FIRST DIVISION
August 26, 2013

No. 1-12-2676

IRWIN W. SHAW, Plaintiff-Appellee, v. THE DEPARTMENT OF EMPLOYMENT SECURITY; DIRECTOR OF EMPLOYMENT SECURITY; and THE DEPARTMENT OF EMPLOYMENT SECURITY BOARD OF REVIEW, Defendants-Appellants (Chicago Transit Authority, Defendant).	)	Appeal from the Circuit Court of Cook County No. 12 L 50538 Honorable Robert Lopez Cepero, Judge Presiding.

JUSTICE DELORT delivered the judgment of the court, with opinion.
Justices Cunningham and Rochford concurred in the judgment and opinion.

OPINION

¶ 1 This appeal was taken from an administrative review judgment in the circuit court of Cook County. The underlying dispute between the employer, the Chicago Transit Authority (CTA), and a former employee, Irwin Shaw (Shaw), involves Shaw's unemployment benefits. The circuit court reversed a decision of the Illinois Department of Employment Security (IDES) Board of Review (Board) to deny Shaw benefits. The IDES, its Director, and the Board (collectively, the state parties)

all appealed to this court from that reversal. We raised the issue of this court's jurisdiction to hear the appeal and requested the state parties to submit additional briefing on that topic. We find that we lack jurisdiction and, accordingly, dismiss the appeal.

¶ 2 BACKGROUND

¶ 3 Plaintiff-appellee Irwin Shaw, an employee of the CTA, was terminated from his employment and applied to the IDES for unemployment insurance benefits. The local IDES office issued a determination letter informing Shaw that he was not eligible for benefits. Shaw requested further review, and a hearing was held before an IDES referee. The CTA participated at that hearing. The referee affirmed the decision of the local office, issuing a written ruling which summarized the evidence and testimony and applied the relevant law to the facts adduced at the hearing. Shaw filed a notice of further appeal to the Board. The Board did not take additional evidence or testimony, and eventually issued a written decision that adopted the referee's decision by reference, affirming the denial of benefits. Shaw then filed a complaint for administrative review in the circuit court of Cook County. The record shows that the employer, the CTA, never filed an appearance or otherwise participated in the circuit court proceedings. The IDES, its Director, and the Board did, through the Attorney General. The circuit court heard arguments and issued a brief written order reversing the Board's decision, without any specific explanation.

¶ 4 The state parties, through the Illinois Attorney General, filed a notice of appeal from the circuit court's ruling and filed briefs in this court. The employee also filed a brief. The CTA, as employer, neither appealed from the circuit court's adverse decision nor filed any brief in this court. On our own motion, we found there was a legitimate question as to whether we had jurisdiction to

hear an appeal of a reversal of an administrative agency's decision when only the agency, and not the losing party in interest (the employer), appealed that reversal or filed a brief in this court. We ordered the Attorney General to file a supplemental brief addressing the issue of jurisdiction. We specifically ordered the Attorney General to address the applicability of the decisions in *Speck v. Zoning Board of Appeals*, 89 Ill. 2d 482 (1982); *Kozenczak v. Du Page County Officers Electoral Board*, 299 Ill. App. 3d 205, 207-08 (1988); *Greer v. Illinois Liquor Control Comm'n*, 185 Ill. App. 3d 219 (1989); *Wallman v. Zoning Board of Appeals, City of Fairview Heights*, 181 Ill. App. 3d 680 (1989); and *Carbondale Liquor Control Comm'n v. Illinois Liquor Control Comm'n*, 227 Ill. App. 3d 71 (1992).

¶ 5 The Attorney General complied with our order and submitted a supplemental brief on the issue of this court's jurisdiction to hear this appeal. We have considered the Attorney General's arguments and the precedents listed above. For the following reasons, we find we lack jurisdiction and dismiss the appeal.

¶ 6 ANALYSIS

¶ 7 We begin by acknowledging that the employee did not raise any concerns about this court's jurisdiction, but instead has argued the merits of the underlying unemployment claim. Nonetheless, it is axiomatic that "[a] reviewing court has an independent duty to consider its jurisdiction and to dismiss an appeal if jurisdiction is lacking." *Uesco Industries, Inc. v. Poolman of Wisconsin, Inc.*, 2013 IL App (1st) 112566, ¶ 73. We also note that "appellate jurisdiction cannot be conferred by *laches*, agreement, waiver or estoppel, and [t]his includes the failure of one party *** to call the appellate court's attention to a jurisdictional defect." (Internal quotation marks omitted.) *Manning*

v. City of Chicago, 407 Ill. App. 3d 849, 856 (2011). Thus, we review the authorities that led this court to question whether the state parties can invoke this court's jurisdiction to overturn a reversal of their own administrative decision.

¶ 8 The Administrative Review Law (735 ILCS 5/3-101 *et seq*. (West 2010)) sets forth the basic rules. " 'Administrative decision' or 'decision' means any decision, order or determination of any administrative agency rendered in a particular case, which affects the legal rights, duties or privileges of parties and which terminates the proceedings before the administrative agency." 735 ILCS 5/3-101 (West 2010). "Every action to review a final administrative decision shall be commenced by the filing of a complaint and the issuance of summons within 35 days from the date that a copy of the decision sought to be reviewed was served upon the party affected by the decision ***." 735 ILCS 5/3-103 (West 2010). "[T]he right to review a final administrative decision is limited to parties of record to the proceeding before the administrative agency whose rights, privileges, or duties are affected by the decision." *Winston v. Zoning Board of Appeals of Peoria County*, 407 Ill. 588, 593 (1950). The administrative rules governing unemployment benefit hearings define "parties" only as employers and employees, and not the Director, the Board, or IDES itself. 56 Ill. Adm. Code 2720.1 (2011).

¶ 9 In *Speck*, our supreme court reviewed an appeal from an administrative decision by the Chicago zoning board of appeals approving the issuance of a special use permit. The parties objecting to the issuance of the special use permit sought administrative review in the circuit court of Cook County. The circuit court reversed the zoning board, and the zoning board itself appealed to the appellate court. *Speck*, 89 Ill. 2d at 484. The appellate court found that the zoning board had

standing to challenge a reversal of its own decision, vacated the zoning board's order, and remanded the cause to the zoning board for further proceedings. *Id.* at 484-85. Our supreme court granted the objectors' petition for leave to appeal, and determined that the dispositive question was: "Does the Board have standing to appeal a reversal of its own decision?" *Id.* at 485.

¶ 10 Our supreme court began by discussing the powers and responsibilities of the zoning board, as forth in the Chicago zoning ordinance. *Id.* The court concluded that the ordinance clearly indicated that the zoning board is intended to function in an adjudicatory or quasi-judicial capacity and found it "noteworthy that nowhere in the ordinance is the Board authorized, expressly or implicitly, to assume the role of advocate for the purpose of prosecuting an appeal." *Id.* The court could not infer that the zoning board had that authority because " '[a]n administrative agency *** has no greater powers than those conferred upon it by the legislative enactment creating it.' " *Id.* (quoting *Village of Lombard v. Pollution Control Board*, 66 Ill. 2d 503, 506 (1977)).

¶ 11 Because of the zoning board's limited authority, the *Speck* court held that it was not a party "whose rights, privileges, or duties [were] affected by the decision." (Internal quotation marks omitted.) *Id.* at 486. The court acknowledged that the zoning board, like all administrative agencies, must be joined as a nominal party defendant when its decisions are appealed on administrative review. See *Environmental Protection Agency v. Pollution Control Board*, 69 Ill. 2d 394, 398 (1977) (stating that the Illinois Pollution Control Board and Industrial Commission were tribunals and thus only nominal parties in administrative review cases). As a nominal party, the administrative agency's role is limited to filing the record (735 ILCS 5/3-108(b) (West 2010)) and defending the rationale for its decision when appropriate.

¶ 12 However, the court found this nominal party status insufficient to confer standing to prosecute an appeal. *Speck*, 89 Ill. 2d at 486. The zoning board had not contended that it was personally aggrieved by the circuit court's reversal of its decision, but asserted that its responsibility to protect the public interest gives it authority to prosecute appeals. *Id*. Our supreme court rejected that argument, finding the zoning board's "obligation to the public *** fully discharged when it conducts a hearing and *** determines the propriety of granting or denying a variation." *Id.* The court expressly held that the zoning board's "responsibility to protect the public interest does not authorize the Board to act as a representative of the public for the purpose of vindicating its own decision on appeal." *Id.* In addition to finding the zoning board lacked statutory authority to prosecute an appeal, the *Speck* court also held that "in assuming the role of advocate, the Board's required duty of impartiality is compromised." *Id*. Thus, our supreme court adopted the view of the majority of jurisdictions and held that "a board like the one here lacks standing to prosecute an appeal from a reversal of its own decision." *Id*. at 486-87.

¶ 13 The *Speck* doctrine has been consistently followed with respect to a host of other administrative agencies. In *Kozenczak v. Du Page County Officers Electoral Board*, 299 Ill. App. 3d 205 (1998), a candidate for sheriff sought judicial review of the decision of the Du Page County Officers Electoral Board (electoral board), which sustained an objection to his certificate of nomination. The circuit court of Du Page County reversed the electoral board's decision and ordered Kozenczak's name placed on the ballot. The objector and the electoral board filed a joint notice of appeal. The electoral board filed a brief in the appellate court and a motion for an expedited briefing schedule, but the objector did not file an appellant's brief. The objector did file a motion to

consolidate briefs and a motion to join the electoral board's argument, but the appellate court denied both motions. Kozenczak moved to dismiss the appeal on the basis that the electoral board could not solely prosecute an appeal from a reversal of its own decision.

¶ 14 The *Kozenczak* court found *Speck* controlling and thus held that the electoral board lacked standing to prosecute the appeal. *Id.* at 207. It found that the electoral board, like the zoning board in *Speck*, functioned in an adjudicatory or quasi-judicial capacity. *Id*. The court further noted that the Election Code (10 ILCS 5/1-1 *et seq*. (West 1996)) did not expressly or implicitly authorize the electoral board to assume the role of advocate for the purpose of prosecuting an appeal. *Id*. Finally, the *Kozenczak* court found that, as in *Speck*, "to allow the [electoral board] to assume the role of advocate would compromise [its] required duty of impartiality." *Id.* at 207.

¶ 15 In *Braun v. Retirement Board of the Firemen's Annuity & Benefit Fund*, 108 Ill. 2d 119 (1985), a decision issued after *Speck* but before *Kozenczak*, our supreme court created an exception to this general rule which applies to governmental pension or retirement boards. The *Kozenczak* court found that the *Braun* exception did not grant the electoral board standing to appeal a reversal of its own decision, even though in *Braun*, "our supreme court implicitly acknowledged that a retirement board had standing to prosecute an appeal from a reversal of its own decision." *Kozenczak*, 299 Ill. App. 3d at 207 (citing *Braun*, 108 Ill. 2d at 128). The *Kozenczak* court distinguished *Braun* because our supreme court noted that "the retirement board, unlike the zoning board *** had extensive managerial responsibilities so that it was more than a tribunal." *Id.* The *Kozenczak* court found that "unlike the retirement board in *Braun*, there is no evidence that the Board in this case [had] extensive managerial responsibilities [so that it was] more than a tribunal."

(Internal quotation marks omitted.) *Id.* A pension board's standing to appeal a reversal of its own decision is grounded in the fact that it awards pensions from a commingled fund, of which the board is a fiduciary (see 40 ILCS 5/1-109.1 (West 2010)), including not only the employee's contributions, but also the board's own investment earnings, tax funds, and donations. See, *e.g.,* 40 ILCS 5/3-125(d) (West 2010) (police pension fund consists of money from four different sources). We explain later why the structure of unemployment benefit payments does not invoke the *Braun* pension fund exception here.

¶ 16 In *Wallman*, also decided before *Kozenczak*, we applied *Speck* and held that the Zoning Board of Appeals of the City of Fairview Heights "lack[ed] standing to prosecute an appeal from a reversal of its own decision." *Wallman*, 181 Ill. App. 3d at 681. The *Wallman* court found that it *must* decline to reach the merits of the Fairview Heights board's appeal from a decision of the circuit court reversing its own decision because the board was not a proper party to bring the appeal. *Id*.

¶ 17 We also extended the holding in *Speck* to a local liquor control commissioner's attempt to seek administrative review of a decision reversing, in part, his own order. *Greer v. Illinois Liquor Control Comm'n*, 185 Ill. App. 3d 219, 220 (1989). In *Greer*, we held that the circuit court lacked jurisdiction to hear the local liquor control commissioner's complaint for administrative review of a decision by the Illinois Liquor Control Commission (ILCC). *Id.* at 221. The *Greer* court noted that the court only "has the power to review administrative actions *** as provided by law." *Id*. (citing Ill. Const. 1970, art. VI, § 9). The law limits the right to seek review of an administrative decision to "parties of record in the proceeding whose rights, privileges or duties are affected by the decision." *Id*. (citing *O'Hare International Bank v. Zoning Board of Appeals, City of Park Ridge*,

8 Ill. App. 3d 764, 766 (1972)). Thus, the *Greer* court framed the issue specifically as "whether a local liquor commissioner can be considered as a party of record whose rights, duties or privileges are affected by the reversal *** of the liquor commissioner's [own] decision." *Id.* at 221.

¶ 18 The *Greer* court noted that *Speck* had been applied to bar dissenting members of an administrative body to appeal a decision of that body. *Id.* at 222 (citing *Hadley v. Board of Trustees of the Firemen's Pension Fund*, 113 Ill. App. 3d 866 (1983)). In *Hadley*, the court had concluded that dissenting members of a pension board did not have standing to challenge the pension board's final decision "because the board members were part of a quasi-judicial body and the Pension Code did not give the individual board members authority to appeal." *Id*. (citing *Hadley*, 113 Ill. App. 3d at 869-70). In *Greer*, the court found that the Liquor Control Act of 1934 (Liquor Control Act) (Ill. Rev. Stat. 1985, ch. 43, ¶ 94 *et seq.*) set forth the local commissioner's powers and duties, and it made no provision for the local commissioner to appeal a decision by the ILCC. *Id.* at 223. Nor did the local liquor control ordinance "purport to give the local commissioner the authority to file a complaint for administrative review of a decision of the ILCC." *Id.* The *Greer* court also found that the commissioner exercises quasi-judicial powers. *Id.* at 222-23. The *Greer* court concluded that because every element of the circuit court's limited grant of jurisdiction was not satisfied, the circuit court did not have jurisdiction, and it vacated the lower court's judgment. *Id.* at 223.

¶ 19 Lastly, the court in *Carbondale Liquor Control Comm'n* affirmed judgments holding that the Carbondale Liquor Control Commission (local commission) had no standing to appeal the final orders of the Illinois Liquor Control Commission (state commission). *Carbondale Liquor Control Comm'n*, 227 Ill. App. 3d at 72. There, the local commission had denied three applications for retail

package liquor licenses. The state commission reversed the local commission. The local commission then filed complaints for administrative review, which the circuit court dismissed for lack of standing. *Id.* at 73.

¶ 20 The local commission in *Carbondale Liquor Control Comm'n* attempted to distinguish *Greer* on the grounds that it did not conduct a hearing on a complaint and, therefore, did not act in a quasi-judicial capacity. *Id.* at 74. The *Carbondale Liquor Control Comm'n* court rejected that argument because it failed to consider the *primary* role of the local commission as a quasi-judicial body. *Id*. The *Carbondale Liquor Control Comm'n* court, applying *Speck*, also held that the local commission was not a party whose duties are affected by the decision of the state commission, in part, because "the Local Commission's responsibility to protect the public interest does not authorize it to act as a representative of the public for the purpose of vindicating its own decision on appeal." *Id.* at 75 (citing *Speck*, 89 Ill. 2d at 486).

¶ 21 In *Carbondale Liquor Control Comm'n*, after the circuit court dismissed the local commission's complaints for lack of standing, the legislature amended the Liquor Control Act (apparently in response to the lower court's ruling) to provide that "[j]udicial review may be requested by any party in interest, including but not limited to the local liquor control commissioner." (Emphasis and internal quotation marks omitted.) *Id.* On appeal, the *Carbondale Liquor Control Comm'n* court declined to apply that new statutory language because it was not merely a clarification of legislative intent, but rather a specific change in existing law. *Id.* at 76. Under the law as it existed prior to the amendment, the court held that the local commission was not a party aggrieved by reversal of its own administrative decision because it is a quasi-judicial body

and (absent the statutory amendment) had not been given any statutory authority to seek administrative review. *Id.* at 75-76.

¶ 22 All of these cases were grounded not merely in the statutory limitations applicable to the respective boards, but primarily in the constitutional requirement of due process. Both employees and employers have the right to due process of law. Due process requires a fair and unbiased tribunal (*Goldberg v. Kelly*, 397 U.S. 254 (1970)), and an administrative proceeding must conform to the fundamental principles of justice and due process of law (*Smith v. Department of Registration & Education*, 412 Ill. 332 (1952)). These cases are firmly grounded in the principle that due process requires an impartial arbiter. Governmental adjudicators, whether they be judges or administrative agencies, must be impartial arbiters and not advocates. Accordingly, to ensure that parties are afforded the full measure of due process rights, their role must be solely judicial and remain so throughout the life of the case. When an agency changes hats during the appellate review process from that of a judge to that of an advocate, an apparent taint of partiality is inevitable. This is particularly so because the agency's judicial role is not necessarily terminated when it issues a "final" decision. On administrative review, either the circuit or a higher court can remand cases to an administrative agency for further hearings, at which it must again act as an impartial arbiter. 735 ILCS 5/3-111 (a)(6), (a)(7), 3-112 (West 2010).

¶ 23 Applying these standards, we find that the state parties may not invoke this court's jurisdiction to vindicate their decision. First, in the context of a claim for benefits, the predominant, if not sole, function of the state parties is to act as a quasi-judicial body. 820 ILCS 405/701 (West 2010) ("A representative designated by the Director, and hereinafter referred to as a claims

adjudicator, shall promptly examine the first claim filed by a claimant for each benefit year and, on the basis of the information in his possession, shall make a 'finding.' Such 'finding' shall be a statement of the amount of wages for insured work paid to the claimant during each quarter in the base period by each employer."); 820 ILCS 405/702 (West 2010) ("The claims adjudicator shall for each week with respect to which the claimant claims benefits or waiting period credit, make a 'determination' which shall state whether or not the claimant is eligible for such benefits or waiting period credit and the sum to be paid the claimant with respect to such week.").

¶ 24 Second, in fulfilling their quasi-judicial responsibilities, the state parties have a duty of impartiality. In particular, IDES has a statutory duty of impartiality embodied in the Unemployment Insurance Act. See 820 ILCS 405/802 (West 2010) ("To hear and decide disputed claims, the Director shall obtain an adequate number of impartial Referees ***."); 820 ILCS 405/803 (West 2010) ("At any hearing before the Board of Review, in the absence or disqualification of any member thereof representing either the employee or employer class, the hearing shall be conducted by the member not identified with either of such classes.").

¶ 25 Third, the state parties have no specific statutory grant of authority to seek administrative review. 820 ILCS 405/1100 (West 2010) ("The provisions of the Administrative Review Law *** shall apply to and govern all proceedings for the judicial review of final administrative decisions of the Director or Board of Review hereunder. The term 'administrative decision' is defined as in Section 3-101 of the Code of Civil Procedure. The party aggrieved by the decision of the Board of Review *** may secure judicial review thereof in the circuit court of the county in which he resides ***."). Had the legislature intended to confer such authority on the state parties in this case, it

clearly knows how to do so. See 235 ILCS 5/7-11 (West 2010) (allowing local liquor commissioners to seek judicial review from an adverse decision of the state liquor commission).

¶ 26 The Attorney General attempts to distinguish *Speck*, *Kozenczak*, *Wallman*, *Greer*, and *Carbondale Liquor Control Comm'n* on the basis that they involved local administrative bodies rather than state agencies. The Attorney General asserts that the State has an ongoing, cognizable interest in the execution and enforcement of its laws, and the Attorney General has been given the constitutional authority to conduct the legal affairs of the State to vindicate that interest. She argues that any limitation on the Attorney General's power to prosecute this appeal for the purposes of vindicating the State's interests would run afoul of the constitution.

¶ 27 The Attorney General's reliance on the state's putative "interest" in the administration of state law is unavailing. In *Speck*, the zoning board similarly argued that it had a responsibility to protect the public interest, and that this responsibility authorized it to prosecute an appeal. Our supreme court rejected that argument, finding that "the Board's obligation to the public is fully discharged when it conducts a hearing and, with due consideration to the public interest, determines the propriety of granting or denying a variation." *Speck*, 89 Ill. 2d at 486. Similarly, in *Greer*, the court noted that the local ordinance gave the local commissioner the power to initiate complaints. The *Greer* court likened the local commissioner's authority to a court's power to *sua sponte* issue a rule to show cause. *Greer*, 185 Ill. App. 3d at 222. However, the issue remained whether the local commissioner was a "party" who could invoke the court's limited administrative review jurisdiction. The *Greer* court found the local commissioner's power to initiate complaints did not make the local commissioner a party whose rights, duties, or privileges are affected by a decision reversing his or

her own order. The court held that the "local commissioner's action in filing a complaint does not detract from his *primary function* as a quasi-judicial body, and, as such, he may not appeal from a reversal of his decision by the State liquor control commission." (Emphasis added.) *Id.* at 222-23. In this case, the state parties' duties regarding the Unemployment Insurance Act are discharged when IDES, through its Director and the Board, conducts a hearing and, with due consideration to the public interest and applicable legal principles, determines the propriety of granting or denying unemployment benefits. *Speck*, 89 Ill. 2d at 486. At that point, the dispute solely rests between the employer and employee. The state, through its agents, was the judge of that dispute and, at most, remains on the scene merely as a trustee of the employer's fund from which the employee's benefits are paid.

¶ 28 The Attorney General also argues that the state parties are entitled to proceed under section 3-112 of the Administrative Review Law. Section 3-112 provides that "[a] final decision, order, or judgment of the Circuit Court, entered in an action to review a decision of an administrative agency, is reviewable by appeal as in other civil cases." 735 ILCS 5/3-112 (West 2010). The Attorney General contends that section 3-112 does not limit unemployment appeals to the private defendants. The *Carbondale Liquor Control Comm'n* court, however, rejected a similar argument. There, the argument was, similarly, that language in the statute providing that final administrative decisions of the state commission shall be subject to judicial review obviated the lack of standing. The *Carbondale Liquor Control Comm'n* court found that the statute at issue made clear that judicial review of administrative decisions is governed by the Administrative Review Law, and the Administrative Review Law expressly limits who may invoke the court's jurisdiction. Those same

strict jurisdictional limits apply in this case. 820 ILCS 405/1100 (West 2010). The Administrative Review Law applies and limits the court's jurisdiction over administrative decisions under the Unemployment Insurance Act. Neither IDES, the Director, nor the Board was a party whose rights, privileges, or duties were affected by the decision and, therefore, could not invoke the court's jurisdiction.

¶ 29 The Attorney General also argues that State agencies differ from local administrative agencies in that the State's ability to litigate a matter is not contingent on whether the agency has suffered an injury, and therefore *Speck* and its progeny are inapplicable. The *Speck* line of cases does not rely on whether or not the administrative officer or agency suffered an injury. "The question of 'standing' in respect to an administrative agency depends rather upon 'interest' or 'duty' prescribed by statute." *Department of Registration & Education v. Aman*, 3 Ill. App. 3d 784, 786 (1972). It was well-established by the time our supreme court decided *Speck* that the right to review a final administrative decision is limited to parties of record in the proceeding whose rights, privileges, or duties are affected by the decision. To reach that conclusion, the court simply applied the definition of "administrative decision" in the Administrative Review Law to determine whether the administrative agency rendering the decision is a party to that decision. *Winston*, 407 Ill. at 593 ("Since section 4 [of the Administrative Review Act] makes no specific provision as to the persons or classes of persons entitled to maintain an action under the act, recourse must be had to other parts of the statute."). Thus, any distinction between local administrative bodies and state agencies makes no difference to the standing analysis. The holdings in *Speck* and its progeny are based on whether the court's limited jurisdiction in administrative review proceedings is properly invoked by the

administrative agency that rendered the decision at issue. See *Greer*, 185 Ill. App. 3d at 223 ("[b]ecause the statutory grant of jurisdiction to the circuit court to review administrative decisions is limited, all elements of the empowering statute must be met in order to vest the circuit court with jurisdiction").

¶ 30 The Attorney General further argues that private parties cannot be relied upon to vindicate the state parties' interests by appealing reversals of the Board's decision. The Attorney General contends that the State has "a strong interest in preserving the integrity of the unemployment fund," that "private parties may have little financial incentive to appeal an adverse judicial decision on a benefits claim," and that, likewise, a claimant who loses in the circuit court may have no financial incentive to hire an attorney to litigate the claim further in the appellate court.

¶ 31 On that point, the Attorney General argues the state parties accomplish this by ensuring that employers pay liabilities owed and that ineligible claimants do not receive benefits. The Attorney General's argument is misplaced. The State does not have an independent interest in preserving the unemployment insurance fund. The State's own financial interests are not affected by the disbursement or nondisbursement of unemployment insurance benefits. The State's only role is to administer the funds provided by employers for the benefit of employees. The agency itself recognizes that it is merely a trustee holding employers' funds:

> "State unemployment benefits are financed through state payroll taxes, which are held in individual state trust fund accounts in the U.S. Treasury's Federal Unemployment Trust Fund.

Federal law prohibits the use of these funds for any purpose other than paying unemployment benefits." See generally Financial Reports from IDES, *available at* http://www.ides.illinois.gov/page.aspx?item=81 (last visited July 25, 2013).

¶ 32 The purpose of the Unemployment Insurance Act is to relieve taxpayers of the burden of "the cost of supporting able-bodied workers who are unable to secure employment" by creating "compulsory unemployment insurance upon a statewide scale ***." 820 ILCS 405/100 (West 2010). "All contributions and payments in lieu of contributions collected under [the Unemployment Insurance Act] *** shall be paid or turned over to the Department and held by the Director, as ex-officio custodian of the clearing account, the unemployment trust fund account and the benefit account, and by the State Treasurer, as ex-officio custodian of the special administrative account, separate and apart from all public moneys or funds of this State, as hereinafter provided. Such moneys shall be administered by the Director exclusively for the purposes of this Act." 820 ILCS 405/2100 (West 2012). The employers who pay into the unemployment insurance fund and the employees who receive benefits are the ones with a direct interest in decisions to pay or deny unemployment insurance benefits.

¶ 33 The Attorney General also argues that the State also has an interest in the correct interpretation and application of the Unemployment Insurance Act. The Attorney General argues the state parties are charged with the responsibility of interpreting and administering the Unemployment Insurance Act and have an interest in the development of "a sound, stable body of law." First, this argument is belied by the fact that the legislature--which created IDES, stated its duties, and granted the powers to its Director and Board--did not grant it the authority to prosecute

appeals from its administrative decisions, despite clearly knowing that, absent such specific authorization, the state parties would not have that power. See *Carbondale Liquor Control Comm'n*, 227 Ill. App. 3d at 75-76; 820 ILCS 405/1100 (West 2010). The Attorney General asserts that if the state parties are not permitted to appeal, significant legal questions may escape appellate review. There are, however, countless reasons why important legal questions resolved in circuit courts in all areas of law are not further reviewed at the appellate level. A tragic airline crash case, for example, might set important precedents of great importance to the public in the areas of tort law, liability, insurance coverage, and product liability. No one would contend, however, that the Attorney General could simply become a party to the case to advocate that an issue be resolved in a particular manner.

¶ 34 The Attorney General alternatively argues the state parties should be permitted to prosecute cases such as this because the State must remain in compliance with federal law. The Attorney General fails to demonstrate how a decision on an individual claimant's benefits might force the State out of compliance with federal Department of Labor requirements, such that we should find the State has standing to appeal such decisions, or that the Unemployment Insurance Act confers any such authority for the purpose. Nor can we discern how a circuit court judge's fairly rendered decision to reverse an unemployment decision, even though incorrect, would somehow trigger punitive action by the federal government.

¶ 35 Nor does our judgment violate the Attorney General's constitutional or common law powers. Article V, section 15, of the 1970 Illinois Constitution provides: "The Attorney General shall be the legal officer of the State, and shall have the duties and powers that may be prescribed by law." The

1870 constitution simply provided that the Attorney General would "perform such duties as may be prescribed by law." Ill. Const. 1870, art. V, § 1. See also Ann M. Lousin, The Illinois State Constitution: A Reference Guide 131 (2010) (noting difference between these two constitutional provisions). Even under the 1870 constitution, however, our supreme court pointed out that the Attorney General possessed certain common law powers which the legislature could not diminish. In the seminal case involving the Attorney General's common law powers under the 1870 constitution, our supreme court held that the legislature could only add to those common law powers, not diminish them. *Fergus v. Russel*, 270 Ill. 304, 335 (1915). This basic principle holds true today under our current state constitution. *Environmental Protection Agency v. Pollution Control Board*, 69 Ill. 2d 394, 399 (1977). However, when viewing *Fergus* through the lens of the 1970 constitution, our supreme court more recently cautioned that common law does not vest the Attorney General with unlimited powers, stating: "Thus, stripped of *dictum*, the *Fergus* decision stands for the principle that the Attorney General is the sole officer who may conduct litigation in which the People of the State are the real party in interest." *People ex rel. Scott v. Briceland*, 65 Ill. 2d 485, 495 (1976). In other words, *Fergus* and its progeny do not hold that the Attorney General can litigate private cases at will, but only stand for the proposition that state officials and agencies must be represented by the elected Attorney General, or a special Assistant Attorney General acting in her stead and with her permission. *Environmental Protection Agency*, 69 Ill. 2d at 399.

¶ 36 The Attorney General's duties under the Illinois Constitution and the Attorney General Act (15 ILCS 205/1 *et seq*. (West 2012)) do not grant jurisdiction upon this court and do not confer standing on the state parties in this case to prosecute this action. The Attorney General's state clients

are merely nominal parties in the administrative proceedings. *Speck*, 89 Ill. 2d at 486 ("the fact that [the zoning board] must be joined as a nominal party defendant in administrative review actions [citation] does not imply that it thereby has standing to prosecute appeals").

¶ 37 Finally, invoking the pension board exception of *Braun*, the Attorney General asserts that the state parties are "more than a tribunal" due to their extensive administrative responsibilities. Our supreme court did not describe the "extensive managerial duties" that made the retirement board in *Braun* "more than a tribunal." *Braun*, 108 Ill. 2d at 128 (citing *Kozak v. Retirement Board of the Firemen's Annuity & Benefit Fund*, 95 Ill. 2d 211 (1983)). The Attorney General points to several administrative functions that are the responsibility of IDES and the Director. While we agree that IDES has extensive responsibilities with regard to administering the system of unemployment insurance, in the context of a decision on an application for unemployment insurance benefits, the IDES and the Director are merely superfluous tag-along defendants to the Board, whose primary role is to act in an adjudicatory or quasi-judicial capacity[1]. Again, as in *Speck*, it is noteworthy that nowhere in the Unemployment Insurance Act are the state parties authorized, expressly or implicitly, to assume the role of advocate for the purpose of prosecuting an appeal. *Speck*, 89 Ill. 2d at 485. The Attorney General has not directed us to any such express or implied authorization, nor have we found any in the Unemployment Insurance Act. The state parties' limited role as nominal parties in the administrative review lawsuit is not sufficient to confer jurisdiction. *Id.* at 486. Therefore, we

[1] See also *Catamount Cargo Services, LLC v. Department of Employment Security*, 366 Ill. App. 3d 1039, 1044 (2006) (holding that the Director of the Department of Employment Security is herself an "administrative agency" with respect to unemployment insurance assessments she levies on employers).

hold that when an adverse party fails to participate at the circuit court level, an agency which did participate at that level cannot appeal its own reversal to this court, absent statutory authorization.

¶ 38 The Attorney General correctly points out that courts have issued substantive rulings in many unemployment benefit cases where the circuit court reversed the Board and awarded benefits to employees, and which the state agencies appealed without the involvement of the employer. In those cases, she notes, the reviewing court has never raised the issue of jurisdiction. The issue has never been squarely addressed; the fact that we have not raised it on our own before does not prevent us from now recognizing it and resolving it.

¶ 39 CONCLUSION

¶ 40 Administrative agencies must not only adjudicate fairly, but they must strictly maintain detached neutrality throughout the appellate process. When we reverse a circuit court judge's decision, the judge cannot pursue an appeal to a higher court. Similarly, when the real party in interest, the employer, declines to vindicate its financial or institutional interests through further litigation, the judging agency has no business acting on the employer's behalf. We do not vacate the judgment of the circuit court, because the employee had the burden at that level to overturn the Board's adverse decision, and the absence of the CTA from those proceedings was not jurisdictional. This appeal, however, is dismissed.

¶ 41 Appeal dismissed.