STATE OF LOUISIANA
DIVISION OF ADMINISTRATIVE LAW
ETHICS ADJUDICATORY BOARD

BOARD OF ETHICS	*	
	*	**DOCKET NO. 2018-2085-ETHICS-B**
	*	
IN THE MATTER OF	*	
	*	
ANTHONY ANDRE	*	**AGENCY TRACKING NO. 2016-1063**

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DECISION AND ORDER

The Louisiana Board of Ethics charged Anthony Andre with three violations of the Code of Governmental Ethics. The Louisiana Board of Ethics proved by clear and convincing evidence that Mr. Andre was a public servant who received a thing of economic value, other than compensation and benefits from his employer, the St. Tammany Parish Recreation District No. 4, to which he was not entitled for the performance of the duties and responsibilities of his office as Director, in violation of Louisiana Revised Statutes (La. R.S.) 42:1111(A)(l)(a). In accordance with La. R.S. 42:1153(B) and La. R.S. 42:1155(A), Mr. Andre is penalized $2,500.00 for a single violation of La. R.S. 42:1111(A)(1)(a).

APPEARANCES

An adjudicatory hearing in this matter was held at the Division of Administrative Law on August 25, 2021, in Baton Rouge, Louisiana, before the Ethics Adjudicatory Board, Panel B.[1] Charles E. Reeves, Jr. and Suzanne Mooney appeared as counsel for the Louisiana Board of Ethics. Though properly noticed, Anthony Andre did not appear.[2]

[1] The panel consisted of administrative law judges Gregory McDonald (presiding), Anthony J. Russo, and Edwin L. Hightower.

[2] The hearing notice was mailed, via U.S. regular mail, on June 3, 2021, by the Administrative Hearings Clerk for the Division of Administrative Law to Anthony Andre at 340 Iowa Avenue, Fort Lauderdale, FL 33312-1821. There was no return of that mailing as undeliverable. This is the same address for which the BOE made service by mail of its discovery requests and its *Motion to Compel*.

STATEMENT OF THE CASE

The Louisiana Board of Ethics (BOE) issued *Charges* against Anthony Andre (Respondent) on March 14, 2018, 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 was a public employee who violated La. R.S. 42:1111(A)(l)(a) by receiving a thing of economic value other than his compensation and salary from the St. Tammany Parish Recreation District No. 4 (Recreation District) through use of the Recreation District's credit card to purchase goods and services for his personal use.

At the hearing on August 25, 2021, the BOE offered twenty exhibits, including:

BOE-17: Motion to Compel Request for Admissions, Interrogatories and Requests,

BOE-18: Order Granting Motion to Compel Discovery, and

BOE-20: The Louisiana Legislative Audit Report for St. Tammany Parish Recreation District No. 4, issued September 28, 2016 (hereafter referred to as the *Audit Report*).

BOE's exhibits BOE-1 through BOE-20 were admitted into evidence.[3] The record closed on August 25, 2021, and the matter was taken under advisement.

Subsequent to the hearing, the tribunal discovered that the *Affidavit of the Louisiana Legislative Auditor, Daryl G. Purpera*, dated July 17, 2017, (hereafter *Affidavit*), used to authenticate BOE Exhibits 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, and 19 had purportedly authenticated the records as part of the audit documentation compiled during the Louisiana Legislative Auditor's investigative audit of the *St. Tammany Parish Recreation District No. 4 (Project #50160011) Audit Report, Issued* ***April 9, 2014***. If the date is accurate, the audit report was issued before any of the three transactions at issue in this matter, which began in November

[3] BOE-1 through BOE-20. The BOE withdrew BOE-21 and BOE-22, Sworn Statements of Jacki Schneider and Joseph Allen, Jr.

2014. The audit report of April 9, 2014, was issued before Respondent became Director of the Recreation District, if BOE Exhibit 8 is accepted and accurate. The *Audit Report* did not disclose when the investigation commenced, nor when the complaints which initiated the audit were received. The *Audit Report* lists the period covered by the audit as September 2014, through April 2016, after the issuance of the audit report referenced in the *Affidavit*.[4] The *Audit Report* was produced to the Recreation District at an unknown time. Because the questions raised about the *Affidavit* are not resolved by the *Audit Report*, the tribunal concludes that the BOE's exhibits 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, and 19, which were purportedly authenticated by the *Affidavit*, are unreliable and were not considered by the tribunal.

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

The Recreation District was created by ordinance of the St. Tammany Parish Police Jury on August 6, 1981, in accordance with La. R.S. 33:4562, as a political subdivision of the State of Louisiana.[5] Respondent served as Director of the Recreation District from August 2014, through August 2016, at an annual salary of $45,000.[6] As Director, Respondent's job duties included, but were not limited to:

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[4] *Audit Report*, BOE-20, page 7. The audit report referenced in the *Affidavit* refers to Project No. 50160011. The *Audit Report*, produced as BOE-20, references Agency ID No. 8166, and Report ID No.'s 50160011 and 70150057. No information was provided which established the documentation for the audit report listed in *Affidavit* was the same as the documentation for the *Audit Report*. The Affidavit does not authenticate the BOE exhibits to which it was affixed.

[5] *See* La. R.S. 33:4562(B) (The district shall constitute an agency of the state of Louisiana designated to carry out an essential governmental function of the state); La. R.S. 33:2740.14(C). St. Tammany Police Jury Ordinance No. 81-238, as reorganized by Ordinance No. 00-0157. BOE-4, page 13.

[6] Respondent admitted, by operation of La. C.C.P. art. 1467(A), that he served as Director of the Recreation District

(a) Preparing and managing annual operating budgets for all recreational functions;
(b) Preparing monthly projections of staff needs for all programs;
(c) Training, supervising, and evaluating work performance of all personnel;
(d) Ensuring all District rules, regulations, and procedures were followed, as well as training employees to follow them; and
(e) Enforcing purchasing procedures and inventory controls for all recreation programs, buildings, fields, and parks.[7]

Respondent was not authorized to receive anything of economic value other than a salary and employment benefits for the performance of his public duties as the Director of the Recreation District.[8]

In 2014, the Louisiana Legislative Auditor's (LLA) office began an audit of certain transactions of the Recreation District, consisting of: (1) interviewing Recreation District employees (including Respondent); (2) interviewing other persons; (3) examining selected Recreation District documents and records; (4) gathering and examining external parties' documents and records; and (5) reviewing applicable state laws and regulations.[9] The audit was prompted by the LLA's receipt of complaints concerning the personal use of Recreation District equipment and funds.[10] The LLA issued the *Audit Report* as a result of this audit.

Charges for Personal Vehicle Maintenance

On November 14, 2014, Respondent used the Recreation District credit card to pay for maintenance and repairs on his personal vehicle, a 2002 Toyota Sequoia, at Daytona Toyota while on vacation in Daytona Beach, Florida, in the amount of $890.87. The expenditure of

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from August 2014, through August 2016, at an annual salary of $45,000. BOE-17, page 11, and BOE-18 (Respondent's responses to BOE's *Request for Admissions* numbers 1 and 3). See also, BOE-7 (W-2 tax forms reflecting Respondent's employment by the Recreation District in 2014, 2015, and 2016).

[7] Respondent's admissions, by operation of La. C.C.P. art. 1467(A). BOE-17, page 11, and BOE-18 (Respondent's responses to BOE's request for admissions number 2).

[8] Respondent's admissions, by operation of La. C.C.P. art. 1467(A). BOE-17, page 11, and BOE-18 (Respondent's responses to BOE's request for admissions number 4).

[9] *Audit Report*, BOE-20, pages 3, 9, and 11.

[10] *Audit Report*, BOE-20, page 9. The date and circumstances of when the investigation for the *Audit Report* commenced, and when the complaints were received, were not disclosed.

$890.87 of public funds for Respondent's personal vehicle was not authorized by the Recreation District.[11] Respondent admitted to the LLA's staff that he charged $891 to the Recreation District's credit card to repair his personal vehicle while in Daytona Beach, Florida, which Respondent admitted had no public purpose.[12]

Purchase of Muscle Massager

Respondent admitted to LLA staff that on September 16, 2015, he charged $272.00 to the Recreation District's credit card to purchase a muscle massager while attending a conference in Las Vegas, Nevada. Respondent told the LLA staff that the muscle massager was to be used by the Recreation District. On April 28, 2016, the muscle massager was not located in any of the Recreation District facilities. On May 16, 2016, Recreation District Office Secretary Nikki Williams acknowledged Respondent had brought the muscle massager to the Recreation District office.[13]

Respondent failed to respond to request for admissions submitted by the BOE regarding the use of the Recreation District credit card to purchase a UniMed Massager from Otto Trading, Inc. in the amount of $272.00. However, the request seeks an admission about a purchase on **September 15, 2016**, which is the wrong calendar date and year of the purchase.

Purchase of NCAA Final Four Tickets

Respondent admitted to LLA staff that on November 17, 2015, he charged $300.00 to the Recreation District's credit card to purchase NCAA Final Four (basketball) tickets for a District employee while both were attending a training conference in Houston, Texas. Respondent stated to LLA staff that the purchase had a public purpose, which was contrary to interviews with

[11] Respondent's admissions, by operation of La. C.C.P. art. 1467(A). BOE-17, page 12, and BOE-18 (Respondent's responses to BOE's request for admissions numbers 5 and 6). See also *Audit Report*, BOE-20, pages 3, 9, 11, and 18.
[12] *Audit Report*, BOE-20, pages 11 and 18.
[13] *Audit Report*, BOE-20, pages 11-12.

District Board members, who stated they were not made aware of the purchase. The interviewed District Board members alleged that, if they had been aware of the purchase, they would not have approved the transaction.[14]

By his failure to respond to Request for Admissions, it is deemed admitted that on November 11, 2015, Respondent used the Recreation District credit card to purchase a package to attend the National Association of Basketball Coaches Convention for $685.00, which included Final Four tickets at a cost of $300.00, and a spouse/guest package at a cost of $125.00.

In *Opinion 92-597*, the Louisiana Attorney General opined that the use of a public credit card for personal expenses is only permissible if the official or employee is in extraordinary circumstances, is given authority by the public entity, and reimburses the public entity as soon as possible after the charges are made and before the receipt of the bill. Further, routine use of a public credit card is not permissible.[15]

The Recreation District paid for the three credit card transactions by Respondent.[16]

The Recreation District responded to the *Audit Report* and provided relevant information. Subsequent to the *Audit Report*, the St. Tammany Parish Police Jury appointed an entirely new board of directors for the Recreation District.[17] The new board of directors adopted Financial Policies and Procedures for the Recreation District. The previous Board of Directors had not adopted any Financial Policies and Procedures for the District.[18] The Recreation District had been reimbursed for the $891 charge for the maintenance to Respondent's vehicle, the muscle

[14] *Audit Report*, BOE-20, page 12. In interviews with District Board members, they were not made aware of the purchase, and if they had been, they would not have approved the transaction. These Board members were not identified, so it is not clear whether it was current Board members or Board members at the time of the transaction. Nor does the report establish that a majority of the Board members were unaware of the purchase and would not have approved the transaction.
[15] *Audit Report*, BOE-20, page 12.
[16] *Id*.
[17] La. R.S. 33:2740.14(B).
[18] *Audit Report*, BOE-20, page 37-38 (letter by Jacki Schneider, Chairperson for the Recreation District Board of Directors).

massager was placed in the Recreation District office, and while Respondent did not know that the $300.00 ticket purchase was a violation, Respondent repaid the $300.00 to the Recreation District.[19]

The LLA reviewed the Recreation District's documentation and concluded that its records did not support a finding that Respondent reimbursed the Recreation District for the $891.00 charged for personal vehicle repairs. The documents included a St. Tammany Parish Sheriff's Office check, which was for reimbursement of ad valorem tax proceeds and not a repayment of the personal vehicle repairs. Because the tribunal rejected the Sheriff's Office check as evidence of repayment by Respondent, there is no evidence documenting Respondent's reimbursement of the vehicle repairs charged to the Recreation District's credit card.

CONCLUSIONS OF LAW

The BOE proved by clear and convincing evidence that Respondent was a "public servant."[20] The BOE proved by clear and convincing evidence that Respondent committed one violation of La. R.S. 42:1111(A)(1)(a) by receiving a thing of economic value, a credit card purchase for his personal use, which was not part of the compensation and benefits he received from the Recreation District for providing services as Director for the Recreation District.

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.[21] Clear and convincing evidence is an intermediate standard of persuasion requiring more proof than a preponderance of the evidence but less proof

[19] *Id*.
[20] La. R.S. 42: 1102(19) provides that a "public servant" means a "public employee."
[21] La. R.S. 42:1141.5.

than required to establish guilt beyond a reasonable doubt.[22] The existence of the disputed fact must be much more probable than its nonexistence.[23]

"Public servant" under the Louisiana Code of Governmental Ethics

For purposes of the Ethics Code, a "public servant" is a public employee or an elected official. The Ethics Code defines "public employee" as "anyone, whether compensated or not, who is: (i) an administrative officer or official of a governmental entity who is not filling an elective office; (ii) appointed by any elected official when acting in an official capacity, and the appointment is to a post or position wherein the appointee is to serve the governmental entity or an agency, either as a member of an agency, or as an employee; (iii) engaged in the performance of a governmental function; or (iv) under the supervision or authority of an elected official or another employee of the governmental entity."[24]

The Recreation District is a governmental entity. Respondent was a public employee because he was employed as Director for the Recreation District. The BOE proved by clear and convincing evidence that Respondent was a public servant by establishing that he was a public employee of a governmental entity.

Violation of La. R.S. 42:1111(A)(1)(a)

The BOE alleged that Respondent violated La. R.S. 42:1111(A)(1)(a) because he used the Recreation District's credit card for personal use.

La. R.S. 42:1111(A)(1)(a) provides:

> No public servant shall receive anything of economic value, other than compensation and benefits from the governmental entity to which he is duly entitled, for the performance of the duties and responsibilities of his office or position.

[22] *La. State Bar Ass'n. v. Edwins*, 329 So. 2d 437, 441 (La. 1976).
[23] *Id*., at page 442.
[24] La. R.S. 42:1102(18)(a).

During the time Respondent was a public servant, he was prohibited from receiving anything of economic value, other than compensation and benefits, for the performance of his job duties and responsibilities of his position.[25]

Charges for Personal Vehicle Maintenance

Respondent admitted he used the Recreation District's credit card for his personal use and economic benefit by using the credit card to pay for maintenance and repairs to his personal motor vehicle while he was on vacation in Daytona Beach, Florida. The tribunal finds that the BOE proved this violation of La. R.S. 42:1111(A)(1)(a) by clear and convincing evidence.

Purchase of Muscle Massager

Respondent admitted he charged $272.00 to the Recreation District's credit card to purchase a muscle massager while attending a conference in Las Vegas, Nevada. However, Respondent also stated the equipment was to be used by the Recreation District. While the LLA found on April 28, 2016, that the massager was not located in Recreation District facilities, it was returned to Recreation District offices. A massager might reasonably be considered as equipment for the Recreation District.

Because of the erroneous date in the requests for admissions, the tribunal cannot conclude that Respondent admitted that the September 15, 2015, purchase of the massager was for personal use and was not authorized by the St. Tammany Parish Recreation District. The tribunal finds that the BOE has failed to establish by clear and convincing evidence that the purchase of the muscle massager was for Respondent's personal use, and thus a thing of economic value beyond the salary and benefits of his employment, given that a muscle massager might be used in Recreation District offices by Recreation District staff or clients.

[25] La. R.S. 42:1111(A)(1)(a).

Purchase of NCAA Final Four Tickets

Respondent admitted he charged $300.00 to the Recreation District's credit card to purchase NCAA Final Four (basketball) tickets, but for another employee of the Recreation District. Another member of the Recreation District attended the same basketball conference as Respondent. The tickets were part of the conference attendance purchase. While Respondent, by failing to respond to requests for admissions, admitted he used the Recreation District's credit card to purchase the basketball tickets for personal use, the *Audit Report* documents it was not for his personal use. The tribunal finds that the BOE failed to prove this alleged violation of La. R.S. 42:1111(A)(1)(a) by clear and convincing evidence.

PENALTIES

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 committed one violation of La. R. S. 42:1111(A)(1). The BOE has requested the maximum fine for the violation. The violation amounted to an abuse of the public office of which Respondent had been entrusted. However, the tribunal notes that the Recreation District was loosely run and without clear financial controls and procedures, something that the LLA's *Audit Report* documented and devoted substantial time to recommend policy and procedural changes to correct the Recreation District's financial mismanagement. While that does not excuse Respondent's conduct, it is of importance in

determining penalties to be imposed. Respondent no longer is employed by the Recreation District, such that other sanctions provided by La. R.S. 42:1153(B) are not available.

Taking these factors into account, the violation of La. R.S. 42:1111(A)(1) for using the Recreation District's credit card for maintenance and repairs of his personal vehicle, a fine of $2,500.00 allowed under La. R.S. 42:1153(B) is imposed, which is commensurate with Respondent's misconduct.[26]

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 Louisiana First Circuit Court of Appeal 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.[27] Applying the First Circuit's interpretation, the phrase "economic advantage" in this matter means the gain/profits derived by Respondent as Director of the Recreation District from his prohibited transactions.

The tribunal found no evidence that Respondent made reimbursement of the credit card charge for maintenance and repair of his personal vehicle, which totaled $890.87.[28] However, during the hearing, counsel for BOE advised the tribunal that the check issued by the St.

[26] *Villanueva v. Comm'n on Ethics for Pub. Emps.*, 98-0980 (La. App. 1 Cir. 5/18/99), 812 So. 2d 1.
[27] *Id*.
[28] The tribunal rejected, as did the LLA staff, that a check from the St. Tammany Parish Sheriff's Office constituted reimbursement by Respondent of the $890.87 credit card charge.

Tammany Parish Sheriff's Office constituted full reimbursement of the vehicle expenses.[29] The BOE having conceded reimbursement of the full amount, Respondent gained no economic advantage, and no penalty will be assessed under La. R.S. 42:1155(A) for use of the Recreation District's credit card for maintenance and repairs on Respondent's personal vehicle.

ORDER

IT IS ORDERED that Anthony Andre violated La. R.S. 42:1111(A)(l)(a) by using the credit card of St. Tammany Parish Recreation District No. 4 for maintenance and repair of his personal motor vehicle.

IT IS FURTHER ORDERED that, in accordance with La. R.S. 42:1153, a fine in the amount of $2,500 is imposed against Anthony Andre for violating La. R.S. 42:1111(A)(l)(a).

IT IS FURTHER ORDERED that the remaining ethical charges against Anthony Andre in *In The Matter of Anthony Andre, docket number 2018-2085*, are dismissed.

Rendered and signed on September 30, 2021, in Baton Rouge, Louisiana.

Gregory McDonald
Presiding Administrative Law Judge

Anthony J. Russo
Administrative Law Judge

Edwin L. Hightower
Administrative Law Judge

NOTICE OF TRANSMISSION OF DECISION OR ORDER

I certify that on Friday, October 01, 2021, I have sent a copy of this decision/order to all parties of this matter.

Clerk of Court
Division of Administrative Law

[29] Hearing recording, at 1:40 p.m.

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, Louisiana Code of Civil Procedure article 5059. To determine your review rights, you should act promptly.

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

EMAIL documents to:
EABprocessing@adminlaw. la.gov

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

MAIL documents to:
DAL – EAB Section
ATTN: EAB Section Deputy Clerk
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.