



STATE OF DELAWARE
DELAWARE STATE PUBLIC INTEGRITY COMMISSION

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April 25, 2016

*Hearing and Decision By: Mark Dunkle, Esq., Vice-Chair (Acting Chair); Commissioners:
Jeremy Anderson, Esq.; Lisa Lessner; Bonnie Smith*

16-15--Karen Weldin Stewart—Complaint

Dear [REDACTED]

On April 19th, 2016, the Commission met to consider your Complaint against Karen Weldin Stewart, Delaware Insurance Commissioner. After consideration of all the relevant facts and circumstances, the Commission decided that the Complaint did not substantiate a violation of the Code of Conduct. As a result, the Commission has dismissed your Complaint and the matter is considered closed.

I. Procedure

Any person may file a sworn Complaint alleging violations of Title 29, Delaware Code, Chapter 58. 29 Del. C. § 5810(a). On March 15, 2016, you filed a sworn Complaint against Karen Weldin Stewart, Delaware Insurance Commissioner. The complaint was properly notarized pursuant to 29 Del. C. § 4328(3). *Hanson v. PIC*, 2012 WL 3860732 (Del. Super, Aug. 30, 2012) (*aff'd PIC v. Hanson*, 69 A.3d 370 (Del. 2013)).

After making a determination that the Complaint was properly sworn, the Commission next examined the Complaint to determine if the allegations were frivolous or failed to state a violation. *Commission Rules, p.3, III(A)*. At this stage of the proceeding all facts are assumed to be true. 29 Del. C. § 5808(A)(a)(4). Allegations that are deemed to be frivolous or that fail to state a claim are dismissed. 29 Del. C. § 5809(3). After reviewing your Complaint, the Commission decided that assuming all facts to be true, the allegations were not frivolous, nor did the Complaint fail to state a claim.

Allegations surviving the dismissal stage are then examined to determine if a majority

of the Commission has reasonable grounds to believe a violation may have occurred.¹ 29 Del. C. § 5809(3). "Reasonable grounds to believe" is essentially whether there is any reasonably conceivable set of circumstances susceptible of proof of the allegation. *Spence v. Funk*, 396 A.2d 967 (Del. Super., 1978) (*interpreting motion to dismiss under Super. Ct. Civ. Rule of Procedure 12(b)*).²

II. Personal Jurisdiction

The Commission's jurisdiction extends to State officers as defined in 29 Del. C. § 5804(13). State officers are defined as "any person who is required by subchapter II of this chapter to file a financial disclosure statement" and are not members of the General Assembly or judges in the courts of this State. 29 Del. C. § 5812(n)(1)(a). As an elected State official, Ms. Stewart is required to file a Financial Disclosure form with PIC. Furthermore, she does not fall within the above listed exclusions.

III. Subject Matter Jurisdiction

The Commission can only address alleged violations of "this chapter"-Title 29, Chapter 58. 29 Del. C. § 5810(h). The Complaint alleges Ms. Stewart violated the Code of Conduct's prohibition against accepting payment of expenses, or anything of monetary value, where the acceptance may result in: (1) impairment of official judgment or; (4) have an adverse effect on the public's confidence in their government. 29 Del. C. § 5806(b). The alleged conduct does fall within the Commission's statutory jurisdiction

IV. Facts

Delaware's Insurance Department (Department) is headed by the Insurance Commissioner. 18 Del. C. § 301(a). The Insurance Commissioner is selected by general election and serves a four year term. 18 Del. C. § 301(b). Ms. Stewart has been the Insurance Commissioner since 2008. www.delawareinsurance.gov. As Commissioner, Ms. Stewart is responsible for the oversight and regulation of insurance companies doing business in the State. *Id.*

The Department is a member of the National Association of Insurance Commissioners (NAIC) and is also accredited by the organization. (*See Atch. 1*). According the Department's website, through the NAIC, U.S. insurance regulators

...establish national standards and best practices, conduct peer reviews and coordinate their regulatory oversight to better protect the interests of consumers while ensuring a strong, viable insurance marketplace. US insurance regulators also participate in the International Association of Insurance Supervisors (IAIS) along with the NAIC by participating in all its major standard setting initiatives, including working with fellow regulators from around the world to better supervise cross-border insurers,

¹ "Reason to believe" means "probable cause." *Coleman v. State*, 562 A.2d 1171, 1177 (Del., 1989). "Probable cause" means facts and circumstances are enough to warrant a person of reasonable caution to believe an offense occurred. *State v. Cochran*, 372 A.2d 193, 195 (Del., 1977).

² Superior Court Rules are used because if a violation is found, the individual may appeal to that Court. 29 Del. C. § 5810(h)(2).

identifying systemic risk in the insurance sector, and creating international best practices.

Id.

To maintain their accreditation, the Department must undergo an audit by NAIC once every five years.

In 2009, the NAIC created the Center for Insurance Policy and Research (CIPR) to collect and analyze insurance data for use by state and federal agencies. www.naic.org/cipr_about. The NAIC believes the primary lesson to be learned from the 2008 financial crisis is that those responsible for the regulation of insurance companies need to be able to assess the degree of risk carried by each insurance company and the likelihood that the risk borne by the company could affect other insurers. *Id.* To that end, NAIC and CIPR created Supervisory Colleges (Colleges). (*See Atch. 2*). In short, the Colleges are confidential meetings between U.S. insurance regulators and executives from international insurance companies. Their stated purpose is to provide a forum to facilitate cooperation between regulators and the companies they regulate to promote increased effectiveness for both entities. www.naic.org/cipr_topics_supervisory_college.

The Complaint alleged Ms. Stewart improperly accepted payment of travel expenses from various insurance companies, regulated by her office. Appended to your Complaint were copies of emails and travel receipts you obtained from Ms. Stewart's office through a FOIA request. Specifically, the Complaint alleged that payment for the following trips in FY 2015 were improper:

1. Zurich, Switzerland--July 8-9, 2014 (Steadfast/Zurich Insurance Company)
2. Chicago, IL--July 21-22, 2014 (Guggenheim Life and Annuity)
3. New York, NY—Oct. 14-16, 2014 (AIG)
4. Amsterdam, Netherlands--October 19-26, 2014 (NAIC)
5. Paris, France—November 15-19, 2014 (Global Life Americas)
6. Bonn, Germany—March 15-19, 2015 (Trip Canceled)
7. Toronto, Canada—May 4-6, 2015 (Fairfax)

V. Application of the Law

No state employee, state officer or honorary state official shall accept other employment, any compensation, gift, payment of expenses or any other thing of monetary value under circumstances in which such acceptance may result in any of the following:

- (1) Impairment of independence of judgment in the exercise of official duties;
- (2) An undertaking to give preferential treatment to any person;
- (3) The making of a governmental decision outside official channels; or
- (4) Any adverse effect on the confidence of the public in the integrity of the government of the State.

29 Del. C. § 5806(b).

The Complaint specifically alleged violations of subsections (1) and (4). When evaluating these provisions of the Code of Conduct, the Commission has previously emphasized the fact that a course of conduct need not actually result in a violation, only that it "may result" in a violation. *Commission Op. Nos. 92-11; 99-34*.

A. Impairment of Independence of Judgment in the Exercise of Official Duties

As Insurance Commissioner, Ms. Stewart decides which insurance companies are permitted to do business in Delaware and she is responsible for the oversight and regulation of those insurance companies. Her office also protects consumers by ensuring insurance companies operating in the State are solvent enough to pay their claims; are fully licensed; and are charging reasonable rates.

The travel expenses giving rise to the Complaint were for trips to attend Supervisory Colleges. The Colleges are a forum created by the NAIC, a professional organization to which Ms. Stewart belongs and through which her State agency seeks professional accreditation. Through their organizational support and advocacy, the NAIC has deemed the Colleges to be important to both the insurance companies and the regulating bodies. The Colleges facilitate the sharing of confidential information which allows both entities (the companies and the regulators) to operate more efficiently, evaluate the degree of risk each insurance company introduces into the insurance market and agree on best practice standards.

The issue considered by the Commission was whether the payment of Ms. Stewart's travel expenses to the Colleges by the sponsoring company *may* tend to impair her professional judgment. The Complaint did not allege facts, nor was there any other evidence, which would suggest her judgment was actually affected.

In similar situations, the Commission previously decided that attendance at an industry event does not, by itself, create a conflict of interest. In *Commission Op. 01-09*, the Commission decided a State officer could accept payment of a conference registration fee from a private company doing business with his agency. The Commission noted the conference was directed at increasing his skills and knowledge in the area of technology for which he was responsible, there was little time for social activities and the company did not use the conference as a venue to promote their products. *See also, Commission Op. 15-28 (State employee who was also on the board of a non-profit entity working with his agency could accept payment of expenses to Las Vegas for training).*

On the other hand, the Commission has also reached the opposite conclusion when the recipient has decision making authority over the entity reimbursing the expenses. In *Commission Op. 12-07*, the Commission permitted seven employees of a State agency to accept payment of expenses from one of their vendors, noting the employees did not have decision-making authority over the vendor and the training would ultimately benefit the State. The supervisor, who did have decision-making authority, did not attend.

In evaluating the similarities and differences between the above cited opinions and the matter at hand, the Commission considered the distinction between a regulated entity and an entity contracting with the State to be a key distinguishing factor. In order to properly regulate an insurance business in the State, the more information Ms. Stewart has about the company, the better off Delaware consumers are likely to be. Additionally, the Commission attributed significant importance to several other factors. First, the Colleges were created by the professional organization through which Delaware's Insurance Department receives its accreditation. Presumably the national organization responsible for such accreditation would apply well-settled industry standards when conducting its accreditation review. There was no reason to believe the NAIC would deviate from those standards when creating and promoting attendance at the Colleges. Second, the trips appeared to be of short duration, reducing the

likelihood that the trips were used for personal recreational purposes. Third, it appeared the travel expenses were first paid by the State and the State was then reimbursed by the insurance company, no payments were sent directly to Ms. Stewart. Lastly, the Colleges are hosted by many international insurance companies, not just one. That fact greatly reduces the likelihood that one company could gain an advantage over the others by paying Ms. Stewart's expenses.

The Commission decided that Ms. Stewart's attendance at the Supervisory Colleges was part of her job as Insurance Commissioner. Not only does she regulate the insurance companies, she also has a duty to protect Delaware consumers. The entity which accredits Ms. Stewart's state office decided that the best way for insurance regulators to monitor the degree of risk borne by each insurance company is to attend the Colleges. Furthermore, the monies were first paid by the State and then the State was reimbursed. Ms. Stewart did not receive any direct payments from the insurance companies.

B. Any Adverse Effect on the Confidence of the Public in the Integrity of the Government of the State

The restriction prohibiting conduct that may result in "any adverse effect on the public's confidence in the integrity of its government," is basically an "appearance of impropriety" test, as is the restriction, found in 29 Del. C. § 5806(a), against engaging in any conduct that may "raise suspicion" that the public trust is being violated. *Commission Op. Nos. 98-11; 98-23; 98-31*. Thus, the law does not require an actual violation. *Commission Op. Nos. 97-11; 98-14*. It only requires that it "may result in an adverse effect on the public's confidence." See also, *Commission Op. No. 99-35 (citing 63C Am. Jur. 2d Public Officers and Employees § 252 (actual conflict is not the decisive factor; nor is whether the public servant succumbs to the temptation; rather it is whether there is a potential for conflict))*. To decide if there is an appearance of impropriety, the Commission should weigh the totality of the circumstances-- facts diminishing an appearance of a conflict and facts lending themselves to an appearance of a conflict. *Commission Op. No. 96-78*.

In *Commission Op. 00-03*, the Commission decided payment of expenses for a public officer's trip overseas, paid by an entity associated with a multi-state organization to which the State was a dues-paying member, was acceptable. The Commission noted: "[b]ecause the officer had no decision making authority over the Institute; the purpose of the trip was educational in nature which served to benefit, not the gift giver, but the State; and the agenda reflected a trip primarily focused on official activities, with little free time, we concluded that no ethical issue were raised by acceptance". *Id.*

While Ms. Stewart does have decision-making authority over the insurance companies operating in Delaware, the Commission decided the risks faced by Delaware citizens and the Delaware economy by having Ms. Stewart perform her duties without all the relevant information far outweighed any appearance of impropriety that may be created.

CONCLUSION

The Commission did not have reasonable grounds to believe that a violation of the Code of Conduct occurred. As a result, your Complaint was dismissed and the matter is considered closed. A redacted copy of this letter (removing your identifying information) will be sent to Ms. Stewart so that she is aware this matter was considered by the Commission.

Sincerely,

/s/ Mark Dunkle, Esq. /s/

Mark Dunkle, Esq.
Acting Chair