

[J-111-2009]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

CASTILLE, C.J., SAYLOR, EAKIN, BAER, TODD, McCAFFERY, GREENSPAN, JJ.

KENNETH KISTLER,	:	No. 59 MAP 2009
	:	
Appellee	:	Appeal from the Order of the
	:	Commonwealth Court entered 10/17/08 at
v.	:	No. 1352 CD 2007, which reversed the
	:	decision of the Ethics Commission dated
	:	6/29/07 at No. 04-037
	:	
COMMONWEALTH OF PENNSYLVANIA,	:	
STATE ETHICS COMMISSION,	:	958 A.2d 1092 (Pa.Cmwlt. 2008)
	:	
Appellant	:	ARGUED: December 1, 2009

OPINION

MR. JUSTICE McCAFFERY

DECIDED: June 22, 2011

The State Ethics Commission (hereinafter “the Commission”) appeals from the order of the Commonwealth Court reversing the Commission’s determination that Kenneth Kistler (hereinafter “Appellee”) had violated two provisions of the Public Official and Employee Ethics Act (hereinafter “Ethics Act”).¹ We affirm.

The following summary of the relevant facts is excerpted from the Commonwealth Court opinion and the Commission’s final adjudication. Kistler v. State Ethics Commission, 958 A.2d 1092 (Pa.Cmwlt. 2008); Final Adjudication of the State Ethics Commission, dated 6/29/07 (hereinafter “Commission’s Adjudication”). Appellee was a member of the

¹ Act of Oct. 15, 1998, P.L. 729, No. 93, 65 Pa.C.S. §§ 1101-13.

Carbon-Lehigh Intermediate Unit (hereinafter “CLIU”) Board of Directors (hereinafter “the Board”),² serving, from January 1998 until March 18, 2002,³ as chairman of the building committee, which was charged with pursuing the Board’s interest in various construction projects. In addition, Appellee is the owner and president of two businesses, Kistler Building Supply, Inc., and Kistler Pole Building Company.

In late 1999, the Board began to explore the possibility of constructing a garage in which to house its buses. Staff member Robert J. Keegan, Jr., was placed in charge of the garage construction project, and in June 2001, he began discussions concerning the project with Dale Roth, an architect who had previously worked for the CLIU. Sometime between February 2002, and March 18, 2002, Mr. Roth told Appellee that the design for the planned garage might involve a pole building,⁴ and Appellee agreed to provide pricing and planning information for the project. Subsequently, Appellee informed the executive director of the CLIU that he was resigning from the building committee because of his possible business involvement with construction of the garage. At the March 18, 2002 meeting of the Board, Appellee’s resignation from the building committee was accepted. The solicitor for the CLIU opined that, although Appellee could properly participate in the construction of the garage, he should abstain from any votes of the Board relating to that project. The Board, with Appellee abstaining, voted to make Mr. Roth’s architectural firm,

² The Board is comprised of one representative from each of fourteen school districts. Commission’s Adjudication at 3.

³ The date that Appellee became chair of the building committee is variously reported as January 1988 (see Kistler, 958 A.2d at 1094); January 1998 (see Commission’s Adjudication at 4); and December 20, 1999 (see id. at 14, 62).

⁴ A pole building is defined as “a quickly constructed building in which vertical poles are secured in the ground to serve as both the foundation and framework.” Oxford Dictionaries, oxforddictionaries.com.

known as Roth Marz Partnership, its agent in pursuing a lease-purchase agreement for the proposed garage site.

In May 2002, Mr. Roth made an initial commitment to Appellee that Kistler Pole Building Company, Appellee's business, would be chosen to construct the garage. The construction arrangements were formalized on July 12, 2002, with a written contract between Kistler Pole Building Company and Cornerstone LLC, another of Mr. Roth's businesses. At its July 15, 2002 meeting, the Board, with Appellee again abstaining, approved a sales agreement, a lease agreement, and an option agreement with Cornerstone LLC. Appellee filed two conflict of interest abstention memoranda, both dated August 19, 2002, explaining that he had abstained from Board votes on March 18, 2002, and July 15, 2002, because of his company's possible participation in the construction of the garage. Kistler Pole Building Company started construction of the garage in September 2002, and completed the project in February 2003.

While planning the garage construction, the Board was also occupied with a second facility, the Lehigh Learning and Adjustment School (hereinafter "the School"). On June 17, 2002, after it became apparent that the building in which the School was then housed had a mold problem, the Board terminated its lease and authorized Mr. Roth to pursue construction of a new facility. Appellee voted in favor of both of these actions. In April 2003, after Appellee learned that Mr. Roth was considering a pole building design for the School, Appellee ceased any involvement with the Board on the School project. At a meeting on October 20, 2003, the Board authorized Mr. Roth to begin construction of the School, and on May 17, 2004, the Board approved a lease agreement between Mr. Roth and the CLIU for the School. Appellee abstained from both votes. On June 17, 2004, Appellee and Mr. Roth executed an agreement under which Kistler Pole Building Company would construct the building for the School.

By letter dated August 4, 2004, the Commission notified Appellee that he was being investigated for possible violations of the Ethics Act. Appellee contacted counsel, specifically, the law firm of the CLIU solicitor, to inquire as to whether he would be in violation of the Ethics Act if he were to fulfill his contractual obligations to construct the School. In a letter dated August 27, 2004, counsel opined that Appellee had not violated the Ethics Act. Appellee then began construction of the School in September 2004, and completed it in January 2005.

The Commission held hearings concerning its allegations against Appellee, and thereafter concluded that Appellee had unintentionally violated the Ethics Act via three actions. First, the Commission determined that Appellee had violated subsection 1103(a), the conflict of interest provision, on June 17, 2002, when he had voted to authorize Mr. Roth to pursue construction of the School while simultaneously seeking a subcontract from Mr. Roth for construction of the garage. In addition, the Commission determined that Appellee had violated subsection 1103(f) by entering into subcontracts with Mr. Roth's businesses for construction of the garage and the School, respectively on July 12, 2002, and on June 17, 2004, because the Board had not solicited and accepted competitive bids prior to awarding the contracts to Mr. Roth. The Commission concluded that all the alleged violations were unintentional because Appellee had voted and had entered into the subcontracts in reliance on the solicitor's legal advice.

The Commonwealth Court reversed in a published opinion in which it concluded that Appellee had not intended his June 17, 2002 vote on the School to lead to his subcontract with Mr. Roth for construction of the garage, and that there was no evidence that the vote did indeed lead to the garage subcontract. Kistler, 958 A.2d at 1100 & n.15. In addition, the Commonwealth Court concluded that the Ethics Act, with its requirement of "an open and public process" in subsection 1103(f), did not mandate use of a competitive bidding process. Id. at 1098.

We granted the Commission's Petition for Allowance of Appeal as to the following questions:

- a. Whether a public official may violate § 1103(a) of the Public Official and Employee Ethics Act, 65 Pa.C.S. § 1103(a), despite lacking the intent to use his office for private pecuniary gain.
- b. Whether § 1103(f) of the Public Official and Employee Ethics Act requires competitive bidding.

Kistler v. State Ethics Commission, 972 A.2d 482 (Pa. 2009).

Both of the questions presented are issues of statutory interpretation, specifically of the Ethics Act. Statutory interpretation is a question of law, for which our standard of review is de novo, and our scope is plenary. St. Elizabeth's Child Care Center v. Department of Public Welfare, 963 A.2d 1274, 1276 (Pa. 2009); see Malt Beverages Distributors Ass'n v. Pennsylvania Liquor Control Board, 974 A.2d 1144, 1154 (Pa. 2009) (citing Seeton v. Pennsylvania Game Commission, 937 A.2d 1028, 1037 (Pa. 2007) for the proposition that "while courts traditionally accord the interpretation of the agency charged with administration of the act some deference, the meaning of a statute is essentially a question of law for the court").

The object of all statutory interpretation is to ascertain and effectuate the intention of the General Assembly, giving effect, if possible, to all provisions of the statute. 1 Pa.C.S. § 1921(a). In general, the best indication of legislative intent is the plain language of a statute. Malt Beverages, supra at 1149. "When the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit." 1 Pa.C.S. § 1921(b). Words of the statute are to be construed according to their "common and approved usage." 1 Pa.C.S. § 1903(a).

The first issue on appeal is whether a public official who does not have the intent to use his or her office for private pecuniary gain may nonetheless violate subsection 1103(a) of the Ethics Act. Subsection 1103(a) bars a public official from engaging in conduct that constitutes a conflict of interest, where conflict of interest is defined in relevant part as the “[u]se by a public official ... of the authority of his office ... for the private pecuniary benefit of himself ... or a business with which he ... is associated.” 65 Pa.C.S. § 1102 (emphasis added). There is no explicit intent element in subsection 1103 or in the definition of conflict of interest. However, the lack of an explicit intent element does not end our inquiry, as we must consider the plain meaning of the entire statutory text.

As the Commonwealth Court has previously emphasized, to violate subsection 1103(a), a public official must “**use**” his or her office for private pecuniary benefit. Kraines v. Pennsylvania State Ethics Commission, 805 A.2d 677, 681 (Pa. Cmwlth. 2002). The word “use” is not defined in the Ethics Act. The dictionary definition of the noun “use” is “[t]he act of using or putting to a purpose[, e.g.,] the use of a car;” analogously, the definition of the verb “use” is “1. [t]o bring or put into service or action: employ[, e.g.,] use a pen [or] use your imagination[, or] 2. to put to some purpose: avail oneself of[, e.g.,] use the bus to get to work.” Webster’s II New College Dictionary, Houghton Mifflin Co., 1995, at 1215. Thus, the common and approved usage of the word “use,” which must guide our inquiry, indicates an action directed toward a purpose. Accordingly, to violate subsection 1103(a), a public official must act in such a way as to put his office to the purpose of obtaining for himself a private pecuniary benefit. Such directed action implies awareness on the part of the public official of the potential pecuniary benefit as well as the motivation to obtain that benefit for himself.

That the General Assembly intended such an interpretation of subsection 1103(a) is strengthened by a declaration in the Ethics Act’s purpose provision: “The Legislature hereby declares that public office is a public trust and that any **effort** to realize personal

financial gain through public office other than compensation provided by law is a violation of that trust.” Pa.C.S. § 1101.1(a) Purpose (emphasis added). The dictionary defines “effort” as “[e]xertion of physical or mental energy to do something.” Webster’s II New College Dictionary at 360. In other words, an effort is an activity directed toward a goal. Accordingly, pursuant to the Ethics Act, violation of the public trust arises from activity directed toward the goal of realizing personal financial gain through public office. This is entirely consistent with the understanding of the word “use” in the context of the statutory definition of “conflict of interest” set forth above.

The Commonwealth Court has considered the Ethics Act’s conflict of interest provision in numerous cases, and the facts and holdings of those cases provide instructive examples of that court’s understanding of how a public official may “use” his office in violation of subsection 1103(a). Two cases, with different outcomes, involved the acceptance by public officials of excess, unauthorized compensation. In McGuire v. Pennsylvania State Ethics Commission, 657 A.2d 1346 (Pa.Cmwlt. 1995),⁵ the Commission concluded that two board members of a township sanitary authority had used their public offices to obtain personal financial gain, and thus had violated the Ethics Act, by receiving monthly meeting pay that was greater than had been authorized, as required, by the township commissioners. Importantly, the two board members in question had not participated in any action or vote to determine the pay at issue; indeed, their excess compensation resulted from an erroneous practice that had begun years before they had even joined the board. Id. at 1348-49 & n.6. The Commonwealth Court reversed the

⁵ McGuire was decided under earlier versions of the Ethics Act; however, any differences from the current version of the Ethics Act are not important to the McGuire holding. See McGuire, 657 A.2d at 1347 n.1 and 1351; see also Title 65 Appendix, Part II, Chapter 11, Historical and Statutory Notes (stating that the Act of October 15, 1998, P.L. 729, No. 93 § 2(a) provides as follows: “Except as otherwise specifically provided in [the Ethics Act], it is the intention of this act to continue existing law.”)

decision of the Commission, determining that the board members had not acted in any way to facilitate their receipt of compensation to which they were not entitled. Id. at 1351. The Commonwealth Court summarized its conclusion as follows:

The [Commission's] belief that mere acceptance of a check constitutes "use" of a public office reaches beyond the limits of the normal interpretation of that term in the context provided. ... Mere mistaken acceptance by a public official of a compensation check in an amount that was determined prior to his term in office is devoid of the type of action needed to constitute "use" of office for the purpose of obtaining personal financial gain.

Id. at 1351-52.

The Commonwealth Court distinguished the circumstances in McGuire from those of an earlier case, Yocabet v. Pennsylvania State Ethics Commission, 531 A.2d 536 (Pa. Cmwlth. 1987), in which the court rejected the petitioner's argument that he had not violated the Ethics Act because it had not been his intention to use his office for private financial gain. In Yocabet, a township supervisor had voted to appoint himself to the township office of secretary/treasurer and then had accepted compensation for this office that had not been set by the township auditors, as required by law. Although the Second Class Township Code permits township supervisors to appoint themselves to township offices, it also requires the township auditors to set the compensation for the offices under such circumstances. Id. at 538. The Commonwealth Court affirmed the Commission's finding that the Yocabet petitioner had violated the Ethics Act because he received unauthorized compensation for an office to which he had acted to appoint himself. The Commonwealth Court did not find it determinative that the supervisor had not intended to violate the Ethics Act. Id. at 539.

The McGuire court distinguished Yocabet as follows:

While Yocabet does not require intent in order to find [that] a violation of Section 3(a) of the Ethics Act has occurred, it does not mean that a public official does not have to take action to fall within that section's prohibition. ... "Use" of public office requires action by a public official that in some way facilitates his receipt of compensation to which he is not entitled, such as in Yocabet where the individual voted to increase his own salary without having authority to do so. Mere mistaken acceptance by a public official [such as in McGuire] of a compensation check in an amount that was determined prior to his term in office is devoid of the type of action needed to constitute "use" of office for the purpose of obtaining personal financial gain.

McGuire, *supra* at 1351-52.

Thus, the determinative distinction drawn by the Commonwealth Court between Yocabet and McGuire focused on whether the unauthorized compensation derived from the public official's **use** of his office. In Yocabet, a township supervisor used his office to appoint himself to a position for which he then accepted excess, unauthorized compensation. In contrast, in McGuire, although the public officials also accepted excess, unauthorized compensation, the error that had led to the unauthorized compensation was made years prior to their terms of office and they had not acted to initiate or perpetuate the error in any way. Thus, while the Yocabet supervisor had "used" his office to appoint himself to a higher-paying position, the board members in McGuire had not so "used" their office, but merely had accepted the pre-determined compensation that they believed, mistakenly, to have been properly authorized.⁶

⁶ We also note that Yocabet was decided under the 1978 version of the Ethics Act, in which Section 3(a), the provision at issue, read in relevant part as follows:

No public official ... shall use his public office ... to obtain financial gain other than compensation provided by law for himself, a member of his immediate family or a business with which he is associated.

(continued...)

It is also instructive to compare two other cases in which the Commonwealth Court considered possible conflicts of interest arising from the creation of a new position by a local authority. In Pulice v. State Ethics Commission, 713 A.2d 161, 163-64 (Pa.Cmwth. 1998), the Commonwealth Court declined to find any violation of the Ethics Act by a school board president who had participated in discussions and votes regarding the creation of a new administrative position to which his son-in-law was subsequently appointed. At the time of the creation of the new position, there were no applicants, and there was no evidence that the son-in-law would ultimately be appointed. The Commonwealth Court determined that the new position was created for the benefit of the entire school district, not to promote or to benefit the president's son-in-law. In concluding that there was no conflict of interest, the Commonwealth Court stated, "[t]here is no evidence at all from which it can be inferred, rather than speculated, that [the school board president-petitioner] 'used his authority' for the private pecuniary benefit of [his] son-in-law by voting for the creation of the new position." Id. at 164.

In contrast, in Rebottini v. State Ethics Commission, 634 A.2d 743 (Pa.Cmwth. 1993),⁷ the Commonwealth Court concluded that board members of a municipal authority had violated the conflict of interest provision of the Ethics Act by creating multiple new

(...continued)

65 P.S. § 403(a), 1978, repealed (emphasis added to the relevant portion removed by amendments in the Act of June 26, 1989, P.L. 26).

The McGuire court does not appear to conclude that this change to the law was dispositive, or even relevant. However, the Yocabet court emphasized that the compensation accepted by the supervisor-petitioner had not been authorized as required by law, and thus determined that he had obtained financial gain "other than compensation provided by law." See Yocabet, 531 A.2d at 537, 539.

⁷ Rebottini was decided under the 1978 version of the Ethics Act, Section 3(a). See n.6, supra.

officer positions, such that each board member could be appointed as an officer and thereby have his compensation set by the board. Notably, pursuant to the Municipality Authorities Act,⁸ board members are authorized to create officer positions, appoint officers, and set officers' salaries. However, board members are not authorized to set their own salaries; rather, salaries of the board members are set by the governing body of the municipality. In Rebottini, the evidence demonstrated that board members had sought to be paid for their services; that their duties and responsibilities had not changed with their appointment as officers; and that they had voted to set their own compensation for their newly assumed officer positions. Id. at 745. Based on all the evidence presented, the Commission found, and the Commonwealth Court agreed, that the board members had created the new officer positions for the purpose of circumventing the requirement of the Municipality Authorities Act that board member salaries be set, not by the board itself, but by the governing body of the municipality. Id. at 747. Accordingly, the Commonwealth Court held that the board members' action was "an abuse of public office and [] precisely the type of conduct which the [Ethics] Act was intended to prevent." Id.

The result in Rebottini is distinguishable from that in Pulice by the motivation of the public officials, a question of fact. In Rebottini, the evidence established that the board members were motivated by a desire to increase their salaries for their service on the board. In contrast, in Pulice, there was no evidence that the board president's motive was to attain a financial benefit for himself or his family.

Finally, in Snyder v. State Ethics Commission, 686 A.2d 843 (Pa.Cmwlt. 1996), the Commonwealth Court considered a conflict of interest issue in the context of an award of a subcontract to a public official. The court affirmed the Commission's finding that a member

⁸ Act of May 2, 1945, P.L. 382, as amended, 53 P.S. §§ 301 - 401. The relevant provisions are §§ 309B and C.

of a township board of supervisors had violated the Ethics Act by participating in the board's deliberations as to two private development projects while also engaging in undisclosed business relationships with the developers of the projects. The supervisor-petitioner, who was the owner of a masonry company, had actively sought business contracts for stonework on the two projects from the developers during the time that he was consistently voting to approve and to further the projects in his capacity as a member of the board. Id. at 849 & n.10, 11. The evidence indicated that the supervisor-petitioner had submitted a bid for stonework on the first project, had lined up installers to assist him, and had communicated with the architect and general contractor, all the while continuing to vote on issues concerning both projects, but never publicly disclosing his intention to secure a subcontract for his company. Id. at 849 n.10. With regard to the second project, the supervisor-petitioner had initially voted against the developer's interests; however, after he had secured a business relationship with the developer, he consistently voted in the developer's favor, and indeed actively supported the developer's interests and needs. Id. at 849 n.11. The Commonwealth Court concluded that the Commission's findings were fully supported by the evidence of record, and affirmed the Commission's determination that the supervisor-petitioner had violated the Ethics Act.

In accordance with the above Commonwealth Court cases, we now hold that to violate the conflict of interest provision in subsection 1103(a) of the Ethics Act, a public official must be consciously aware of a private pecuniary benefit for himself, his family, or his business, and then must take action in the form of one or more specific steps to attain that benefit. As informed by the Commonwealth Court decisions discussed above, this interpretation derives from the plain meaning of the statutory definition of conflict of interest,

which requires that a public official **use** the authority of his office for private pecuniary benefit. See text supra; 65 Pa.C.S. § 1103(a).⁹

Furthermore, we conclude, as did the Commonwealth Court, that the Commission erred here in determining that Appellee used his office for private pecuniary benefit and thus violated subsection 1103(a) of the Ethics Act. The Commission found that Appellee had violated subsection 1103(a) on June 17, 2002, when he voted to authorize Mr. Roth to pursue construction of the School, because at the same time, Appellee was actively seeking a contract with Mr. Roth for construction of the garage and had a reasonable expectation of receiving the contract. Commission's Adjudication at 76, 82. However, it is only speculation, based on the timing of events, that Appellee's June 17, 2002 vote on the School was motivated by private financial benefit. There is no evidence that Appellee had acted with awareness that his June 17, 2002 vote on the School could or would result in his receipt of a subcontract for construction of the garage. Nor is there any evidence that Appellee's vote actually constituted a step in his realization of the garage subcontract.

We do not dispute the Commission's general assertion that a public official violates the Ethics Act if he uses the authority of his office to award a contract to a developer for one project in order to obtain a subcontract from the same developer on a different project. However, the Commission must provide clear and convincing evidence, see 65 P.S. § 1108(g), that the public official's action was accompanied by awareness of the potential for private financial benefit and was undertaken as a step in attaining that benefit. Here, the Commission presented no evidence that Appellee's June 17, 2002 vote as to the School

⁹ In the context of a criminal case, a majority of this Court has expressed the view that the Ethics Act does not indicate a legislative intent to impose absolute criminal liability. Commonwealth v. Parmar, 710 A.2d 1083, 1089-90, 1091 (Pa. 1998) (Opinion in Support of Affirmance and Opinion in Support of Reversal). Because the analysis was largely based on principles of criminal law and was the product of a divided Court, it is not particularly instructive for the instant case.

was either motivated by or led, directly or indirectly, to the subcontract he subsequently obtained to construct the garage. Without clear and convincing evidence that Appellee's vote was at least partially motivated by private pecuniary benefit, we cannot conclude that the Commission has established a violation of subsection 1103(a).

Although Snyder, supra, may have certain similarities to the instant case, the Commission's finding of Ethics Act violations in Snyder was grounded in evidence of improper conduct that is not present here. Similarly to the instant case, in Snyder, a township supervisor, who was the owner of a masonry company, sought and obtained subcontracts from the developers of two township construction projects. However, in contrast to the instant case, the evidence in Snyder supported the following findings: the supervisor repeatedly voted on the development projects at issue, and indeed actively promoted them, without disclosing his financial interest in the projects; he refused to complete and sign a form, which had been prepared by the township solicitor, declaring for the record the supervisor's financial interest in one of the projects; the supervisor began to vote in one developer's favor only after he had formed a business relationship with that developer; and the supervisor made it clear to several individuals that he was using his official position in the township to promote the interests of his business. Id. at 845-49 & n.10 & 11. The Commission made no similar findings in the instant case.

In fact, the evidence here indicates that Appellee both disclosed his financial interest in the projects at issue and abstained from voting on projects in which he had a financial interest. Shortly after Mr. Roth approached Appellee concerning a possible business relationship with regard to the garage construction, Appellee resigned from the Board's building committee, and he abstained from any further votes on matters relating to the garage construction. Kistler, 958 A.2d at 1095. Importantly, Appellee sought and acted in concert with the advice of the township solicitor. Id. at 1096 n.8; Commission's Adjudication at 30, 40-41, and 46. Undisputed testimony established that Appellee did not

attempt to influence the Board's deliberations with regard to the garage. Commission's Adjudication at 17, 18, 25, 30, and 39. Undisputed testimony also indicated that the Board chose to hire Mr. Roth for the garage and the School projects because the Board was satisfied with his previous work. Id. at 16, 24, 37-38. With regard to the School, it is undisputed that the Board's vote on June 17, 2002, to terminate the old facility's lease was prompted by the receipt, a month earlier, of a solicited study concerning a mold problem. Kistler, 958 A.2d at 1099. Only months later did Appellee learn that Mr. Roth was considering a pole building design for the school, which could implicate Appellee's company; Appellee then ceased any involvement with the Board on the School project and abstained from any votes thereon. Id. at 1096.

Thus, in contrast to the circumstances in Snyder, there is no evidence from which one could reasonably infer that Appellee's June 17, 2002 vote as to the School was related to or motivated by Appellee's private financial interest in obtaining a subcontract for the construction of the garage. We conclude, in agreement with the Commonwealth Court, that the Commission erred when it found that Appellee violated the conflict of interest provision in subsection 1103(a) of the Ethics Act.

The second issue before this Court concerns the Commission's finding that Appellee violated subsection 1103(f) of the Ethics Act, which provides in relevant part as follows:

Contract.--No public official ... or any business in which the [official] is associated shall enter into ... any subcontract valued at \$500 or more with any person who has been awarded a contract with the governmental body with which the public official ... is associated, unless the contract has been awarded through **an open and public process**, including prior public notice and subsequent public disclosure of all proposals considered and contracts awarded.

65 Pa.C.S. § 1103(f) (emphasis added).

The statutory phrase “an open and public process,” which is not defined in the Ethics Act, is the focus of the parties’ dispute. The Commission interprets the phrase to mean a meaningful opportunity for competitors to submit proposals, requiring actual public solicitation for proposals through public notice or advertisement; in other words, the Commission interprets subsection 1103(f) to mandate a competitive bidding process. Commission’s Adjudication at 80; Commission’s Brief at 41-42.

In the instant case, the Board had awarded contracts to the Roth businesses for construction of the garage and the School without publicly soliciting any competitive bids. Therefore, the Commission found that Appellee had violated subsection 1103(f) when he entered into subcontracts with Mr. Roth or the Roth businesses for construction of these facilities because the Board had awarded the contracts to the Roth businesses without “an open and public process.” Commission’s Adjudication at 82.

The Commonwealth Court reversed the Commission’s decision, holding that it was error to construe subsection 1103(f)’s phrase “an open and public process” to mandate a competitive bidding process. Kistler, 958 A.2d at 1098. The Commonwealth Court set forth two general rationales for its decision. First, the Commonwealth Court suggested that when the General Assembly intends to mandate a competitive bidding process, it does so explicitly. As examples, the Commonwealth Court cited the Pennsylvania Convention Center Authority Act and the Third Class County Convention Center Authority Act, both of which provide that certain individuals shall not enter into a contract valued at \$500 or more “unless the contract has been awarded **to the lowest responsible bidder** through an open and public process, including prior public notice and subsequent public disclosure of all proposals considered and contracts awarded.” Kistler, supra at 1097-98 (citing 64 Pa.C.S. § 6017(c)(3) and 16 P.S. § 2399.16(c)(3)) (emphasis added by Commonwealth Court). Because the phrase “to the lowest responsible bidder” does not appear in subsection

1103(f) of the Ethics Act, the Commonwealth Court concluded that the “open and public process” required in the Ethics Act may be satisfied without a competitive bidding process.

Second, the Commonwealth Court looked to the Commonwealth Procurement Code, and noted that, although the general rule requires all Commonwealth agency contracts to be awarded by competitive bidding, there are numerous exceptions. Kistler, supra at 1098 (citing 62 Pa.C.S. §§ 511, 515(1), and 516 (respectively, general rule; exception applicable when only a single contractor is capable of providing the supply, service, or construction; and exception applicable for emergency procurements)); see also 62 Pa.C.S. §§ 514 and 515(2) - (10) (exceptions applicable, respectively, for small procurements and under miscellaneous circumstances). If subsection 1103(f) of the Ethics Act is interpreted to require competitive bidding, then any official who enters into a subcontract with a contractor chosen under one of these exceptions would violate subsection 1103(f). For example, a public official would violate subsection 1103(f) if he or she entered into a subcontract with a contractor chosen to address a threatened emergency under the emergency procurement exception. The Commonwealth Court argued that this is an absurd and unreasonable result, inconsistent with 1 Pa.C.S. § 1922(1), under which we presume that the General Assembly does not intend a result that is absurd or unreasonable. Kistler, supra at 1098 & n.12.

Finally, the Commonwealth Court highlighted the General Assembly’s recognition that “clear guidelines are needed in order to guide public officials [] in their actions.” Id. at 1097 (quoting 62 Pa.C.S. § 1101.1(a)). To that end, the General Assembly specified its intent “to define as clearly as possible those areas which represent conflict with the public trust.” Id. at 1097 (quoting 62 Pa.C.S. § 1101.1(a)). We agree with the Commonwealth Court that the Ethics Act simply does not expressly state or otherwise make clear a legislative intent that the phrase “open and public process” invariably must mean a competitive bidding process.

Appellee provides numerous examples of statutes that specifically address procurement or public works and set forth specific procedures for contracting. For example, 53 P.S. § 53202(a), which pertains to the regulation of contracts by incorporated towns, provides in part as follows: “All contracts [] of incorporated towns in excess of ten thousand dollars ... shall not be made except with and from the lowest responsible bidder, after due notice in one newspaper ... at least three times at intervals of not less than three days The first advertisement shall be published not less than ten days prior to the date fixed for the opening of bids.” See also 53 P.S. §§ 56802(a) and 68102(a) (setting forth similar, although not identical, requirements for, respectively, first class and second class townships). In addition, several statutory provisions set forth a requirement for separate bids for plumbing, heating, ventilation, and electrical work. See, e.g., 53 P.S. § 1003 (pursuant to general municipal law, “it shall be the duty of the person or persons authorized to enter into contracts for the erection, construction, or alteration of such public buildings to receive separate bids upon each of the said branches of work, and to award the contract for the same to the lowest responsible bidder for each of said branches.”); 53 P.S. §§ 53205 and 56805 (setting forth the same requirement with regard to, respectively, an incorporated town and a first class township). With regard to bridges, viaducts, and culverts, the Second Class County Code provides that “the county commissioners, in conjunction with the city, borough or township, ... shall advertise for bids and award the contract to the lowest responsible bidder.” 16 P.S. § 5855. With regard to waters and water supply, general municipal law requires that any public works or improvement involving an expenditure of more than \$10,000 be “let to the lowest responsible bidder after due advertisement, once a week for two successive weeks in at least one newspaper of general circulation.” 53 P.S. § 2863(a). For contracts of greater than \$4,000, but less than \$10,000, this statute requires that at least three price quotations be requested, unless there are fewer than three qualified contractors in the market area. 53 P.S. § 2863(b). The

Public School Code of 1949 also sets forth specific directives for contracting work related to the construction, repair, or maintenance of school buildings, which depend, inter alia, on the total cost of the contract and whether the work is necessitated by an emergency. 24 P.S. § 7-751. The general rule for work exceeding \$10,000 requires the school district to award the contract to the lowest responsible bidder; however, under certain circumstances for work of lesser cost, the school board is not required to solicit competitive bids. 24 P.S. § 7-751(a), (a.1), and (b).

The Ethics Act is not a procurement statute, and there is no indication that the General Assembly intended it to constrain or modify the numerous statutory provisions, e.g., those summarized above, that do set forth specific procedures for awarding contracts. Regardless of whatever statutory or regulatory provision may define the established procedures for awarding a public contract in any particular case, the Ethics Act sets forth the ethical standards to which the public officials involved are expected to conform. The Ethics Act “emphasizes guidance to public officials [] regarding [those] ethical standards,” and intends to provide guidelines in as clear a way as possible. 65 Pa.C.S. § 1101.1(a) and (b). Accordingly, for these reasons, we decline to infer that when the General Assembly chose to use the phrase “an open and public process” in the context of subsection 1103(f), its actual intent was to specify a competitive bidding process.

In sum, we conclude that the Commonwealth Court correctly construed subsections 1103(a) and 1103(f) of the Ethics Act, and so we affirm.

Former Justice Greenspan did not participate in the decision of this case.

Messrs. Justice Eakin and Baer, and Madame Justice Todd join in the opinion.

Mr. Justice Saylor files a concurring opinion in which Mr. Chief Justice Castille joins.