



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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GOVERNMENTAL ETHICS AND
CONFLICT OF INTEREST:
Overage Reports under the State
Officials and Employees Ethics Act

Mr. Shawn W. Denney
Chair, Executive Ethics Commission
401 South Spring Street
403 Stratton Office Building
Springfield, Illinois 62706

Dear Mr. Denney:

I have the Executive Ethics Commission's letter regarding the meaning of the phrase "appropriate ultimate jurisdictional authority" as used in section 20-65 of the State Officials and Employees Ethics Act (the Ethics Act) (5 ILCS 430/20-65 (West 2006)).

Specifically, the Executive Ethics Commission (the Commission) asks whether the Executive Inspector General for the Agencies of the Illinois Governor (EIGG) may satisfy his duty to notify the appropriate ultimate jurisdictional authority of investigations that he has not concluded within six months by distributing a single, collective overage report to the boards of trustees of all of the

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State's universities and community colleges, rather than by notifying the individual board of trustees for each specific State university or community college served by an officer or employee who is the subject of an investigation. For the reasons stated below, it is my opinion that the EIGG is under a statutory duty to notify the individual board of trustees of the specific State university or community college whose officer or employee is the subject of an investigation of the general nature of the allegation or information giving rise to the investigation and the reasons for the EIGG's failure to complete that particular investigation within six months. Accordingly, the EIGG does not satisfy his duty to report overage investigations to the appropriate ultimate jurisdictional authority by simply distributing a single overage report to the boards of trustees of all of the State's universities and community colleges.

BACKGROUND

Creation of the Office of the Executive Inspector General and the Executive Ethics Commission

The General Assembly enacted the Ethics Act as part of an ethics reform package intended to regulate the ethical conduct of executive branch constitutional officers, legislative branch constitutional officers, General Assembly members, and State employees. *See generally* 5 ILCS 430/1-1 *et seq.*, 5-5 *et seq.*, 10-10 *et seq.* (West 2006). To promote and investigate compliance with the Act, the General Assembly created five Executive Inspector General (EIG) offices, each an independent, non-partisan agency for a specific constitutional officer of the executive branch. 5 ILCS 430/20-10 (West 2006). Each Office of an EIG is directed and supervised by an EIG (5 ILCS 430/20-10 (West 2006)) who is authorized "to investigate

allegations of fraud, waste, abuse, mismanagement, misconduct, nonfeasance, misfeasance, malfeasance, or violations of [the Ethics] Act or violations of other related laws and rules." 5 ILCS 430/20-10(c) (West 2006).

In addition, the General Assembly created the Commission, an administrative body with jurisdiction to address those matters arising under the Ethics Act with respect to officers and employees of State agencies other than the General Assembly, the legislative support service agencies,¹ and the Office of the Auditor General.² 5 ILCS 430/20-5(d), 20-15 (West 2006). The Commission's duties include, among other things, promulgating rules governing the investigations of the EIGs, conducting administrative hearings and making rulings on cases brought before it, and making rulings, issuing recommendations, and imposing administrative fines, as appropriate, in connection with the implementation and interpretation of the Ethics Act. 5 ILCS 430/20-15 (West 2006).

Complaint Investigation Process

Upon the receipt of an allegation of a violation of the Ethics Act, the Office of an EIG may initiate an investigation. *See* 5 ILCS 430/20-20(1) (West 2006); *see also* 2 Ill. Adm. Code §§1620.320, 1620.330, 1620.350, adopted at 29 Ill. Reg. 9619, 9627, 9628, 9629 (effective July 1, 2005). Although the Ethics Act does not prescribe a time period within which an EIG is

¹The General Assembly created a separate Legislative Ethics Commission and Legislative Inspector General to address issues arising under the Ethics Act with respect to the General Assembly members, the legislative support service agencies, and employees of the legislative branch of State government. *See* 5 ILCS 430/25-5 *et seq.* (West 2006).

²The General Assembly created a separate Inspector General to address issues arising under the Ethics Act with regard to State officers and employees under the jurisdiction of the Auditor General. *See* 5 ILCS 430/30-5 (West 2006).

required to complete an investigation, pursuant to section 20-65 of the Ethics Act, an EIG who fails to complete an investigation within six months must notify both the Commission³ and the "appropriate ultimate jurisdictional authority" of the general nature of the allegation or information giving rise to the investigation and the reasons for failing to complete the investigation within six months. If the Commission finds that the EIG's reasons for failing to complete the investigation within six months are insufficient, it may appoint a special EIG to investigate the alleged violations of the Ethics Act. 5 ILCS 430/20-21 (West 2006).

Included within the Commission's and the EIGG's jurisdictions are investigations relating to officers or employees of the State's universities and community colleges.⁴

In reviewing the information provided by the Commission, it appears that the Commission and the EIGG disagree over the construction of the phrase "appropriate ultimate jurisdictional authority" as used in section 20-65 with regard to the State's universities and community colleges. The EIGG contends that he can satisfy his reporting duty by simply sending

³By administrative rule, the Commission has addressed the submission of an overage report by the EIG. The rule provides that the overage report must "indicate the investigation's unique tracking number, the date the investigation began, a description of the nature of the alleged misconduct and reasons for the delay in concluding the investigation." 2 Ill. Adm. Code §1620.360, adopted at 29 Ill. Reg. 9619, 9629 (effective July 1, 2005).

⁴Litigation is currently pending which challenges whether community colleges are "State agencies" subject to the Ethics Act. See *Board of Trustees of Community College District No. 501 v. Wright*, Docket No. 06-MR-1394 (Circuit Court, DuPage County) (community colleges are not "State agencies" for purposes of the Ethics Act), *appeal pending*, No. 2-07-0948 (2d Dist.); see also *Kerber, Eck & Braeckel, LLP v. State of Illinois*, Docket No. 06-MR-133 (Circuit Court, Sangamon County) (Richland Community College is a "State agency" for purposes of the Ethics Act).

In addition, although the 95th General Assembly passed House Bill 3504 to amend the Ethics Act expressly to include community college districts in the definition of "governmental entity" and to exclude them from the definition of "State agency," the Governor vetoed this bill on August 14, 2007. In accordance with the provisions of article IV, section 9(c), of the Illinois Constitution of 1970, the veto stands. Thus, the law currently gives the EIGG jurisdiction over investigations relating to officers and employees of the community colleges.

the same report to each of the boards of trustees of the 57 State universities and community colleges. The EIGG's version of the overage report combines all investigations open for over six months regarding every officer and employee of all the State's universities and community colleges. Conversely, it is the position of the Commission that the EIGG must send a separate, individual overage report to the specific board of trustees of the State university or community college served by the officer or employee who is the subject of the pending investigation.

ANALYSIS

Section 20-65 of the Ethics Act provides:

If any investigation [initiated pursuant to the Ethics Act] is not concluded within 6 months after its initiation, *the appropriate Executive Inspector General shall notify the Executive Ethics Commission and appropriate ultimate jurisdictional authority of the general nature of the allegation or information giving rise to the investigation and the reasons for failure to complete the investigation within 6 months.* (Emphasis added.)

With regard to the State's universities and community colleges, the term "ultimate jurisdictional authority" is defined in the Ethics Act to refer to:

(6) For State employees of public institutions of higher learning as defined in Section 2 of the Higher Education Cooperation Act,⁵ *the board of trustees of the appropriate public institution of higher learning.* (Emphasis added.) 5 ILCS 430/1-5 (West 2006).

⁵Section 2 of the Higher Education Cooperation Act (110 ILCS 220/2 (West 2006)) does not define the term "public institutions of higher learning." Rather, that Act defines the phrase "public institution of higher education," which includes "the University of Illinois, Southern Illinois University, Chicago State University, Eastern Illinois University, Governors State University, Illinois State University, Northeastern Illinois University, Northern Illinois University, Western Illinois University, the public community colleges of this State, and any other public universities, colleges and community colleges now or hereafter established or authorized by the General Assembly." The language in section 1-5 of the Ethics Act, therefore, must be interpreted to refer to "public institutions of higher education." See Ill. Att'y Gen. Op. No. 05-009, issued October 5, 2005.

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The fundamental principle of statutory construction is to ascertain and give effect to the General Assembly's intent, and the language of a statute is the best indicator of legislative intent. *Town & Country Utilities, Inc. v. Illinois Pollution Control Board*, 225 Ill. 2d 103, 117 (2007). If the language of a statute is clear and unambiguous, it must be given effect as written. *DeLuna v. Burciaga*, 223 Ill. 2d 49, 59 (2006). Moreover, a statute should be evaluated as a whole, construing each provision in connection with every other section (*Eden Retirement Center, Inc. v. Department of Revenue*, 213 Ill. 2d 273, 291 (2004)), and no word or paragraph should be interpreted so as to be rendered meaningless. *Williams v. Staples*, 208 Ill. 2d 480, 487 (2004).

Section 20-65 of the Ethics Act provides that if an EIG fails to conclude an investigation within six months after its initiation, the EIG "shall notify *the* Executive Ethics Commission and *appropriate ultimate jurisdictional authority* of the general nature of the allegation or information giving rise to the investigation and the reasons for failure to complete the investigation within 6 months." (Emphasis added.) 5 ILCS 430/20-65 (West 2006). The term "appropriate" is not defined in the Ethics Act. When interpreting a statute, undefined terms must be ascribed their ordinary and popularly understood meaning. *People v. Ward*, 215 Ill. 2d 317, 325 (2005). "Appropriate" commonly means "specially suitable" or "belonging peculiarly[.]" Webster's Third New International Dictionary 106 (1993). Further, section 1-5 indicates that the term "ultimate jurisdictional authority" refers to "*the board* of trustees of the appropriate public institution of higher learning." (Emphasis added.) By using the term

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"appropriate" in both sections 20-65 and 1-5, as well as the singular form of "board" of trustees in section 1-5, the General Assembly evinces an intent that the EIGG must send a specific coverage report to each board of trustees of a State university or community college to which a pending investigation relates. Such report would provide the particular ultimate jurisdictional authority with control over the specific officer or employee with notice regarding the longevity of a given investigation. To interpret sections 1-5 and 20-65 in any other fashion would render the singular reference to the "appropriate ultimate jurisdictional *authority*" in section 20-65 meaningless. (Emphasis added.)

The EIGG asserts that there are policy reasons for producing one, collective coverage report that omits any reference to the particular campus involved in the investigation and distributing it to all of the boards of trustees for the various State universities and community colleges. Specifically, the EIGG suggests that such a blanket report prevents the likelihood of the destruction or concealment of evidence, the disclosure of allegations, the divulgence of the identity of witnesses or wrongdoers, or other interference with an investigation. If there are valid policy reasons for disseminating investigation information in a comprehensive report so that it is not possible for the universities or community colleges to determine if any investigation relates to them, the EIGG should address that concern to the General Assembly. The EIGG may not unilaterally elect to disregard the plain language and intent of section 20-65. Moreover, section 20-65 requires only that EIGs disclose the "general nature of the allegation" and the reasons for

failing to complete the investigation within six months. It does not require EIGs to disclose the detailed allegations, key witnesses, or sensitive information uncovered during the first six months of the investigation to the board of trustees of the specific State university or community college.⁶

CONCLUSION

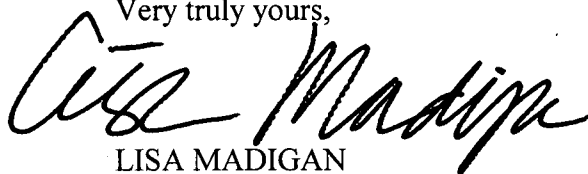
Pursuant to section 20-65 of the Ethics Act, if an EIG fails to complete an investigation within six months of initiating it, he or she must submit an overage report to both the Commission and to the "appropriate ultimate jurisdictional authority" setting forth the general nature of the allegation and the reasons for failing to complete the investigation within six months. With respect to the State's universities and community colleges, the "appropriate ultimate jurisdictional authority" is "the board of trustees of the appropriate public institution of higher learning[.]" which is the board of trustees of the specific State university or community college to which the investigation relates. Therefore, it is my opinion that the EIGG is under a statutory duty to notify the board of trustees of the specific State university or community college whose officer or employee is the subject of an investigation of the general nature of the allegation or information giving rise to the investigation and the reasons for the failure to complete that

⁶The EIGG also asserts that because only the Commission or the Governor, not the board of trustees for the State's universities or community colleges, has the power to take action if they believe that the EIGG is unnecessarily delaying the completion of an investigation, there is no reason for identifying the particular State university or community college which is the subject of an investigation in overage reports submitted to the boards. This is, again, a policy argument which ignores the intent of the General Assembly that the board of trustees of the specific State university or community college receive the overage report. Moreover, the EIGG's reference to the Governor is inapt. Under section 20-21 of the Ethics Act (5 ILCS 430/20-21 (West 2006)), only the Commission is authorized to appoint a special EIG. There is no role for the Governor in the special EIG appointment process.

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particular investigation within six months. The EIGG may not satisfy his duty to report overage cases by sending the same collective report of all outstanding investigations relating to all university or community college officers and employees to all boards of trustees of the State's universities and community colleges.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Lisa Madigan". The signature is written in black ink and is positioned above the printed name.

LISA MADIGAN
ATTORNEY GENERAL