

Commonwealth of Kentucky

Court of Appeals

NO. 2009-CA-000991-MR



WILLIAM HUFFMAN

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE THOMAS D. WINGATE, JUDGE
ACTION NO. 04-CI-01441

EXECUTIVE BRANCH ETHICS
COMMISSION

APPELLEE

OPINION
AFFIRMING

** * * * *

BEFORE: LAMBERT AND STUMBO, JUDGES; WHITE,¹ SENIOR JUDGE.

LAMBERT, JUDGE: William Huffman appeals from an April 27, 2009, Franklin Circuit Court order that affirmed a final order entered against Huffman by the Executive Branch Ethics Commission. In its order, the Commission found that Huffman committed unethical conduct in violation of KRS 11A.020. As penalty

¹ Senior Judge Edwin White sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

for this conduct, the Commission issued a public reprimand and a two thousand five hundred dollar (\$2,500.00) fine against Huffman. After careful review, we affirm.

Huffman has been a licensed attorney in the Commonwealth of Kentucky since 1970. During the period in question, Huffman was a classified state employee (i.e. merit employee) at the Department of Labor serving as a staff attorney in the Division of Workers' Compensation Funds. His official responsibilities included attending benefit conferences and hearings, reviewing claim applications, reviewing and evaluating claim files for settlement purposes, attending depositions, performing legal research, and drafting motions, memoranda, and briefs.

While employed at the division, Huffman obtained outside employment as a co-counsel in a federal civil rights lawsuit against the Lexington-Fayette Urban County Government. This private lawsuit was not related to Huffman's duties as a classified state merit employee. The private lawsuit was eventually settled for two million four hundred thousand dollars (\$2,400,000.00).

During a fee dispute arising between Huffman and his co-counsel,² Huffman made several alarming and controversial statements at a deposition.

² Huffman and his co-counsel were awarded nearly nine hundred sixty thousand dollars (\$960,000.00) in attorney fees.

Local print and broadcast media published the following contents of Huffman's statements:

1. It was Huffman's opinion that sending personal fax messages on his employer's electronic facsimile machine was permitted, if not done for profit;
2. Huffman and other employees at the division routinely worked only 1.5 hours per day, and they read books the rest of the time; and
3. Due to expected layoffs within the division at the end of Governor Patton's administration, the Secretary of Labor represented that he would carry the attorneys through the end of the administration.

Upon publication of the above remarks, Huffman voluntarily resigned his position with the Department of Labor on February 14, 2003. Notwithstanding this resignation, both the Labor Cabinet and the Ethics Commission conducted an investigation that uncovered the following acts:

1. Huffman claimed sick leave from the division on at least thirteen (13) separate occasions, for time periods when, in fact, he was working on his private legal case; and
2. Huffman misused state-owned equipment (i.e. telephones, fax machines, office computers, etc.) to create, transmit, or otherwise process documents for use in his private legal case from approximately 2001 to 2003.

Huffman was subsequently charged with violations of the Executive Branch Code of Ethics (Chapter 11A of the Kentucky Revised Statutes). After

being afforded due process, Huffman was adjudicated guilty of the violations and penalized with a public reprimand and fine.

On appeal to the Franklin Circuit Court, Huffman argued, among other things, that the Ethics Commission did not have jurisdiction over the personnel matters of classified state merit employees, but rather such jurisdiction was exclusively vested with the Personnel Board. *See* KRS 18A.005 *et. seq.* According to Huffman, the Ethics Commission only had jurisdiction to regulate the conduct of non-merit government officials. The trial court rejected this argument, concluding that both the Personnel Board and the Ethics Commission had authority to regulate certain conduct of classified state merit employees. Upon careful review of the applicable statutes and case law, we agree.

The Personnel Board exists to administer and regulate Kentucky's personnel laws pertaining to classified state merit employees. KRS 18A.075, KRS 18A.0751, KRS 18A.095. As stated by the trial court, the Personnel Board functions primarily as an arbiter of employment disputes between classified state merit employees and their appointing authority. *Id.* The Board not only promulgates and enforces administrative regulations governing all appeals and grievances by classified state merit employees, but it also reviews any and all employment actions affecting these employees to ensure compliance with state personnel laws and regulations. *Id.*

In contrast, the Ethics Commission exists to promote and protect the public's confidence in public servants. KRS 11A.005; *Executive Branch Ethics Commission v. Stephens*, 92 S.W.3d 69, 73 (Ky. 2002) (“The statutory system of an Executive Ethics Commission is to promote ethical conduct of present and former public employees and to investigate and adjudicate potential violations.”). The Commission's jurisdiction extends beyond just classified state merit employees and encompasses all persons who work in any capacity, including elected officials, non-merit advisors, and management personnel, for state government. See KRS 11A.010. Rather than overseeing disputes between state employees and their state employers, the Ethics Commission functions primarily as an independent body that investigates and adjudicates ethics complaints against public servants. KRS 11A.080 – 110; *Stephens*, 92 S.W.3d at 73.

In his brief to this Court, Huffman concedes that the language set forth in KRS 11A.005 *et seq.* does not exclude classified state merit employees from the definition of “public servant.” However, he argues that the statute “should have” because “it is obvious from the language [set forth in KRS 11A.005] that [the Ethics Code] was concerned about the actions of employees with more than ordinary, every day power.”

The Ethics Commission cites to KRS 11A.010(9)(h), which specifically includes “merit employees” within the definition of the term “public

servant.” We agree with the Commission that the plain language of this section is unequivocal. *See King Drugs, Inc. v. Commonwealth*, 250 S.W.3d 643, 645 (Ky. 2008) (“[I]f a plain reading of the statute yields a reasonable legislative intent, then that reading is decisive and must be given effect regardless of the canons and regardless of our estimate of the statute's wisdom.”); *SmithKline Beecham Corp. v. Revenue Cabinet*, 40 S.W.3d 883, 885 (Ky. App. 2001) (“A court may not interpret a statute at variance with its stated language.”). Huffman cites to nothing in KRS 18A.005 *et seq.*, the statutes defining the scope and function of the Personnel Board’s jurisdiction, which is contrary to or inconsistent with the language set forth in KRS 11A.010(9)(h). We therefore hold that KRS 11A.010(9)(h) plainly vests the Ethics Commission with jurisdiction to investigate and adjudicate ethics complaints against classified state merit employees.

Huffman next argues that even if he was a “public servant” as defined in KRS 11A.010(9), his actions did not violate the Ethics Code. Huffman was found to have violated KRS 11A.020(1)(c) and (d), which read as follows:

(1) No public servant, by himself or through others, shall knowingly:

...

(c) Use his official position or office to obtain financial gain for himself or any members of the public servant's family; or

(d) Use or attempt to use his official position to secure or create privileges, exemptions, advantages, or treatment for himself or others in derogation of the public interest at large.

Huffman argues that taking sick leave when he is not sick and using state equipment for a private legal matter is not in violation of the above provisions unless the activity can be deemed “substantial and material.” He cites to KRS 11A.005(2)(c) as support for this proposition, which states that “[s]tandards of ethical conduct for the executive branch of state government are needed to determine those conflicts of interest which are substantial and material or which, by the nature of the conflict of interest, tend to bring public servants into disrepute.”

He also claims that because it is certain that “a person in private employment can take a sick day to take a son fishing or wire a house or sue a pedophile,” his conduct was not punishable pursuant to the KRS 11A.005(1)(c). This section states, “[a] public servant [shall] not use public office to obtain private benefits[.]” *Id.*

Statutes are to be read “as a whole and in context with other parts of the law.” *Lewis v. Jackson Energy Co-op. Corp.*, 189 S.W.3d 87, 92 (Ky. 2005). “All parts of the statute must be given equal effect so that no part of the statute will become meaningless or ineffectual.” *Id.* Neither our canons of statutory interpretation nor simple logic support Huffman’s interpretations of KRS 11A.020.

KRS 11A.005, titled “Statement of public policy,” does not define what constitutes a violation of the Ethics Code. Rather, it is what it says it is - a statement of policy that explains and clarifies the Code’s purpose. While it is helpful to look to KRS 11A.005 when determining the legislature’s purpose or intent in enacting the statute, it is not appropriate to rely on this section when determining what acts constitute violations of the code. KRS 11A.020, titled in pertinent part “Public servant prohibited from certain conduct,” is the statute which defines such violations.

KRS 11A.020(1)(c) specifically bans the use of one’s official position to obtain financial gain for himself or his family. Nothing in this statute requires the financial gain to be “substantial and material” in order for a violation to occur. Rather, the legislature determined, as set forth in the KRS 11A.005 policy statement, that all financial gain obtained from use of one’s official position is “substantial and material.” The same rationale applies to KRS 11A.020(1)(d), which bans the use of one’s official position “to secure or create privileges, exemptions, advantages, or treatment for himself or others in derogation of the public interest at large.” These privileges and advantages are by definition “substantial and material” so long as they are “in derogation of the public interest at large.” KRS 11A.005(2)(c), KRS 11A.020(1)(d).

Huffman’s improper use of sick time on at least thirteen (13) different occasions allowed him financial gain and privilege in at least two ways. First, he was paid by the Commonwealth for private work that was not related to his duties as a public servant. Second, use of this sick time contributed to the receipt of a substantial attorney fee to Huffman³ from his private clients. Use of the state equipment also gave Huffman the advantage of utilizing state-funded resources for pursuit of a private gain. When KRS 11A.005 *et. seq.* is read “as a whole and in context with other parts of the law,” *Lewis*, 189 S.W.3d at 92, we hold that KRS 11A.020(1)(c) and (d) plainly prohibited the improper use of sick time and state equipment as it was demonstrated in this case.

Huffman’s conduct was not simply a series of isolated escapades. Rather, it was a continuous and concerted effort to misuse state resources and funds for the purpose of advancing a private legal matter. As determined by the legislature, this is precisely the type of conduct which “tend[s] to bring public servants into disrepute.” KRS 11A.005(2)(c). Accordingly, we find no error in the orders entered against Huffman which adjudicated his conduct in violation of KRS 11A.020(1)(c) and (d).

In his final argument, Huffman contends that the Ethics Commission’s exercise of jurisdiction in this case has “interfere[d] with the powers of the State

³ On appeal, Huffman claims he donated his entire fee to charity.

Personnel Board.” Huffman fails to set forth how the Ethics Commission has so interfered with the Board’s powers other than to declare, “[w]e are talking TIME SHEETS (emphasis mine), not ethics.” (Emphasis in original).

As set forth above, the purpose and function of the Personnel Board is different from the purpose and function of the Ethics Commission. While these two bodies may, at times, have concurrent authority to regulate certain conduct of classified state merit employees, it does not follow that such concurrent jurisdiction is necessarily prohibited or incompatible. *Compare Stephens*, 92 S.W.3d at 73-74 (“The insurance code should not be so broadly interpreted as to nullify the provisions of the ethics code.”); *Democratic Party of Kentucky v. Graham*, 976 S.W.2d 423, 430 (Ky. 1998) (jurisdiction to investigate campaign finance laws may be vested in more than one party); *and Cathey v. Johns-Manville Sales Corp.*, 776 F.2d 1565, 1571 (6th Cir. 1985) (subjecting defendant to multiple punitive damage awards for same course of conduct was not unconstitutional). That is especially so in this case since Huffman’s resignation limited the scope of disciplinary action that could have been pursued by his appointing authority and thus, appealed before the Personnel Board. *See* KRS 18A.005 *et. seq.*

Having been presented with no reversible error, we hereby affirm the Franklin Circuit Court’s April 27, 2009, order.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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