

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

DONALD POST, MAYOR OF THE :
TOWN OF MILTON, :
 : 07A-09-008 WLW
Defendant Below- :
Appellant, :
 :
v. :
 :
 :
DELAWARE STATE PUBLIC :
INTEGRITY COMMISSION, :
 :
 :
Plaintiff Below - :
Appellee. :

Submitted: January 18, 2008

Decided: April 30, 2008

ORDER

Upon Appellee's Motion to Dismiss.
Granted.

John F. Brady, Esquire of Brady Richardson Beauregard & chasanov, LLC,
Georgetown, Delaware; attorneys for Appellant.

Janet A. Wright, Esquire of Delaware State Public Integrity Commission, Dover,
Delaware; attorney for Appellee.

WITHAM, R.J.

Appellant, Donald Post, Mayor of the Town of Milton (“Appellant” or “Mayor Post”), appealed the Advisory Opinion¹ issued by Appellee, Delaware State Public Integrity Commission (“Appellee” or “the Commission”), which advised against his attempted appointment of his brother to the Milton Board of Adjustment/Historic Preservation Committee (“Board of Adjustment”). The Commission filed a Motion to Dismiss. Appellee’s motion is *granted* without prejudice on jurisdictional grounds.

BACKGROUND

Mayor Post allegedly appointed his brother, William Post, as an alternate on the Board of Adjustment at the Town Special Council Meeting on April 12, 2006. On January 31, 2007, Marion Jones, who was serving as Commissioner on the Town Board of Adjustments, sent a letter to the Commission complaining about this appointment. The “appointment” involved Mayor Post nominating his brother for the Board of Adjustment/Historic Preservation Commission as an alternate. The appointment was not carried out since the Mayor did not have the legal authority to add an alternate to the Board. The Commission’s resulting advisory opinion does not provide finding of facts although it provides a brief introduction stating that it reviewed nepotism allegations by the town’s mayor and that they “believe that a violation occurred.”

Mayor Post appealed the Advisory Opinion arguing that the Commission did not have authority to issue it and therefore violated the statute. The Commission

¹Advisory Op. No. 07-05, June 25, 2007; Motion for Reconsideration–07-05, September 5, 2007).

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argues that Advisory Opinions cannot be appealed and therefore this Court does not have jurisdiction.

DISCUSSION

Title 29 Del.C. § 5807(c) provides that “[u]pon the written request of any state employee, state officer, honorary state official or state agency or a public officer as defined in § 5812 of this title, the Commission may issue an advisory opinion as to the applicability of this chapter to any particular fact situation.” Marion Jones is a public officer in accordance with § 5812 and therefore the Commission had authority to draft an advisory opinion that addressed the fact situation raised by Mr. Jones. Therefore there were no statutory violations. Since advisory opinions are not final judgments,² this Court does not have jurisdiction to review the merits of the appeal.

Conclusion

Based on the aforementioned, the Court *grants* the Commissions Motion to Dismiss. IT IS SO ORDERED.

/s/ William L. Witham, Jr.

R.J.

WLW/dmh

oc: Prothonotary

xc: Order Distribution

²Super. Ct. Civ. Proc. R. 72(b).