT since 2001. Respondent worked for another State agency from 1999 until joining IDOT in 2001. From March 2014 to the present, Respondent has served as an Office Administrator

IV in the Commercial Vehicle Safety Section of IDOT's Division of Traffic Safety in Springfield, Illinois.

2. In her current position, Respondent is responsible for various administrative activities involving Official Testing Stations licensed by IDOT. Pursuant to statute, 625 ILCS 5/13-101, IDOT oversees a vehicle inspection program that requires testing of commercial vehicles. To facilitate this program, IDOT grants permits to privately-owned vehicle service stations to operate as Official Testing Stations authorized to perform IDOT-required testing. *Id.* § 13-103.
3. A vehicle service station seeking to obtain a permit must submit an application demonstrating the capability to serve as an Official Testing Station and post a bond. *Id.* After initially receiving a permit, an Official Testing Station must apply for annual permit renewals. *Id.* At all times relevant to the allegations in Petitioner's Complaint, Respondent's job responsibilities at IDOT included corresponding with representatives and owners of Official Testing Stations regarding the permitting and permit renewal process.
4. In the course of her duties as an IDOT employee, Respondent corresponded with the owner of a service center ("Service Center Owner") in Lake Bluff, Illinois that is licensed as an Official Testing Station ("Lake Bluff Service Center"). The Lake Bluff Service Center has been licensed by IDOT as an Official Testing Station since 1990. In 2014, Respondent corresponded with Service Center Owner regarding the annual renewal of Lake Bluff Service Center's permit.
5. In the course of Respondent's correspondence with Service Center Owner, Respondent would occasionally discuss personal matters. For example, Respondent told Service Center Owner about a trip Respondent planned to take to London, England in July 2014. Respondent has a minor daughter who resides with her. Respondent initially told Service Center Owner that Respondent planned to bring her minor daughter on the trip. In a subsequent conversation, however, Respondent told Service Center Owner that Respondent could no longer bring her minor daughter on the trip to London because of the cost of the airfare.
6. Service Center Owner responded by offering to pay the cost of the airfare for Respondent's minor daughter. On July 28, 2014, Service Center Owner did in fact pay for roundtrip airfare from Springfield, Illinois to London, England for Respondent's minor daughter. The cost of the roundtrip airfare was \$2,845.80.

7. On July 30, 2014, Respondent's minor daughter used the ticket paid for by the Service Center Owner to travel to London, England with Respondent. On August 9, 2014, Respondent's minor daughter used the ticket paid for by Service Center Owner to fly back from London, England to Springfield, Illinois with Respondent.
8. Respondent did not repay the owner of the Official Testing Station for the ticket for over nine months.
9. On April 27, 2015, Respondent received an email from an investigator for the Office of the Executive Inspector General for the Agencies of the Governor, seeking to interview Respondent regarding matters related to a possible "Gift Ban violation". The email did not specify the nature of the violation.
10. On May 2, 2015, three days before her scheduled interview with OEIG investigators, Respondent traveled over 200 miles from the Springfield area to Lake Bluff to meet the Service Center Owner, whom, prior to that date, Respondent had never met.
11. At the May 2, 2015 meeting in Lake Bluff, Respondent gave Service Center Owner a personal check for \$2,845.80.
12. In preparation for that meeting, Respondent also had prepared a document for Service Center Owner to sign. The document stated:

Payment has been received by me, [signature of the Service Center Owner] in respect to the purchase of airfare for the minor child [first name omitted] Periman on July 28, 2014. No set payment schedule had been arranged at the onset of this loan. Payment has been received in full, and there is no further payment obligation from Kim Periman to myself for said loan.

Respondent signed the document, as did Service Center Owner, at Respondent's request.

13. On May 5, 2015, Respondent was interviewed by an OEIG investigator. During the interview, Respondent affirmed that Service Center Owner had paid for the airfare that was purchased for Respondent's minor daughter on July 28, 2014. Respondent characterized the payment as a "loan" during her interview, but conceded that she did not reimburse Service Center Owner for the airfare until May 2, 2015. Respondent acknowledged that she did not reimburse Service Center Owner for the

airfare until after she received an email regarding the OEIG investigation on April 27, 2015.

14. IDOT imposed a thirty-day suspension without pay on Respondent for violating the gift ban provision in IDOT's Personnel Policy Manual based on the conduct described in this Stipulation. Respondent served this suspension from November 3, 2015 through December 2, 2015. Respondent's suspension resulted in a loss of \$5,137 in gross pay.
15. Respondent has repaid in full the \$2,845.80 cost of the roundtrip airfare to Service Center Owner in Lake Bluff.
16. Respondent admits that her actions, as described in this Stipulation, violated the gift ban in the Ethics Act.
17. Respondent has no record of prior Ethics Act violations.

CONCLUSIONS OF LAW  
AND MIXED FINDINGS OF FACT AND LAW

18. Pursuant to 5 ILCS 430/20-5(d), the Illinois Executive Ethics Commission ("Commission") has jurisdiction over "all officers and employees of State agencies" for purposes of any matter arising under or involving the Ethics Act. The Commission's authority extends to officers and employees of IDOT.
19. As an IDOT employee, Respondent is a State employee, and thus subject to the Ethics Act, as well as the jurisdiction of the Commission with respect to matters arising under the Ethics Act. 5 ILCS 430/20-5(d), 55(c)-(d). Respondent's "ultimate jurisdictional authority" is the Governor. *Id.* §§ 1-5, 20-10(c).
20. In relevant part, the Ethics Act states that "no officer, member, or State employee shall intentionally solicit or accept any gift from any prohibited source[.] This ban applies to and includes the spouse of and immediate family living with the . . . State employee." *Id.* § 10-10.
21. The Ethics Act further states that a State employee "does not violate this Act if . . . [the] employee *promptly* takes reasonable action to return the prohibited gift to its source or gives the gift or an amount equal to its value to an appropriate charity[.]" *Id.* § 10-30 (emphasis added).

22. The Ethics Act defines “Gift” as follows:

‘Gift’ means any gratuity, discount, entertainment, hospitality, *loan*, forbearance, or other tangible or intangible item having monetary value[.]

*Id.* § 1-5 (emphasis added).

23. The Ethics Act defines “Prohibited Source” as follows, in pertinent part:

‘Prohibited source’ means any person or entity who:

(1) is seeking official action (i) by 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;

(2) does business or seeks to do business (i) with the member or officer or (ii) in the case of an employee, with the employee or with the member, officer, State agency, or other employee directing the employee;

(3) conducts activities regulated (i) by 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;

(4) has interests that may be substantially affected by the performance or non-performance of the official duties of the member, officer, or employee[.]

*Id.* § 1-5.

24. At all times relevant to the allegations in the Complaint, Respondent had a duty to comply with the provisions of the Ethics Act, and with all policies adopted and implemented pursuant thereto.

25. At all times relevant to the allegations in Petitioner’s Complaint, Respondent had knowledge of the restrictions imposed on State employees by the gift ban in the Ethics Act.

26. At all times relevant to the allegations in Petitioner’s Complaint, the Service Center Owner was a “prohibited source” under the Ethics Act. The Service Center Owner

also was seeking official action from IDOT in the form of a permit renewal to continue serving as an IDOT Official Testing Station. *See id.* §§ 1-5, 10-10.

27. Respondent violated the gift ban in the Ethics Act when she intentionally accepted roundtrip airfare to London, England, in the amount of \$2,845.80, for her minor daughter from the Service Center Owner. By failing to repay any portion of the \$2,845.80 cost of the airfare for over nine months, Respondent likewise failed to “promptly take[] reasonable action to return the prohibited gift . . . .” *Id.* § 10-30. Respondent did not repay the cost of the airfare until after she learned that she was going to be interviewed by an OEIG investigator regarding a gift ban violation.
28. The Ethics Act provides that “[a]n ethics commission may levy an administrative fine of up to \$5,000 against any person who violates this Act.” *Id.* § 50-5(e). Section 50-10 of the Ethics Act similarly authorizes the Commission to order “appropriate injunctive relief up to and including discharge of a State employee” for a violation of the Ethics Act. *Id.* § 50-10(a).

#### 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 Article 10 of the State Officials and Employees Ethics Act (5 ILCS 430/10).

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)(1), (4), (5), (9), (11) and (13).

- A.           § 1620.530(b)(1)—**nature of the violations**—Respondent received a substantial amount of money, \$2,845.80, from a prohibited source.
  
- B.           § 1620.530(b)(5)—**extent of Respondent’s intent or knowledge of the facts surrounding the violation**—Within five days of learning that she was to be interviewed regarding an unspecified “Gift Ban violation,” Respondent drove over 200 miles to deliver a personal check to the Service Center Owner, despite having failed to repay the Service Center Owner for over nine months. Respondent also arranged for the Service Center Owner to sign a document purporting to characterize the purchase of the roundtrip airfare as a loan, even though the gift ban applies to loans as well as other forms of gifts.
  
- C.           § 1620.530(b)(4) and (9)—**extent of the use of resources, money, time to the State; involvement of others, especially other State employees**—In mitigation, Respondent’s violation did not involve substantial use of State resources or other State employees.
  
- D.           § 1620.530(b)(11) and (13)—**cooperation; prior disciplinary record or Ethics Act violation**— Respondent cooperated in bringing these proceedings to a prompt resolution without the need for a hearing. This is Respondent’s first offense. She has not been previously disciplined for violations of the Ethics Act.

In further mitigation, Petitioner notes that IDOT imposed a thirty-day suspension without pay on Respondent for violating the gift ban provision in IDOT's Personnel Policy Manual based on the conduct described in the Stipulation. Respondent's suspension resulted in a loss of \$5,137 in gross pay. In addition, Respondent has repaid in full the \$2,845.80 cost of the roundtrip airfare to the Service Center Owner.

WHEREFORE, for the foregoing reasons, Petitioner's unopposed motion for summary judgment is granted. The Commission levies an administrative fine of \$1,000.00 against Respondent Kim Periman for violation of 5 ILCS 430/10-10. This is a final administrative decision and subject to the Administrative Review Law.

ENTERED: May 19, 2016

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