

**STATE OF LOUISIANA
DIVISION OF ADMINISTRATIVE LAW**

BOARD OF ETHICS

*** DOCKET NO. 2018-5777-ETHICS-A**

IN THE MATTER OF

*

MICHELLE DENNIS

*** AGENCY TRACKING NO. 2017-672**

DECISION AND ORDER

The Louisiana Board of Ethics charged Michelle Dennis with multiple violations of the Code of Governmental Ethics. The Louisiana Board of Ethics proved by clear and convincing evidence that Ms. Dennis received things of economic value, totaling \$1,824.32, from prohibited sources in violation of Louisiana Revised Statutes (La. R.S.) 42:1111(A)(1)(a). In accordance with La. R.S. 42:1153(B), fines totaling \$7,297.28 are imposed against Ms. Dennis.

APPEARANCES

On September 22, 2022, Panel A of the Ethics Adjudicatory Board¹ conducted the public hearing in this matter at the Division of Administrative Law in Baton Rouge, Louisiana. Suzanne Q. Mooney appeared as counsel for the Louisiana Board of Ethics. Though properly noticed, Michelle Dennis did not appear.²

STATEMENT OF THE CASE

On July 13, 2018, the Louisiana Board of Ethics (BOE) issued *Charges* against Michelle Dennis (Respondent) and requested a hearing to have the Ethics Adjudicatory Board (EAB) determine whether she violated the Code of Governmental Ethics (Ethics Code). In its *Charges*,

¹ The panel consisted of administrative law judges Lance B. Vinson (presiding), A. Brock Avery, and Edwin L. Hightower.

² The hearing notice was mailed via U.S. regular mail on July 7, 2022, by the Administrative Hearings Clerk for the Division of Administrative Law to Michelle Dennis at 41109 Mandalay Drive, Sorrento, LA 70778-3434, Respondent's last known address.

the BOE alleged that Respondent, an employee of the Fifth Ward Elementary School,³ used the school's Sam's Club credit card to make sixteen, separate personal purchases totaling \$1,824.32 between December 8, 2016, and February 9, 2017.⁴ The BOE alleged that Respondent violated La. R.S. 42:1111(A)(1)(a) by receiving monetary compensation to which she was not entitled to receive for the performance of her job duties.

At the hearing, counsel for the BOE offered eleven exhibits,⁵ which were admitted into evidence. The BOE was provided an opportunity to file a supplementary exhibit: a copy of the subpoena duces tecum it had issued to the Saint John the Baptist Parish School Board to obtain Respondent's employment records. The BOE filed that exhibit on September 27, 2022, it was admitted into evidence, and the record was closed.

JURISDICTIONAL AUTHORITY

The EAB is a legislatively created board, as contemplated by Louisiana Constitution article X, section 21.⁶ The EAB has original jurisdiction under La. R.S. 42:1141.5 to determine whether violations of the Code of Governmental Ethics (Ethics Code), La. R.S. 42:1101 *et seq.*, have been committed.

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

FINDINGS OF FACT

Respondent was employed by the Fifth Ward Elementary School as a clerk at the times

³ The elementary school is part of the Saint John the Baptist Parish School System.

⁴ The BOE also alleged that Respondent had not deposited \$14,806.32 related to fundraising or school activities. At the hearing, Ms. Mooney stipulated that the BOE was not pursuing the claim related to the undeposited funds.

⁵ Marked BOE-1 through BOE-11.

⁶ See La. R.S. 42:1141.2 *et seq.*

relevant to this matter: December 8, 2016, through February 15, 2017.⁷ As a clerk, Respondent's job responsibilities including making purchases for the school.⁸ On the following dates, Respondent charged the listed items to the school's Sam's Club credit card:

Date	Description	Amount
12/08/16	Goal zero multi tool, cozy throw, choc chip tub	150.80
12/21/16	Personal: headphones, Cabela's gift card, coffee, tumbler set.	192.94
12/22/16	Food: peas, chicken wings, milk, whole chicken	27.45
12/24/16	Vanilla Mastercard \$50	53.94
12/24/16	Unknown gift cards	28.44
12/28/16	2 pack x 3 \$25 gift cards (six total)	188.86
12/30/16	Vanilla Mastercard \$100 and other personal items	131.62
12/31/16	Vanilla Mastercard \$100	105.44
12/31/16	Vanilla Mastercard \$50	53.94
1/3/17	Clothing items: t-shirts	26.69
1/6/17	Gift cards and pants	133.78
1/21/17	Vanilla Mastercard \$50 x 4	215.76
1/22/17	Vanilla Mastercard \$50 x 2; personal items	132.89
1/23/17	T-shirts	67.41
1/28/17	Vanilla gift cards x 2	107.88
2/9/17	Vanilla Mastercard gift card	206.48

⁷ Respondent's alleged date of hire, August 10, 2009, is not supported by competent evidence. However, Respondent's W-2 statements for 2013 through 2016 (BOE-3), together with documentation of her resignation on February 15, 2017 (BOE-5), competently establish that she was employed by Fifth Ward Elementary School during the relevant period.

⁸ BOE-4.

TOTAL		1,824.32 ⁹
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Respondent resigned from her employment with the Fifth Ward Elementary School on February 15, 2017.¹⁰ On December 11, 2017, Respondent entered a plea of guilty in the Fortieth Judicial District Court for the crime of “theft of a value of \$5,000 to \$25,000,” and, in that plea, she expressly admitted to “misuse of school credit card.”¹¹

CONCLUSIONS OF LAW

The BOE proved by clear and convincing evidence that Respondent violated La. R.S. 42:1111(A)(1)(a) because she was a public servant who received things of economic value totaling \$1,824.32 to which she was not duly entitled.

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.¹² 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.¹³ The existence of the disputed fact must be much more probable than its nonexistence.¹⁴

Between December 8, 2016, through February 15, 2017, Respondent was a public employee¹⁵ of her agency,¹⁶ the Fifth Ward Elementary School. As a public employee, Respondent was a public servant for purposes of the Ethics Code.¹⁷

⁹ See BOE-6. Each charge was for Respondent’s personal purposes and not for the school. See BOE-7.

¹⁰ BOE-5.

¹¹ BOE-10.

¹² La. R.S. 42:1141.5.

¹³ *La. State Bar Ass’n. v. Edwins*, 329 So. 2d 437, 441 (La. 1976).

¹⁴ *Id.* at 442.

¹⁵ See La. R.S. 42:1102(18).

¹⁶ See La. R.S. 42:1102(2)(a)(vi).

¹⁷ A “public servant” is a public employee or an elected official. La. R.S. 42:1102(19).

La. R.S. 42:1111(A)(1)(a) prohibits public servants from receiving anything of economic value, other than compensation and benefits from the governmental entity to which he or she is duly entitled, for the performance of the duties and responsibilities of his or her office or position. The BOE proved that Respondent received things of value on sixteen separate occasions by using the school's Sam's Club credit card to make personal purchases totaling \$1,824.32.

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.

Respondent violated a law within the jurisdiction of the BOE. Each of the sixteen purchases Respondent made using the school's Sam's Club card violated La. R.S. 42:1111(A)(1)(a). Due to her violations of the Ethics Code, Respondent improperly received things of value totaling \$1,824.32. Imposing the maximum fine for these violations would amount to fines totaling \$150,000. Such an amount is not commensurate with Respondent's conduct.¹⁸

In accordance with La. R.S. 42:1153 and considering the repeated course of offending conduct in which Respondent engaged, fines totaling \$7,297.28 are imposed against Respondent, an amount representing four times the amount of the improperly received things of value. This amount is adequate to penalize Respondent for her prohibited conduct.

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

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.

Under La. R.S. 42:1155(A), this additional penalty is discretionary, not required to be imposed, and, if imposed, can range from a de minimis amount to an amount that is one and one half of the economic advantage. The fines previously imposed under La. R.S. 42:1153(B) adequately penalize Respondent's conduct, and the imposition of an additional penalty would be excessive and unduly harsh.

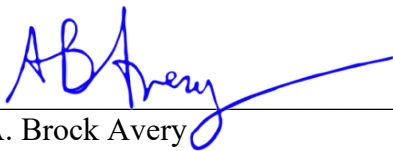
ORDER

IT IS ORDERED that, in accordance with La. R.S. 42:1153, fines totaling \$7,297.28 are imposed against Michelle Dennis for violating La. R.S. 42:1111(A)(1)(a).

Rendered and signed on November 14, 2022, in Baton Rouge, Louisiana.



Lance B. Vinson
Presiding Administrative Law Judge
Ethics Adjudicatory Board, Panel A



A. Brock Avery
Administrative Law Judge
Ethics Adjudicatory Board, Panel A



Edwin L. Hightower
Administrative Law Judge
Ethics Adjudicatory Board, Panel A

NOTICE OF TRANSMISSION OF DECISION OR ORDER

I certify that on Wednesday, November 16, 2022, I have sent a copy of this decision/order to all parties of this matter.

Clerk of Court
Division of Administrative Law

REVIEW RIGHTS

Requests for rehearing, reopening, or reconsideration are subject to the procedures, timing requirements, and legal grounds provided in La. R.S. 49:971.1.

To request rehearing, reopening, or reconsideration, it should be sent to one of the addresses indicated below:

EMAIL: EABprocessing@adminlaw.la.gov

FAX: (225) 342-1812

HAND DELIVERY TO:

1020 Florida Street, Baton Rouge, LA 70802

MAIL:

Division of Administrative Law
ATTN: Ethics Adjudicatory Board
P.O. Box 44033
Baton Rouge, LA 70804-4033

Judicial review of this decision is subject to the provisions of La. R.S. 42:1142(A)(1).