

FINDINGS OF FACT

The record of proceedings has been reviewed by the members of the Executive Ethics Commission. Based upon the record, including the parties' joint stipulation of undisputed material facts, 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 Juvenile Justice (the "DJJ") as a Juvenile Justice Specialist. He has been an employee of the State of Illinois since July 1988.
2. Respondent is the President of Local 416 of the American Federation of State, County, and Municipal Employees ("AFSCME"), Council 31. Local 416 is an affiliated subordinate body of the American Federation of State, County, and Municipal Employees, AFL-CIO ("AFSCME International").
3. AFSCME International has an independent national political action committee ("PAC"). Its formal name is American Federation of State, County, and Municipal Employees PEOPLE. PEOPLE is an acronym for Public Employees Organized to Promote Legislative Equality. The national PAC is commonly known as "PEOPLE." Its statement of organization with the Federal Election Commission is available at: http://docquery.fec.gov/cgi-bin/fecimg/?_12952230916+0.
4. AFSCME members may contribute voluntarily to PEOPLE through payroll deductions by completing a payroll deduction authorization card. In pertinent part, the PEOPLE authorization card states:

VOLUNTARY PEOPLE DEDUCTION AUTHORIZATION NATIONAL PEOPLE COMMITTEE

I hereby authorize my employer and associated agencies to deduct each pay period the amount certified above as a voluntary contribution to be paid to AFSCME Council 31, P.O. Box 2328, 615 South Second Street, Springfield, IL 62705, to be used in accordance with the by-laws of the PEOPLE Qualified Committee for the purpose of making political contributions. My contribution is voluntary, and I understand that it is not required as a condition of membership in any organization, or as a condition

of continued employment, and is free of reprisal, and that I may revoke this authorization at any time by giving written notice.

5. A copy of the Collective Bargaining Agreement between AFSCME Council 31 and the State of Illinois operative at the time relevant to the incidents described herein is available at: https://www.illinois.gov/cms/Employees/Personnel/Documents/emp_afscme1.pdf.
6. Respondent's State-compensated work time for Juvenile Justice is from 5:45 a.m. until 2:00 p.m. on Mondays, Tuesdays, and Fridays. Respondent's State-compensated work time for his work as a Union official is from 6:00 a.m. until 2:00 p.m. on Wednesdays and Thursdays.
7. Dr. Kathryn Isabelli is a Juvenile Justice contract clinical psychologist who works at the Illinois Youth Center's St. Charles facility on Mondays, and Wednesdays through Fridays from 9:00 a.m. until 5:00 p.m. She reports to Dr. Jesse Sekey, the Lead Psychologist at Juvenile Justice's St. Charles facility. Dr. Sekey's business hours are from 8:00 a.m. until 4:00 p.m. on Mondays through Fridays.
8. On Friday, September 5, 2014, Respondent approached Dr. Isabelli during the morning hours (between approximately 9:00 a.m. and noon) while she was making her client rounds at the Juvenile Justice infirmary in St. Charles. During this State-compensated time – both for Respondent and Dr. Isabelli – Respondent spoke with Dr. Isabelli about signing a PEOPLE payroll deduction card. Respondent further suggested that Dr. Isabelli visit an AFSCME website for additional information. The conversation took no more than a few minutes.
9. On Friday, September 12, 2014, Respondent approached Dr. Sekey during the morning hours (between approximately 8:00 a.m. and noon) at the St. Charles facility grounds. During this State-compensated time – both for Respondent and for Dr. Sekey – Respondent spoke with Dr. Sekey about the AFSCME payroll deduction program, handed Dr. Sekey a copy of the PEOPLE authorization card, and asked him to sign it. Dr. Sekey declined to sign the card. The conversation took no more than a few minutes.

10. On Friday, September 19, 2014, at approximately 9:15 a.m., Respondent followed up his in-person contact with Dr. Isabelli by contacting Isabelli on her State telephone line, during State-compensated time (both for Respondent and for Dr. Isabelli) to discuss with her again the PEOPLE authorization cards and AFSCME's voluntary payroll deduction program. The conversation took no more than a few minutes.
11. Also on Friday, September 19, 2014, at approximately 9:30 a.m., Respondent followed up his in-person contact with Dr. Sekey by contacting Dr. Sekey on his State telephone line, during State-compensated time (both for Respondent and for Dr. Sekey) – to discuss with him again about contributing voluntarily to PEOPLE through payroll deductions. The conversation took no more than a few minutes.
12. Respondent has no record of prior Ethics Act violations.

CONCLUSIONS OF LAW

1. 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 the Department of Juvenile Justice.
2. As a DJJ 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. *Id.*
3. As an employee at DJJ, Respondent took annual Ethics Act training, which includes a section regarding the restrictions placed on State employees against participating in prohibited political activity. Respondent has been participating in annual Ethics Act training since at least 2004.
4. The "ultimate jurisdictional authority" for DJJ officers and employees, including Respondent, is the Governor of the State of Illinois. 5 ILCS 430/1-5 (defining and

identifying the “ultimate jurisdictional authority” for various state officers, employees, and the entities for which they work).

5. 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,” 5 ILCS 430/20-10(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 5 ILCS 430/20-20. Accordingly, the OEIG’s authority extends to DJJ and its officers and employees.
6. Under the Ethics Act, “State employees shall not intentionally perform any prohibited political activity during any compensated time (other than vacation, personal, or compensatory time off).” 5 ILCS 430/5-15(a).
7. 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.*
8. Under the Ethics Act, “Contributions shall not be intentionally solicited, accepted, offered, or made on State property by public officials, by State employees, by candidates for elective office, by persons required to be registered under the Lobbyist Registration Act, or by any officers, employees, or agents of any political organization, except as provided in this Section. . . .” 5 ILCS 430/5-35.
9. “Prohibited political activity” is defined by the Ethics Act to mean, in relevant part, “Soliciting contributions, including but not limited to the purchase of, selling, distributing, or receiving payment for tickets for any political fundraiser, political meeting, or other political event” or “Soliciting, planning the solicitation of, or preparing any document or report regarding any thing of value intended as a campaign contribution.” 5 ILCS 430/1-5.
10. “Campaign for elective office” is defined by the Ethics Act to mean, “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 or office in a political organization, or the selection, nomination, or election of Presidential or Vice-Presidential electors, but does not include activities (i) relating to the support or opposition of any executive, legislative, or administrative action (as those terms are defined in Section 2 of the Lobbyist Registration Act), (ii) relating to collective bargaining, or (iii) that are otherwise in furtherance of the person's official State duties." *Id.*

11. "Contributions" under the Election Code, as adopted by the Ethics Act, is defined in relevant part as "a gift, subscription, donation, dues, loan, advance, deposit of money, or anything of value, knowingly received in connection with the nomination for election, election, or retention of any candidate or person to or in public office or in connection with any question of public policy." 10 ILCS 5/9-1.4(A)(1); *see also* 5 ILCS 430/1-5.
12. "Political Organization" under the Ethics Act is defined as "a party, committee, association, fund, or other organization (whether or not incorporated) that is required to file a statement of organization with the State Board of Elections or a county clerk under Section 9-3 of the Election Code, but only with regard to those activities that require filing with the State Board of Elections or a county clerk." 5 ILCS 430/1-5.
13. Section 9-3 of the Election Code states "every political committee shall file with the State Board of Elections a statement of organization. . . ." 10 ILCS 5/9-3.
14. "Political committee" under the Election Code "includes a candidate political committee, a political party committee, a political action committee, a ballot initiative committee, and an independent expenditure committee." 10 ILCS 5/9-1.8.
15. When Respondent, during compensated time, spoke with Drs. Isabelli and Sekey about signing a Voluntary PEOPLE Deduction Authorization for the National PEOPLE Committee on September, 5 and 19, 2014, he intentionally performed "prohibited political activity" as defined in the Ethics Act and in violation of 5 ILCS 430/5-15(a).
16. When Respondent used State telephones during compensated time to speak with Drs. Isabelli and Sekey about signing a Voluntary PEOPLE Deduction Authorization for the National PEOPLE Committee on September 19, 2014, he intentionally misappropriated

State property or resources by engaging in “prohibited political activity” as defined in the Ethics Act and in violation of 5 ILCS 430/5-15(a).

17. When Respondent, during compensated time spoke with Drs. Isabelli and Sekey about signing a Voluntary PEOPLE deduction authorization for the National PEOPLE Committee, he intentionally solicited contributions in violation of 5 ILCS 430/5-35.

18. 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. 5 ILCS 430/50-5(e).

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. Ill. Commerce Comm’n*, 309 Ill. App. 3d 163, 177, 242 Ill. Dec. 892, 903 (1999); *Cano v. Vill. of Dolton*, 250 Ill. App. 3d 130, 138, 189 Ill. Dec. 883, 620 N.E.2d 1200 (1993). 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.

Summary judgment is appropriate only where “the pleadings, depositions, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” 736 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. N. Ill. Gas Co.*, 211 Ill.2d 32, 43, 284 Ill. Dec. 302, 310 (2004).

ANALYSIS

Respondent stipulated to a series of facts from which the Commission concludes he engaged in prohibited political activity in violation of the State Officials and Employees Ethics Act (5 ILCS 430/5-15(a)). The Commission further concludes based upon the stipulated facts that Respondent solicited contributions on State property also in violation of the State Officials and Employees Ethics Act (5 ILCS 430/5-35). Respondent does not dispute he spoke with Drs. Isabelli and Sekey during state-compensated time while physically present at the Juvenile Justice facility in St. Charles about signing a Voluntary PEOPLE Deduction Authorization for the National PEOPLE Committee on September 5, 12, and 19, 2014. Respondent also admits that his conversations on September 19, 2014 were made using State telephones.

Respondent argues the solicited deductions were not contributions under the Ethics Act because PEOPLE is not a “political organization” under the Ethics Act. Respondent argues PEOPLE is a federal PAC which is governed by federal election regulations and, therefore, is not required to register with the Illinois State Board of Elections. Respondent points to the Ethics Act’s definition of “political organization” as “a party, committee, association, fund, or other organization (whether or not incorporated) that is required to file a statement of organization with the State Board of Elections or a county clerk under Section 9-3 of the Election Code” to support his argument.

The Election Code defines “political committee” to include “a candidate political committee, a political party committee, a political action committee, a ballot initiative committee, and an independent expenditure committee.” 10 ILCS 5/9-1.8. There is no dispute PEOPLE is a federal political action committee. The Election Code in Section 9-3 states “every political committee shall file with the State Board of Elections a statement of organization. . . .” 10 ILCS 5/9-3. There is no federal exception to filing contained in Section 9-3, though a shortened filing process for federal political committees is outlined in the applicable administrative rules. As such, for the purposes of defining what is meant by “political organization” under the Ethics Act, it should include “every political committee” including political action committees such as PEOPLE.

Respondent argues the federal election regulations preempt the Ethics Act as to whether PEOPLE can be considered a “political organization.” This argument is misplaced. To be

preemptory, the federal election regulations need to conflict in some way with State law. The federal election regulations dictate how federal election entities such as PEOPLE must behave and what filings are required at the federal level. The Ethics Act dictates certain restrictions on its State employees' political activity to the extent they are performed on State property or during State-compensated time. These are mutually exclusive. There is no conflict between the federal election regulations and the definition of what constitutes a "political organization" under the Ethics Act, therefore, federal preemption does not apply.

Respondent argues the contributions to PEOPLE were not "for the benefit of any campaign for elective office or any political organization" because there was no specific earmarking of where those contributions might be used by PEOPLE. The authorization card does say the contributions will be used "for the purpose of making political contributions." The definition of "campaign for elective office" is broad and covers "any activity in furtherance of an effort to influence the selection, nomination, election, or appointment of any individual" at the local, State, or federal level. Given this broad definition it is hard to see how contributions to PEOPLE would not be considered "for the benefit of any campaign for elective office or any political organization."

The Commission therefore concludes Respondent violated 5 ILCS 430/5-15(a) on September 5, 12, and 19, 2014 when he intentionally performed "prohibited political activity" during compensated time, by speaking with Drs. Isabelli and Sekey about signing a Voluntary PEOPLE Deduction Authorization for the National PEOPLE Committee. Having Drs. Isabelli and Sekey execute the deduction authorizations would result in a monetary benefit to PEOPLE, a "political organization" under the Ethics Act. Respondent also violated 5 ILCS 430/5-15(a) when on September 19, 2014, he misappropriated State property or resources by engaging in "prohibited political activity."

The Commission also concludes Respondent violated 5 ILCS 430/5-35 of the Ethics Act on September 5, 12, and 19, 2014 when he, a State employee physically present at the Department of Juvenile Justice facility in St. Charles, intentionally solicited contributions to PEOPLE, a "political organization" under the Ethics Act, from Drs. Isabelli and Sekey, who were also State employees physically present at the Department of Juvenile Justice facility in St. Charles.

Consequently, the Commission may levy an administrative fine of up to \$5,000 against Respondent for his violation of the Ethics Act. 5 ILCS 430/50-5(a). Neither party has specifically addressed what amount of fine is appropriate. The Ethics Act does not provide any guidance for the Commission to consider when levying a fine. The Commission has, however, adopted rules, found at 2 ILL. ADMIN, CODE 1620.530(b), that outline fourteen aggravating and mitigating factors the Commission may consider in assessing an appropriate fine. In relevant part, these factors include: the nature of the violation; the scope of the violation; the extent of the use of resources, money, time to the State; and the extent of the Respondent's intent or knowledge of the facts surrounding the violation. 2 ILL. ADMIN. CODE 1620.530(b)(1), (2), (4), and (5).

WHEREFORE, for the foregoing reasons, Petitioner's motion for summary judgment is granted and Respondent's motion for summary judgment is denied. The Commission levies an administrative fine of \$1000.00 against Respondent, James Winburn, for violations of 5 ILCS 430/5-15(a) and 5-35. This is a final administrative decision subject to the Administrative Review Law.

ENTERED: May 25, 2017