

**STATE OF LOUISIANA
DIVISION OF ADMINISTRATIVE LAW
ETHICS ADJUDICATORY BOARD**

BOARD OF ETHICS

*** DOCKET NO. 2020-6232-ETHICS-B**

IN THE MATTER OF

JOSEPH WICKER

*** AGENCY TRACKING NO. 2019-593**

DECISION AND ORDER

The Louisiana Board of Ethics charged Joseph Wicker with a violation of La. R.S. 42:1113(B) of the Louisiana Code of Governmental Ethics. The Louisiana Board of Ethics proved by clear and convincing evidence that Mr. Wicker violated La. R.S. 42:1113(B) because he was an appointed member of a board who entered into a contract which was under the supervision or jurisdiction of the board on which he served. In accordance with La. R.S. 42:1153(B) and La. R.S. 42:1155(A), Mr. Wicker is penalized \$15,999.98 for this violation.

APPEARANCES

An adjudicatory hearing in this matter was held at the Division of Administrative Law in Baton Rouge, Louisiana, on April 30, 2021, before the Ethics Adjudicatory Board, Panel B.¹ Charles E. Reeves Jr. appeared as counsel for the Louisiana Board of Ethics. Though properly noticed, Joseph Wicker did not appear.²

¹ The panel consisted of administrative law judges Gregory McDonald (presiding), Anthony J. Russo, and Esther A. Redmann.

² The hearing notice was mailed, via U.S. mail, on January 13, 2021, by the Administrative Hearings Clerk for the Division of Administrative Law to Joseph Wicker at 8619 Hickock Drive, Baton Rouge, Louisiana 70811, and was not returned as undeliverable. This is the same address that the BOE used when it sent, via certified mail, return receipt requested, discovery requests to Respondent on January 8, 2021, and a letter requesting a Rule 10.1 Conference, on February 19, 2021. The certified mail receipts were signed and returned to the BOE. See BOE 8.

STATEMENT OF THE CASE

The Louisiana Board of Ethics (BOE) issued *Charges* against Joseph Wicker (Respondent) on June 17, 2020, and requested a hearing to have the Ethics Adjudicatory Board (EAB) determine whether he violated the Louisiana Code of Governmental Ethics (Ethics Code).

In its *Charges*, the BOE alleged that Respondent, an appointed member of the Laurel Oaks Charter School Board of Directors (the “Board”), entered into a loan agreement with Laurel Oaks Foundation (the “Foundation”), wherein Mr. Wicker loaned the Foundation \$15,000.00, to be repaid with 27% per annum interest, in three equal payments of \$6,333.33. The BOE alleged Mr. Wicker, as an appointed member of the Board, violated the provisions of La. R.S. 42:1113(B) by entering into the loan agreement with the Foundation, which was under the supervision or jurisdiction of the Board. The BOE alleged the violation by Mr. Wicker subjected him to the penalties provided in La. R.S. 42:1153(B) and La. R.S. 42:1155(A).

At the hearing, the BOE offered nine exhibits³, including the *Type 2 Charter Contract entered into by Laurel Oaks Foundation and Louisiana Department of Education* (the “Charter Contract”).⁴ All of the exhibits were accepted into evidence, with the exception of Exhibit 3, the Charter Contract. The tribunal kept the record open, on counsel for the BOE’s request, until May 18, 2021, at 5:00 p.m., in order for counsel for the BOE to file supplemental documentation and/or legal memoranda on the issues of calculation of damages, including reimbursement by Respondent, and the authenticity of the Charter Contract.⁵

Counsel for the BOE filed documents, including a post-hearing memorandum and a certified copy of the Charter Contract, into the record on May 19, 2021. The certified copy of the Charter Contract was accepted into evidence as Exhibit 3 and the record closed on May 19,

³ BOE-1 through BOE-9.

⁴ BOE-3.

⁵ *Minute Entry and Order* issued May 6, 2021.

2021, at 5:00 p.m.⁶ The matter was taken under advisement by the panel.

JURISDICTIONAL AUTHORITY

This adjudication is conducted in accordance with Louisiana Code of Governmental Ethics, La. R.S. 42:1101, *et seq.*, the Administrative Procedure Act, La. R.S. 49:950, *et seq.*, and the enabling legislation of the Division of Administrative Law, La. R.S. 49:991, *et seq.*

FINDINGS OF FACT

On July 1, 2016, the Foundation was granted a Type 2 Charter by the Louisiana Department of Education (LDOE), through its Board of Elementary and Secondary Education (BESE) to operate Laurel Oaks Charter School.⁷ The Charter Contract, dated July 1, 2016, contains language on the bottom of each page that the document is the “Charter Contract of Laurel Oaks Charter School operated by Laurel Oaks Foundation.”⁸ Section 1 of the Charter Contract, entitled “Establishment of School,” designated the “Parties” to the contract under subsection 1.1.⁹

Subsection 1.1.1 provides:

This Charter Contract is entered into between Laurel Oaks Foundation and its Board of Directors (“Charter Operator”) and Louisiana Board of Elementary and Secondary Education (“BESE”) for the purpose of operating Laurel Oaks Charter School (the “Charter School”).¹⁰

⁶ The BOE filed the certified copy of the Charter Contract with the Administrative Hearings Clerk for the Division of Administrative Law on May 19, 2021, one day after this tribunal’s order requiring it to be filed on or before 5:00 p.m. on May 18, 2021. As the Division of Administrative Law and other state agencies in the Baton Rouge area were closed due to inclement weather conditions in the area, that date became a legal holiday. The EAB accepted the Charter Contract into evidence pursuant to the provisions of La. Code of Civil Procedure art. 5059. That article provides, in subsection (A), that “in computing a period of time allowed or prescribed by law or by order of the court...[t]he last day of the period is to be included, unless it is a legal holiday, in which event the period runs until the end of the next day which is not a legal holiday.” For the same reason, the record in this matter closed at 5:00 p.m. on May 19, 2021.

⁷ BOE-2, at p.1.

⁸ BOE-3, at pp. 1-27.

⁹ *Id.*, at p. 4.

¹⁰ *Id.*

Subsection 1.1.4 provides:

The person authorized to sign this Agreement on behalf of the Charter Operator is Julie Ferris (“Charter Representative”), **who must be an Officer of the Charter Operator’s Board of Directors.** The Charter Representative affirms **as a condition of this Agreement that the Charter Operator’s Board of Directors has authorized him or her to execute agreements, including this Charter Contract, on behalf of the Charter Operator.**¹¹ (emphasis added)

Subsection 1.1.6 provides:

The Charter Operator affirms, **as a condition of this Charter Contract, that the non-profit corporation has a Board of Directors, whose members received no compensation other than reimbursement of actual expenses incurred** while fulfilling duties as a member of such a board.¹² (emphasis added)

The Board, of which Respondent was an appointed member at all times relevant to the alleged violation, supervised the Foundation. The Charter Contract was entered into by BESE, the Foundation and the Board.¹³ The person who signed the contract on behalf of the Foundation was required to be an officer of the Charter School’s Board.¹⁴ The Charter Contract was conditioned on the Charter Representative having authority from the Board to execute such agreements, specifically including the Charter Contract.¹⁵ The Foundation affirmed in the Charter Contract that, as a condition of entering into the contract, the Foundation must have a Board.¹⁶

Section 2 of the Charter Contract, under “Operation of School,” provides that the Charter Operator and its Board are responsible for complying with and carrying out the provisions of the Charter Contract.¹⁷ The Board of the Charter Operator is required to adopt by-laws for the

¹¹ BOE-3, at p. 4.

¹² *Id.*

¹³ *Id.*, at p. 3.

¹⁴ *Id.*, at p. 3, *Subsection 1.1.4.*

¹⁵ *Id.*

¹⁶ *Id.*, at p. 3, *Subsection 1.1.6.*

¹⁷ BOE-3, at pp. 6-13.

Charter School and assure that the school operates in accordance with those by-laws.¹⁸ The Charter Operator and its Board are responsible for the sound fiscal management of the Charter School.¹⁹ The Charter Operator is the final authority in matters affecting the Charter School.²⁰

On September 14, 2018, Respondent was appointed as a member of the Board and served in that capacity until his resignation in December of 2018.²¹ On September 14, 2018, Respondent entered into a loan agreement with the Foundation for the sum of \$15,000.00, to be repaid with 27 percent per annum interest in three equal monthly installments.²² The Foundation made payments of \$6,333.33 to Respondent on November 1, 2018, December 3, 2018, and January 3, 2019.²³ The Foundation paid Respondent a total of \$3,999.99 in interest by or on January 3, 2019, on the loan agreement entered into on September 14, 2018.²⁴

CONCLUSIONS OF LAW

The BOE proved by clear and convincing evidence that Respondent violated La. R.S. 42:1113(B) and is subject to penalties as authorized by La. R.S. 42:1153(B) and La. R.S. 42:1155(A).

Violation of La. R.S. 42:1113(B)

The BOE proved by clear and convincing evidence that Respondent violated La. R.S. 42:1113(B) when, as a duly-appointed member of the Board of Laurel Oaks Charter School, entered into a loan agreement with the Foundation, which was under the supervision and

¹⁸ *Id.*, at p. 6, *Subsection 2.2.2*.

¹⁹ *Id.*, at p. 6, *Subsection 2.2.6*.

²⁰ *Id.*, at p. 6, *Subsection 2.2.7*. The Foundation is required to get the Board's approval for any material modification of the Charter School's disciplinary code. A representative of the Foundation is required to attend all meetings of the Board.

²¹ *Id.* See also, BOE-8, pp. 12-13 and 18-22. Respondent admitted this by operation of La. C.C.P. art. 1467(A).

²² *Id.*, BOE-6, and BOE-7. See also, BOE-8, pp. 12-13 and 18-22. Respondent admitted this by operation of La. C.C.P. art. 1467(A).

²³ BOE-2, at p.1. See also, BOE-8, pp. 12-13 and 18-22. Respondent admitted this by operation of La. C.C.P. art. 1467(A).

²⁴ *Id.* See also, BOE-8, pp. 12-13 and 18-22. Respondent admitted this by operation of La. C.C.P. art. 1467(A).

jurisdiction of the Board.

The EAB is charged with determining whether the BOE has established by clear and convincing evidence that a violation of the Ethics Code has occurred, and if so, what penalties or sanctions, if any, should be imposed.²⁵ Clear and convincing evidence is an intermediate standard of persuasion requiring more proof than a preponderance of the evidence but less proof than required to establish guilt beyond a reasonable doubt.²⁶ The existence of the disputed fact must be much more probable than its nonexistence.²⁷

La. R.S. 1113(B) provides:

Other than a legislator, no appointed member of any board or commission, member of his immediate family, or legal entity in which he has a substantial economic interest shall bid on or enter into or be in any way interested in any contract, subcontract, or other transaction which is under the supervision or jurisdiction of the agency of such appointed member.

La. R.S. 42:1113(B) prohibits an appointed member of any board from entering into or be in any way interested in any contract, subcontract, or other transaction which is under the supervision or jurisdiction of the agency of such appointed member.

Respondent was a duly appointed member of the Board of Laurel Oaks Charter School.²⁸ While a member of the Board, Respondent entered into a loan agreement with the Foundation. The loan agreement provided that, in consideration for Respondent lending the Foundation the sum of \$15,000.00, at 27% per annum interest, the Foundation would pay Respondent three (3) equal payments of \$6,333.33 (a total of \$18,999.99) on November 1, 2018, December 3, 2018, and January 3, 2019. The Foundation made each of the three required payments to Respondent

²⁵ La. R.S. 42:1141.5.

²⁶ *La. State Bar Ass'n. v. Edwins*, 329 So. 2d 437, 441 (La. 1976).

²⁷ *Id.* at 442.

²⁸ BOE-4 and BOE-5.

under the loan agreement. Respondent recouped the \$15,000.00 he loaned the Foundation, as well as a total of \$3,999.99 in interest. Respondent subsequently resigned from the Board of Directors in December 2018.

The evidence established that the Foundation was under the supervision and jurisdiction of the Board of Laurel Oaks Charter School. The Board was a necessary and required party/signatory to the Charter School Contract. The contract required the Foundation to have a Board. The Board authorizes the Foundation to execute agreements on behalf of the School. A representative of the Foundation is required to attend Board. The Board is intimately involved in the operations of the Charter School.

Respondent entered into a contract (the loan agreement) with the Foundation while he was an appointed member of the Board that supervised the Foundation. Respondent derived substantial monetary benefit from the contract. The BOE proved by clear and convincing evidence that Respondent violated La. R.S. 42:1113(B).

Penalties under La. R.S. 42:1153(B)

La. R.S. 42:1153(B) provides with respect to penalties:

Upon a determination that any public employee or other person has violated any provision of any law within the jurisdiction of the Board of Ethics except violations of the Campaign Finance Disclosure Act which shall be governed by Chapter 11 of Title 18 of the Louisiana Revised Statutes of 1950, the Ethics Adjudicatory Board 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.

The evidence supports a finding that Respondent violated La. R.S. 42:1113(B), which is within the jurisdiction of the BOE. The violation was substantial and amounted to an abuse of his position as a member of the Board of the Charter School. Respondent has not responded to the BOE's Charges, nor has he participated in any aspect of these proceedings, despite notice being sent to his last known address. There is no evidence that Respondent has reimbursed the

Board for the financial windfall he derived from the loan agreement. Taking these factors into account, the maximum fine allowed under La. R.S. 42:1153(B) is commensurate with Respondent's actions.²⁹

In accordance with La. R.S. 42:1153(B), a fine totaling \$10,000.00 is imposed against Respondent for his violation of La. R.S. 42:1113(B).

Penalties under La. R.S. 42:1155(A)

Respondent may also be assessed penalties pursuant to La. R.S. 42:1155(A), which provides:

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 of Ethics to his economic advantage, and after an adjudicatory hearing on the matter, the Ethics Adjudicatory Board 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.

The First Circuit has interpreted the phrase "economic advantage" to mean the profits derived by the person from the prohibited conduct, consisting of the price received by the person, minus the direct expenses attributable to prohibited conduct, for which evidence is provided in the record.³⁰ Applying the First Circuit's interpretation, the phrase "economic advantage" in this matter means the interest payments received by Respondent per the loan agreement with the Foundation. Respondent did not appear at the hearing before the EAB to present any evidence that any of the monetary benefits in the form of interest payments attributable to the prohibited conduct were reimbursed to the Foundation. The gain/profits Respondent received will be used in determining the penalty under La. R.S. 42:1155(A).

²⁹ *Villanueva v. Comm'n on Ethics for Pub. Emps.*, 98-0980 (La. App. 1 Cir. 5/18/99), 812 So. 2d 1.

³⁰ *Id.*

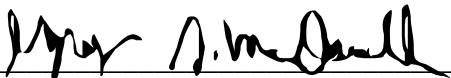
The BOE proved that Respondent received \$3,999.99 in interest from payments made by the Foundation pursuant to the loan agreement. In addition to the \$3,999.99, the BOE seeks to recover the maximum additional penalty of \$1,999.98,³¹ which is equal to one-half of Respondent's economic gain. As such, Respondent is assessed an additional penalty of \$5,999.97.³²

ORDER

IT IS ORDERED that, in accordance with La. R.S. 42:1153, a fine in the amount of **\$10,000.00** is imposed against Joseph Wicker for violating La. R.S. 42:1113(B).

IT IS FURTHER ORDERED that, in accordance with La. R.S. 42:1155(A), and in addition to the fine above, a penalty of **\$5,999.97** is imposed against Joseph Wicker for the amount of the economic advantage that he improperly gained.

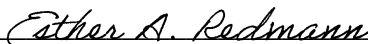
Rendered and signed on June 28, 2021, in Baton Rouge, Louisiana.



Gregory McDonald
Presiding Administrative Law Judge



Anthony J. Russo
Administrative Law Judge



Esther A. Redmann
Administrative Law Judge

NOTICE OF TRANSMISSION OF DECISION OR ORDER

I certify that on Wednesday, June 30, 2021, I have sent a copy of this decision/order to all parties of this matter.

Clerk of Court

Division of Administrative Law

³¹ \$3,999.99 (Respondent's economic advantage) ÷ 2 = \$1,999.98.

³² \$3,999.99 total economic advantage + \$1,999.98 = \$5,999.97.

REVIEW RIGHTS

This decision exhausts your administrative remedies. If you are dissatisfied with this ruling, you may have the right to seek a rehearing or reconsideration of this decision or order, subject to the grounds for and time limitations provided in Louisiana Revised Statute 49:959 and Louisiana Code of Civil Procedure article 5059. To determine your review rights, you should act promptly and seek legal advice.

To request a rehearing or reconsideration, please send it to one of the addresses indicated below:

EMAIL documents to:
EABprocessing@adminlaw.state.la.us

FAX documents to:
EAB Section Deputy Clerk
(225) 219-9820

MAIL documents to:
DAL – EAB Section
ATTN: EAB Section
P. O. Box 44033
Baton Rouge, LA 70804-4033

If you do not request a rehearing of your decision or your rehearing request is denied, you have the right to seek judicial review in accordance with La. R.S. 49:964, La. R.S. 42:1142(A)(1), and La. C.C.P. art 5059. To determine your review rights, you should act promptly.