

NOT DESIGNATED FOR PUBLICATION

JEW
WICK
J

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2018 CA 1671

--CONSOLIDATED WITH--

2018 CA 1672

--CONSOLIDATED WITH--

2018 CA 1673

--CONSOLIDATED WITH--

2018 CA 1674

LOUISIANA BOARD OF ETHICS
IN THE MATTER OF DORIS HICKS, ET AL.

JUDGMENT RENDERED: MAY 31 2019

Appealed from the Ethics Adjudicatory Board
Division of Administrative Law • State of Louisiana
Docket Number 2014-11977-Ethics-B • Panel B

Charles Perrault, Joycelyn Elmore, Karla Coreil, Sabra Matheny, Janet Waguespack, and Patrick E. Moore • Administrative Law Judges Presiding

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RESPONDENTS—Doris Hicks,
Monique Cook, Iris Ponson, and
Darrin Cook

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ATTORNEYS FOR APPELLEE
The Louisiana Board of Ethics

BEFORE: WELCH, CHUTZ, AND LANIER, JJ.

WELCH, J.

The defendants, Doris Hicks, Darrin Cook, Iris Ponson, and Monique Cook, appeal a decision of the Louisiana Ethics Adjudicatory Board (“EAB”) finding that they violated provisions of the Louisiana Code of Governmental Ethics (“Code of Ethics”) and ordering them to pay penalties to the Louisiana Board of Ethics (“Ethics Board”). Finding no error in the decision of the EAB, we affirm the decision in accordance with Uniform Rules—Courts of Appeal, Rule 2-16.1(B).

The Dr. Martin Luther King, Jr. Elementary School for Science and Technology (“MLK School”) is located in the Ninth Ward in New Orleans, Louisiana. Prior to August 2005, MLK School was operated by the Orleans Parish School Board with an enrollment of 740 students. On August 29, 2005, Hurricane Katrina decimated the Ninth Ward in New Orleans, damaging every school in the area. Student enrollment in Orleans Parish dropped to less than half following Hurricane Katrina. MLK School struggled to reopen in the Ninth Ward after being flooded with approximately twenty feet of water.

Friends of King School, Inc. (“FOKS”) is a Louisiana not-for-profit public benefit corporation that was incorporated on March 14, 2006, and thereafter, FOKS entered into a three-year contract with the Louisiana Board of Elementary and Secondary Education (“BESE”) for the purpose of operating the Dr. Martin Luther King, Jr. Charter School for Science and Technology (“MLK Charter School”). Also, FOKS subsequently entered into a contract with BESE for the purpose of operating the Joseph A. Craig Elementary Charter School (“Craig Charter School”). A non-profit corporation that operates a charter school is subject to the same law applicable to charter schools, including the Code of Ethics. See La. R.S. 17:3996(B)(20).

On September 18, 2006, Doris Hicks entered into an annual employment contract with FOKS for the position of Principal assigned to the MLK Charter

School. As Principal of MLK Charter School, Doris Hicks was the administrative officer who supervises the operation of the school. On that same date, September 18, 2006, Iris Ponson, the biological sister of Doris Hicks, entered into an annual employment contract with FOKS for the position of Hall Monitor assigned to MLK Charter School. Likewise on September 18, 2006, Darrin Cook, a pre-Hurricane Katrina employee of the Orleans Parish School Board, entered into an annual employment contract with FOKS for the position of Head Custodian assigned to MLK School. As Head Custodian, Darrin Cook reported to MLK Charter School Principal Doris Hicks and his job duties included performing and overseeing repair and maintenance of all equipment, buildings, and grounds. Darrin Cook is married to Monique Cook, the biological daughter of Doris Hicks. Iris Ponson and Darrin Cook have remained employed by FOKS since 2006.

On August 4, 2008, Doris Hicks entered into a new annual Employment Contract with FOKS for the position of Principal assigned to MLK School and as the Chief Executive Officer (CEO) of FOKS. As CEO of FOKS, Doris Hicks' duties included, but were not limited to, ensuring campus compliance with Louisiana Department of Education regulations and policies and overseeing faculty recruitment for all schools under FOKS's purview, which included MLK Charter School. Doris Hicks is not a school board member.

On August 1, 2012, Monique Cook, a state-certified teacher, entered into a Consulting Contract with FOKS to provide consulting services in the field of special education at Craig Charter School. Monique Cook is a state-certified special education teacher. Monique Cook received over \$17,000.00 from FOKS for the consulting service rendered to FOKS. Doris Hicks, as CEO on behalf of FOKS, signed eight checks issued to her daughter, Monique Cook, compensating her for her consulting services rendered to FOKS. Doris Hicks signed the checks as secondary signatory while Hilda Young, the Chairperson of the Board for

FOKS, was on medical leave. On January 7, 2013 Monique Cook was hired by FOKS as a certified teacher

On October 17, 2014, the Board of Ethics issued charges against Doris Hicks for two counts of violating La. R.S. 42:1119¹ (nepotism) and eight counts of violating La. R.S. 42:1112² (prohibition against participation in certain transactions involving the governmental entity); Darrin Cook for one count of violating La. R.S. 42:1119; Iris Ponson for one count of violating La. R.S. 42:1119; and Monique Cook for one count of violating La. R.S. 42:1113(A)³ (prohibited contractual arrangements). More specifically, the Ethics Board maintained that Doris Hicks, while CEO of FOKS, a not-for-profit public benefit corporation that operates charter schools, signed checks payable to her daughter, Monique Cook, for services rendered by Monique Cook pursuant to a consulting contract. Thus, the Ethics Board claimed that Doris Hicks participated in eight prohibited transactions involving the governmental entity where her daughter had a substantial economic interest in violation of La. R.S. 42:1112. Doris Hicks contended that she did not violate La. R.S. 42:1112(B)(1) by signing checks issued by FOKS to her daughter Monique Cook because she was required to sign the checks to Monique Cook by FOKS as the checks required two signatures, she was only one of three people authorized to sign checks issued by FOKS, and Hilda

¹ Louisiana Revised Statutes 42:1119(A) provides that “[n]o member of the immediate family of an agency head shall be employed in his agency.” An “[a]gency head” is defined as “the chief executive or administrative officer of an agency ... who exercises supervision over the agency.” La. R.S. 42:1102(3). In addition, “[i]mmediate family’ as the term relates to a public servant means his children, the spouses of his children, ... [and] his sisters.” La. R.S. 42:1102(3).

² Louisiana Revised Statutes 42:1112(B)(1) provides, in pertinent part, that “[n]o public servant ... shall participate in a transaction involving the governmental entity in which, to his actual knowledge [any member of his immediate family] has a substantial economic interest.”

³ Louisiana Revised Statutes 42:1113(A)(1)(a) provides, in pertinent part, that “[n]o public servant, ... or member of such a public servant’s immediate family ... shall bid on or enter into any contract, subcontract, or other transaction that is under the supervision or jurisdiction of the agency of such public servant.”

Young, who was also authorized to sign checks, was unavailable because she was on medical leave.

The Ethics Board also maintained that Doris Hicks violated La. R.S. 42:1119 because her sister, Iris Ponson and her son-in-law, Darrin Cook, were employed at MLK Charter School while she was Principal of MLK Charter School and members of her immediate family were precluded from being employed at MLK Charter School while she was Principal at that school. With respect to Darrin Cook, the Ethics Board maintained that he violated La. R.S. 42:1119 because he was employed as Head Custodian at MLK Charter School while his mother-in-law, Doris Hicks, was Principal of MLK Charter School in violation of Louisiana's nepotism rule. As to Iris Ponson, the Ethics Board maintained that she violated La. R.S. 42:1119 because she was employed as Hall Monitor at MLK Charter School while her sister, Doris Hicks, was Principal of MLK Charter School in violation of Louisiana's nepotism rule. Doris Hicks also contended that she did not violate La. R.S. 42:1119 because she was not the agency head of MLK Charter School. Doris Hicks, Iris Ponson, and Darrin Cook also contend that they did not violate La R.S 42:1119 because Doris Hicks called the Ethics Board and was informed that she could hire Iris Ponson and Darrin Cook to work at MLK Charter School. Darrin Cook further contends that his employment at MLK Charter School did not violate La. R.S. 42:1119 because he performed similar duties when he was previously employed by the Orleans Parish School Board.

As to Monique Cook, the Ethics Board contended that she violated La. R.S. 42:1113(A) because she entered into a consulting contract with FOKS and received payments totaling over \$17,000.00 while her mother, Doris Hicks, was CEO of FOKS and that she entered into a contract that was under the supervision of FOKS while her mother served and continues to serve as CEO of FOKS. Monique Cook claimed that she did not violate La. R.S. 42:1113(A)(1)(a) because La. R.S.

42:1113(D)(2)(a) allows for contracts for employment in a professional educational capacity or for professional services for an elementary or secondary school or other educational institution.

After a public hearing, the EAB found that the Ethics Board proved, by clear and convincing evidence, that Doris Hicks violated La. R.S. 42:1119 twice and that she violated La. R.S. 42:1112(B)(1) eight separate times. More specifically, the EAB concluded that Doris Hicks, as the administrative officer exercising supervision over MLK Charter School, was the agency head. See In Re Demuro, 2003-2694 (La. App. 1st Cir. 11/3/04) 897 So.2d 669, 670-71 (affirming the determination that the headmaster of a charter school was an “agency head” within the meaning of La. R.S. 42:1119). As agency head, members of Doris Hicks’ immediate family were prohibited from being employed at MLK Charter School; however, her sister and son-in-law were employed at MLK Charter School. With respect to La. R.S. 42:1112(B)(1), the EAB concluded that by signing the checks issued to her daughter, Doris Hicks, as CEO of FOKS, took part in and shared responsibility for approving and issuing payment to her daughter for services rendered to FOKS and that Doris Hicks knew that her daughter had a substantial economic interest in the transaction. Due to her violations of La. R.S. 42:1119 and 42:1112(B)(1), Doris Hicks was assessed a \$20,000.00 penalty and was removed from her employment as CEO of FOKS and Principal of MLK Charter School.⁴ The EAB also found that the Ethics Board proved, by clear and convincing evidence, that both Darrin Cook and Iris Ponson violated La. R.S. 42:1119 by being employed at MLK Charter School while Doris Hicks was the Principal and assessed each of them a \$2,500.00 penalty. Lastly, the EAB found

⁴ See La. R.S. 42:1153(B), which provides that “[u]pon a determination that any public employee or other person has violated any provision of any law within the jurisdiction of the Board of Ethics ..., the [EAB] may **remove**, suspend, or order a reduction in pay, or demotion of the public employee or other person, **or impose a fine of not more than ten thousand dollars, or both.**” (Emphasis added).

that the Ethics Board proved, by clear and convincing evidence, that Monique Cook violated La. R.S. 42:1113(A) by entering into a prohibited contract with FOKS while her mother, Doris Hicks, was CEO of FOKS, assessed her a penalty of \$8,921.25, and ordered her to forfeit payments totaling \$17,842.50.⁵ From this decision of the EAB, Doris Hicks, Iris Ponson, Darrin Cook, and Monique Cook have appealed.

Proceedings before the EAB and judicial review of its decisions are governed by the Louisiana Administrative Procedure Act. See La. R.S. 42:1143; La. R.S. 49:950, *et seq.*; **Louisiana Bd. of Ethics in re Great S. Dredging, Inc.**, 2015-0870 (La. App. 1st Cir. 5/27/16), 195 So.3d 631, 634, writ denied, 2016-1208 (La. 10/17/16), 207 So.3d 1063. Thus, judicial review is confined to the record developed in the administrative proceeding, and the EAB's decision may be reversed or modified only if substantial rights of the appellant (or appellants) are prejudiced because the findings, inferences, conclusions, or decisions are: (1) in violation of constitutional or statutory provisions; (2) in excess of the agency's statutory authority; (3) made upon unlawful procedure; (4) affected by other error of law; (5) arbitrary, capricious, or an abuse of discretion; or (6) not supported and sustainable by a preponderance of evidence as determined by the reviewing court. La. R.S. 49:964(F) & (G).

⁵ See La. R.S. 42:1153 (set forth in footnote 4) and La. R.S. 42:1155, which provides:

A. If an investigation conducted pursuant to this Part reveals that any public servant or **other person** has **violated any law** within the jurisdiction of the Board ... to his economic advantage, and after an adjudicatory hearing on the matter, the [EAB] **may order the payment of penalties**. Recovery may include, in addition to an amount equal to such economic advantage, **penalties not to exceed one half of the amount of the economic advantage**. ...

B. The [EAB] is authorized to order the **forfeiture of any gifts or payments made in violation of this Chapter**.

(Emphasis added).

Pursuant to La. R.S. 49:964(G), we find that the determinations of fact and conclusions of law by the EAB with regard to Doris Hicks, Iris Ponson, Darrin Cook, and Monique Cook are supported and sustainable by a preponderance of the evidence and further, that the penalty imposed by the EAB was not an abuse of its discretion. Accordingly, we find no reversible error in the decision of the EAB and hereby affirm that decision. All costs of this appeal are assessed to the appellants, Doris Hicks, Darrin Cook, Iris Ponson, and Monique Cook.

AFFIRMED.