2012 IL App (1st) 112312-U

SIXTH DIVISION
FEBRUARY 3, 2012

No. 1-11-2312

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

CITIZENS FOR LIGHTFORD, Petitioner-Appellant, v. ILLINOIS STATE BOARD OF ELECTIONS, sitting as the STATE OFFICERS ELECTORAL BOARD, its members BRYAN A. SCHNEIDER, HAROLD D. BYERS, BETTY J. COFFRIN, ERNEST L. GOWEN, WILLIAM M. McGUFFAGE, JUDITH C. RICE, JESSE R. SMART, and CHARLES W. SCHOLZ, all named in their official capacities as members of the ILLINOIS STATE BOARD OF ELECTIONS, Respondents-Appellees.	)	Appeal from the Illinois State Board of Elections. No. 11 MA 004

PRESIDING JUSTICE ROBERT E. GORDON delivered the judgment of the court. Justices Lampkin and Palmer concurred in the judgment.

ORDER

¶ 1 *Held*: The Board of Elections did not err in imposing a fine on the appellant political committee in the amount of $8,025 since (1) the Board had the authority to impose a $5,000 penalty for the committee's failure to electronically file its semiannual report and (2) the Board did not abuse its discretion by imposing a $3,025 penalty for the committee's failure to timely report campaign contributions. The Board's finding that the committee did receive notice of their

failure to file electronically is not against the manifest weight of the evidence.

¶ 2 The instant appeal concerns fines imposed against petitioner Citizens for Lightford (Citizens) as civil penalties for not complying with financial disclosure laws. After a hearing, respondent Illinois State Board of Elections (the Board) adopted the hearing officer's recommendation and rendered a decision against Citizens, imposing a fine of $8,025 for two violations. Citizens appeals and we affirm.

¶ 3 BACKGROUND

¶ 4 On January 20, 2010, Citizens filed its semiannual report of campaign contributions and expenditures for the reporting period of July 1, 2009, through December 1, 2009; the deadline for filing the report was January 20, 2010, and the report was filed on paper. The paper report was scanned and posted onto the Board's website the same day.

¶ 5 On January 28, 2010, the record indicates that the Board mailed Citizens a letter concerning its filing. The letter stated that Citizens was required to file its reports electronically, not in paper form. The letter further stated that if the electronic report was filed within 30 days of the notice, the paper report would be considered a timely filing. However, "[i]f the report is not filed electronically within 30 days of this notice, the paper report will be considered as never having been filed and penalties for late filing will accrue from the date of the filing deadline."

¶ 6 On March 2, 2010, the record also indicates that the Board mailed a second letter to Citizens stating that the committee had failed to electronically file its semiannual report as required by section 9-28 of the Election Code (10 ILCS 5/9-28 (West 2008)), and that, since it had failed to file the report electronically when it received notice, the paper report was

considered as never having been filed.

¶ 7 On December 30, 2010, Citizens electronically filed an amended copy of the semiannual report.

¶ 8 On March 9, 2011, the Board sent Citizens a written notice informing Citizens that it had failed to file its semiannual report during the filing period, in violation of section 9-10 of the Election Code (10 ILCS 5/9-10 (West 2008)). The notice stated that the report was received by the Board on December 30, 2010, 234 days late. Citizens was assessed a civil penalty for each day the report remained unfiled, and the total amount of the assessed fine was $5,000.

¶ 9 Additionally, the notice informed Citizens that it had failed to file a number of "Schedule A-1's, Report of Campaign [C]ontributions of more than $500" within two business days of receipt as required by the Illinois Campaign Disclosure Act. Citizens was fined a total of $30,250 for delinquently filing the Schedule A-1 reports, but the notice stated that the penalty would be reduced to $3,025 because it was Citizens' first delinquent filing of the reports.

¶ 10 On April 12, 2011, Kimberly Lightford, chairman of Citizens, filed a request for a hearing to appeal the assessment of civil penalties and attached an affidavit in support, stating that "We have an explanation of this issue that will be explained at the hearing."

¶ 11 A hearing was held on May 3, 2011,[1] and the hearing officer issued a written report on May 13, 2011. The hearing officer's report indicated that Citizens has been required to file campaign disclosure reports electronically since 2003. The report further indicated that "[a]

[1] The record on appeal does not contain the report of proceedings or a bystander's report of the hearing.

letter was sent on February 1, 2010 notifying the Committee it had 30 days to file the report electronically[;] otherwise[,] the paper report would be considered a non-filing." Citizens did not file its report within the 30-day deadline.

¶ 12 The hearing officer's report indicated that Dovile Soblinskas[2] appeared on behalf of Citizens at the hearing. Soblinskas submitted a letter of defense from Lightford stating that Lightford was unaware that Citizens was ineligible to file on paper. Lightford was unable to find a "knowledgeable person to handle the committee's finances" and received assistance in preparing the report from the staff at the Board's office, where she was told that she could file the report by fax. In April, Lightford was informed that the filing was not in compliance and "had challenges seeking a qualified person to handle the campaign account." Soblinskas informed the hearing officer that Citizens' former treasurer had stolen campaign funds and kept poor records. After Lightford "piece[d] back together" Citizens' financial records, in December 2010, Soblinskas assisted Lightford in filing the reports electronically.

¶ 13 Concerning the Schedule A-1 report, the hearing officer's report stated that Soblinskas indicated that Citizens misunderstood the filing deadline. All of the contributions were received on November 1, 2010, making the two-day deadline for filing the Schedule A-1 report November 3, 2010, one day past the November 2, 2010, general election. Thus, Soblinskas believed that the contributions "were considered out of the reporting period and did not qualify to be listed on a

[2] An affidavit filed by Soblinskas states that she was a consultant for political campaign committees and "assist[ed] committees in meeting the financial disclosure requirements required of committees under State law."

separate Schedule A-1 Report."

¶ 14 The hearing officer recommended the appeal regarding the delinquent report be denied "for lack of an adequate defense" and recommended that Citizens be assessed the maximum $5,000 civil penalty. The hearing officer further recommended the appeal of the failure to file the Schedule A-1 reports be denied for lack of an adequate defense. However, since it was an "unintentional violation" and Citizens' first Schedule A-1 offense, the hearing officer recommended that only 10% of the civil penalty be assessed, reducing the fine to $3,025.

¶ 15 On June 6, 2011, the hearing officer's report was sent to Citizens and Citizens was informed that its pending appeal would be presented to the Board at its June 2011 meeting. At the June 14, 2011, meeting, Steve Sandvoss, the Board's general counsel, stated that he concurred with the hearing officer's recommendation.

¶ 16 Lightford spoke on behalf of Citizens at the Board meeting. She stated that she came to the Board's offices and spent a few days working on the paper filing herself so that she would not fall behind in her filing requirements. She stated that she "had no idea that I couldn't do it that way" and that she learned she was ineligible for paper filing after "two years." Lightford did not make any statements concerning whether she did or did not receive any letters sent by the Board about her improperly filed report. Lightford informed the Board that Citizens was not currently represented by counsel, and the Board agreed to continue the matter until the August Board meeting so that Citizens could have the benefit of counsel.

¶ 17 On August 2, 2011, Citizens hired a lawyer who filed a brief in support of its appeal of the March 29, 2011, assessment notice. The brief stated that Citizens complied with section 9-10

in filing its semiannual report when it filed a paper copy of the report on January 20, 2010. It further stated that the paper copy was scanned and made publicly available on the Board's website on January 20, 2010. The brief also claimed that Citizens was being fined for failing to file electronically pursuant to section 9-28, yet that section was not referenced in the assessment notice, nor did section 9-28 provide for the imposition of financial penalties. Thus, there was no statutory authorization to impose the fine under section 9-28 or under any other section of the Illinois Administrative Code. The brief did not raise any issues concerning any claimed inadequate notice of the improper filing.

¶ 18 Concerning the Schedule A-1 report, the brief repeated Soblinskas' interpretation of the Election Code that it was not necessary to file the report since one of the filing dates fell after the date of the general election. Given the fact that the hearing officer recognized the violation as unintentional and that Citizens had not had a Schedule A-1 violation since 2003, the fine should be for a reduced amount.

¶ 19 Attached to the brief was a letter from Lightford to the Board dated May 9, 2011. The letter stated that Lightford, on behalf of Citizens, filed the semiannual report on paper to comply with the reporting rules and deadlines. At the time, Lightford was unaware that Citizens was ineligible to file on paper. She replaced the person who handled the matter prior to filing and "had absolutely no knowledge of the status of the campaigns [*sic*] filing obligations other than to make sure I meet the deadline." She received assistance from the Board's office staff "and was informed that [she] could fax the information in." The letter further stated that Lightford was informed in April 2011 that there was a problem with the filing.

¶ 20 Also attached to the brief was Soblinskas' affidavit. Soblinskas stated that based on her interpretation of the Election Code, Soblinskas believed that:

> "the A-1 filing period for contributions of $500 or more were to be filed on Schedule A-1s within two business days of receipt during the time span of 30 days prior to the election until the day of the election, which was November 2, 2010. To further explain, it was my opinion that if either of the two business days within which to file A-1s fell after the election occurred, it was not necessary to file A-1s. My opinion was based upon the belief that all the filing dates of A-1s had to be within the 30-day period prior to an election, and not after."

Since the contributions were received on November 1, 2010, and one of the filing dates fell after the November 2 election, Soblinskas believed that it was not necessary to file A-1s with regard to those contributions.

¶ 21 On August 10, 2011, the hearing officer filed a supplement to the hearing officer report. In the supplement, the hearing officer provided more analysis of Citizens' claims and addressed the new arguments raised by Citizens' counsel. The hearing officer rejected Citizens' claims that it was in compliance with section 9-10 and only violated section 9-28, which did not have civil penalties attached. The hearing officer pointed to section 100.150 of the Board's Rules and Regulations and noted that section 100.150 "clearly applies to the facts in this case" and that in the hearing officer's opinion, the Board had the authority to make the assessments. The hearing

officer's supplemental report also stated that "[u]pon receiving the paper report, the Board issued the 30 day electronic filing requirement notice to the Committee on February 1, 2010 (attached, Complainant's Exhibit 1)."[3]

¶ 22 The hearing officer further rejected the defense that the paper documents were scanned and published on the Board's website, noting that scanning was not synonymous with electronic filing "and the distinction must be made that a scanned paper document is in essence a photograph of that document while electronic filing produces a searchable database as required by statu[t]e." The hearing officer also found Citizens' defense that it received advice from the Board's staff to be "inadequate and circumstantial," pointing out that the staff was not responsible for compliance of any committees they assisted.

¶ 23 On August 16, 2011, at its monthly meeting, the Board again considered Citizens' appeal. At the meeting, Citizens' attorney indicated that he had not been provided a copy of the hearing officer's supplemental report. Citizens' counsel also made the following statement: "Mr. Sandvoss [the Board's general counsel] indicated that a notice was sent. I did call the Board and ask for all the papers that were involved in this proceeding, and I was told that it was essentially the report of the hearing officer. So I never had that opportunity to see any report that would have been sent to Citizens for Lightford indicating that the report had not been electronically filed."[4]

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[3] The record does not contain the attachment to the hearing officer's supplemental report, but from the context, it appears as though the letter was attached.

[4] This statement by Citizens' attorney is the first place in the record in which anyone from

¶ 24 On August 19, 2011, the Board issued a final order in which it adopted the hearing officer's recommendation, denying the appeal. The Board assessed a civil penalty for the delinquent filing of the semiannual report in the amount of $5,000 and a civil penalty for the delinquent filing of the Schedule A-1 reports in the amount of $3,025, which was 10% of the maximum allowed penalty, for a total fine of $8,025. The order stated that it was a final order subject to review under the Administrative Review Law and section 9-22 of the Election Code.

¶ 25 On August 18, 2011, Citizens filed a petition for administrative review, which was amended on August 22, 2011. This appeal follows.

¶ 26 ANALYSIS

¶ 27 On appeal, Citizens argues that: (1) the Board should not have imposed any penalty for the paper filing of its semiannual report and (2) the Board should not have imposed any penalty for Citizens' unintentional failure to file the Schedule A-1 report. We consider each argument in turn.

¶ 28 I. Semiannual Report

¶ 29 Citizens first argues that it complied with section 9-10 of the Election Code by filing its paper report and that the Board erred in determining that Citizens should be fined due to noncompliance with section 9-28, which did not authorize the imposition of fines. These questions involve the interpretation of the Election Code, a question of law that we review *de novo*. See *Ryan v. Board of Trustees of the General Assembly Retirement System*, 236 Ill. 2d 315, 319 (2010); *McNamara v. Oak Lawn Municipal Officers Electoral Board*, 356 Ill. App. 3d

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Citizens mentioned notice.

961, 964 (2005); *Cullerton v. Du Page County Officers Electoral Board*, 384 Ill. App. 3d 989, 991 (2008). *De novo* consideration means we perform the same analysis that a trial judge would perform. *Khan v. BDO Seidman, LLP*, 408 Ill. App. 3d 564, 278 (2011).

¶ 30 The fundamental rule of statutory construction is to ascertain and give effect to the legislature's intent. *People ex rel. Birkett v. City of Chicago*, 202 Ill. 2d 36, 45 (2002). The best indication of legislative intent is the plain and ordinary meaning of the statutory language. *Birkett*, 202 Ill. 2d at 45. Where the language is clear and unambiguous, we must apply the statute without resort to other aids of statutory construction. *Birkett*, 202 Ill. 2d at 45-46. If the statutory language is ambiguous, we look to other sources to decide the legislature's intent. *Birkett*, 202 Ill. 2d at 46. We must view all provisions of a statutory enactment as a whole and "[a]ccordingly, words and phrases should not be construed in isolation, but must be interpreted in light of other relevant provisions of the statute." *Southern Illinoisan v. Illinois Department of Public Health*, 218 Ill. 2d 390, 415 (2006) (citing *Michigan Avenue National Bank v. County of Cook*, 191 Ill. 2d 493, 504 (2000)).

¶ 31 Additionally, the Board is a creature of statute and may exercise only the powers conferred on it by the legislature. *Nader v. Illinois State Board of Elections*, 354 Ill. App. 3d 335, 340 (2004). "Any power or authority claimed by an administrative agency must find its source within the provisions of the statute by which the agency was created." *Nader*, 354 Ill. App. 3d at 340 (citing *Vuagniaux v. Department of Professional Regulation*, 208 Ill. 2d 173, 187-88 (2003)). "The agency's authority must either arise from the express language of the statute or 'devolve by fair implication and intendment from the express provisions of the [statute]

as an incident to achieving the objectives for which the [agency] was created.' " *Vuagniaux*, 208 Ill. 2d at 188 (quoting *Schalz v. McHenry County Sheriff's Department Merit Comm'n*, 113 Ill. 2d 198, 202-03 (1986)). Accordingly, we examine the Election Code to determine whether the Board properly imposed a penalty against Citizens for failing to electronically file its semiannual report.

¶ 32 The version of section 9-10 of the Election Code in force at the time of the events at issue provides:

> "(a) The treasurer of every state political committee and the treasurer of every local political committee shall file with the Board, *** reports of campaign contributions and semi-annual reports of campaign contributions and expenditures on forms to be prescribed or approved by the Board. ***
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> * * *
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> (c) In addition to [reports of campaign contributions] the treasurer of every political committee shall file semi-annual reports of campaign contributions and expenditures no later than July 20th, covering the period from January 1st through June 30th immediately preceding, and no later than January 20th, covering the period from July 1st through December 31st of the preceding calendar year. *** The Board shall assess a civil penalty not to exceed $5,000 for a violation of this subsection ***." 10 ILCS

5/9-10 (West 2008).

¶ 33 Section 9-28 of the Election Code provides:

"The Board shall by rule provide for the electronic filing of expenditure and contribution reports as follows:

***

Beginning July 1, 2003, electronic filing is required for all political committees that during the reporting period (i) had at any time a balance or an accumulation of contributions of $10,000 or more, (ii) made aggregate expenditures of $10,000 or more, or (iii) received loans of an aggregate of $10,000 or more.

The Board may provide by rule for the optional electronic filing of expenditure and contribution reports for all other political committees. The Board shall promptly make all reports filed under this Article by all political committees publicly available by means of a searchable database that is accessible through the World Wide Web.

The Board shall provide all software necessary to comply with this Section to candidates, public officials, political committees, and election authorities.

The Board shall implement a plan to provide computer access and assistance to candidates, public officials, political

> committees, and election authorities with respect to electronic filings required under this Article." 10 ILCS 5/9-28 (West 2008).

Citizens argues that it did not violate section 9-10 and that section 9-28, the only section that it violated, does not authorize the imposition of fines for violations. We do not find Citizens' arguments persuasive. As noted, we must view all provisions of a statutory enactment as a whole and "[a]ccordingly, words and phrases should not be construed in isolation, but must be interpreted in light of other relevant provisions of the statute." *Southern Illinoisan*, 218 Ill. 2d at 415 (citing *Michigan Avenue National Bank*, 191 Ill. 2d at 504). Examining section 9-10 in conjunction with section 9-28, we find that the plain language of both sections, along with the Board's regulations, authorize the imposition of the penalty.

¶ 34 In order to understand the relationship between section 9-10 and section 9-28, it is necessary to examine section 100.150 of the Board's regulations. Section 100.150 provides in relevant part:

> "(c) Once a committee is required to file its reports electronically under Section 9-28 of the Election Code, it must continue to file all reports (semiannual, amended semiannual, pre-election, amended pre-election, final, amended final, Schedule A-1) electronically, except as follows:
>
> (1) A paper report shall be considered a timely filing if it is received by the Board on or before the filing deadline, provided that it covers the initial reporting period during which the

> mandatory electronic filing threshold is exceeded and that the report is filed electronically within 30 days after receipt of notice from the Board that this report was required to have been filed electronically. If the report is not filed electronically within this 30 day period, it shall be considered as never having been filed and the civil penalties mandated by 26 Ill. Adm. Code 125.425 will accrue from the date of the filing deadline." 26 Ill. Adm. Code 100.150 (2009).

Section 125.425, referred to in section 100.150, provides a structure for imposing penalties for violations of section 9-10 of the Election Code, including a provision that "if the delinquent report is a semi-annual report, the political committee shall be assessed a fine of $50 per business day for the first violation, $100 per business day for the second violation, and $200 per business day for the third and each subsequent violation, to a maximum of $5000." 26 Ill. Adm. Code 125.425 (2009).

¶ 35 Thus, the Board's regulations, in conjunction with sections 9-10 and 9-28 of the Election Code, demonstrate that Citizens was penalized in the following way: pursuant to section 9-10 of the Election Code, Citizens was required to file semiannual reports of campaign contributions and expenditures. Pursuant to section 9-28, it was required to do so through electronic filing. Citizens violated section 9-28 by not filing its semiannual report electronically, instead filing it in paper form. Under section 100.150 of the Board's regulations, Citizens was required to file its report electronically within 30 days after notification by the Board and, if it failed to do so, the

paper report would be considered as never having been filed and the penalty provisions of section 125.425 would apply. Citizens failed to file its report electronically until 234 days after the filing deadline. Thus, the penalty was directly authorized by the Board's regulations.

¶ 36 To the extent that Citizens argues that the Board did not have authority to promulgate section 100.150 of its regulations permitting the imposition of fines for violations of section 9-28 of the Code, we find its argument also unpersuasive. Section 9-28 specifically requires the Board to "by rule provide for the electronic filing of expenditure reports." 10 ILCS 5/9-28 (West 2008). Even if section 9-28 does not specifically mention the imposition of fines, we find that the Board's authority to do so " 'devolve[s] by fair implication and intendment from the express provisions of the [statute] as an incident to achieving the objectives for which the [agency] was created.' " *Vuagniaux*, 208 Ill. 2d at 188 (quoting *Schalz*, 13 Ill. 2d at 202-03).

¶ 37 Additionally, the Election Code itself authorizes the imposition of a fine in this case. Under section 100.150 of the Board's regulations, by failing to file its report electronically, Citizens was considered to have never filed its report at all. Thus, by not filing any report, Citizens violated section 9-10(c) of the Election Code and became subject to its penalty provisions. Accordingly, we find that the Board had the authority to impose the $5,000 penalty against Citizens.

¶ 38 We are not persuaded by Citizens' arguments that it should not have been fined because Lightford relied on advice from the Board's staff in filing Citizens' report in paper form and that Citizens did not receive the notice of electronic filing. In reviewing the actions of an administrative agency, "[t]he findings and conclusions of the administrative agency on questions

of fact shall be held to be prima facie true and correct." 735 ILCS 5/3-110 (West 2008). The reviewing court is not to reweigh the evidence or make an independent determination of the facts. *Kouzoukas v. Retirement Board of the Policemen's Annuity & Benefit Fund*, 234 Ill. 2d 446, 463 (2009). The propriety of the agency's findings of fact will be upheld unless they are against the manifest weight of the evidence. *Kouzoukas*, 234 Ill. 2d at 463; *Marconi*, 225 Ill. 2d at 532 (*per curiam*). "An administrative agency decision is against the manifest weight of the evidence only if the opposite conclusion is clearly evident." *Abrahamson v. Illinois Department of Professional Regulation*, 153 Ill. 2d 76, 88 (1992). The fact that the opposite conclusion is reasonable or that the reviewing court may have reached a different outcome does not justify reversal of the administrative findings. *Abrahamson*, 153 Ill. 2d at 88. "If the record contains evidence to support the agency's decision, it should be affirmed." *Abrahamson*, 153 Ill. 2d at 88-89.

¶ 39 In the case at bar, concerning the advice of the staff, the hearing officer, whose report was adopted by the Board, found that Citizens' defense was "inadequate and circumstantial." The hearing officer further found that the Board's staff were not attorneys or consultants and that the Board "accepts all documents that are attempted to be filed regardless [of whether] the method of filing is through the mail, in person, fax or electronically." The record does not contain any other evidence as to the qualifications or duties of the staff members that assisted Lightford. Absent such information, we cannot find that the Board's decision was against the manifest weight of the evidence. See *Hamwi v. Zollar*, 299 Ill. App. 3d 1088, 1095 (1998) (noting that to invoke equitable estoppel against a public body, a party must rely on an affirmative act that is "an act of

the public body itself such as a legislative enactment rather than the unauthorized acts of a ministerial officer or a ministerial misrepresentation").

¶ 40 Additionally, we do not find Citizens' argument concerning notice to be persuasive. In its brief and during oral argument, Citizens argued that it never received notice that it was required to electronically file its semiannual report. Section 100.150 of the Board's regulations states that "[a] paper report shall be considered a timely filing if it is received by the Board on or before the filing deadline, provided that it covers the initial reporting period during which the mandatory electronic filing threshold is exceeded and that the report is filed electronically within 30 days *after receipt of notice from the Board that this report was required to have been filed electronically*." (Emphasis added.) 26 Ill. Adm. Code 100.150 (2009). Since the issue of notice was not raised before the hearing officer, the hearing officer did not specifically make any findings concerning receipt of notice, but did find that the Board sent notice. Thus, we consider whether a finding that the Board sent notice suffices to demonstrate receipt.

¶ 41 Neither the Election Code nor the Board's regulations explicitly define "receipt of notice" under section 100.150 and neither party provides us with any authority concerning the issue. Furthermore, there appears to be no case law interpreting "receipt of notice" under the Election Code in circumstances not explicitly requiring certified mail. However, after examining the Election Code and the regulations promulgated pursuant to it, we find that the evidence in the record on appeal supports the Board's decision.

¶ 42 Section 9-15 of the Election Code sets forth the duties of the Board, including the duty to prescribe suitable rules and regulations to carry out the provisions of Article 9 of the Election

Code. Under the authority provided by section 9-15, the Board promulgated the regulations located in sections 100.10 *et seq*. and 125.5 *et seq*. of the Title 26 of the Administrative Code. Section 100.150, governing the electronic filing of semiannual reports, is in this portion of the Board's regulations.

¶ 43 Section 125.5 of the regulations explains that sections 125.5 through 125.199 "shall apply to the practices and procedures of the State Board of Elections, and all proceedings conducted by the Board under [those sections]." Section 125.55 provides that:

> "[w]henever this Part requires a notice to be given within a period of time, such requirements shall be construed to mean that notice shall be received by the party entitled to such notice; provided however, that evidence that notice was dispatched by means reasonably calculated to be received by the prescribed date shall be prima facie proof that notice was timely received by the party entitled to such notice." 26 Ill. Adm. Code 125.55 (2009).

Thus, under section 125.55, "receipt" of notice by a certain date can be demonstrated through "evidence that notice was dispatched by means reasonably calculated to be received" by the party entitled to the notice by that date. Notably, this section does not impose any requirements that notice be sent via registered or certified mail but only requires notice to be sent "by means reasonably calculated to be received by the prescribed date."

¶ 44 Indeed, from our examination of the Election Code, no provision of Article 9 or its regulations specifically requires notice by the Board to be sent via registered or certified mail,

even though several sections refer to "mailing" of notice. For instance, section 9-15(4) requires the Board "to send by first class mail" notice of obligations under Article 9 to certain entities after the general primary election every two years. See 10 ILCS 5/9-15(4) (West 2008). Additionally, under section 125.425 of the rules, which is the section providing for civil penalty assessments for violations of section 9-10 of the Election Code, the rules provide that "the Board will send notice of delinquency" to the political committee. 26 Ill. Adm. Code 125.425(c) (2009). When referring to the notice, section 125.425 consistently uses the term "mailing of the assessment notice" in calculating penalties. See, *e.g.*, 26 Ill. Adm. Code 125.425(f)(1) (2009) (a committee assessed a civil penalty may "submit, within 30 calendar days after the mailing of the assessment notice" a request for waiver of appearance and appeal affidavit). Section 125.425 does not qualify the term "mailing" with a phrase such as "certified mail, return receipt requested."

¶ 45 As Citizens notes in its reply brief, there are several places in the Election Code where registered or certified mail is specifically required when sending documents. Thus, the absence of such language from the provisions in Article 9 is instructive. Based on the absence of such language and in light of section 125.55's instruction that receipt of notice by a certain date may be demonstrated through evidence that notice was dispatched by means reasonably calculated to be received by the party by that date, we find that proof that the Board sent notice to Citizens is evidence that the notice was received by Citizens. Since the issue of whether notice was sent by the Board and received by Citizens is a question of fact, we next consider whether the Board's adoption of the hearing officer's finding that notice was sent was against the manifest weight of

the evidence. See *Kouzoukas*, 234 Ill. 2d at 463; *Marconi*, 225 Ill. 2d at 532 (*per curiam*).

¶ 46 In the case at bar, the record contains few mentions of the notice that was purportedly given to Citizens of its improper filing. The hearing officer found that "[a] letter was sent on February 1, 2010 notifying the Committee it had 30 days to file the report electronically[;] otherwise[,] the paper report would be considered a non-filing." Additionally, the hearing officer's supplemental report stated that "[u]pon receiving the paper report, the Board issued the 30 day electronic filing requirement notice to the Committee on February 1, 2010 (attached, Complainant's Exhibit 1)."[5]

¶ 47 "If the record contains evidence to support the agency's decision, it should be affirmed." *Abrahamson*, 153 Ill. 2d at 88-89. In the case at bar, the record contains letters purportedly sent by the Board to Citizens on January 28, 2010, and March 2, 2010.[6] These letters support a finding that notice was received by Citizens. Moreover, contrary to Citizens' argument, nothing in the record indicates that the letters were never received by Citizens. Lightford stated in a letter that she became aware that she was ineligible for electronic filing in April 2011 and told the Board during its June meeting that she learned that she was ineligible for paper filing after "two years." During the Board's August meeting, Citizens' counsel made the following statement:

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[5] As noted previously, the record does not contain the attachment to the hearing officer's supplemental report.

[6] The record contains two copies of each letter: one copy addressed to Citizens at an address in Westchester and one copy addressed to Lightford as chairman of Citizens at an address in Maywood.

"Mr. Sandvoss [the Board's general counsel] indicated that a notice was sent. I did call the Board and ask for all the papers that were involved in this proceeding, and I was told that it was essentially the report of the hearing officer. So I never had that opportunity to see any report that would have been sent to Citizens for Lightford indicating that the report had not been electronically filed." Neither statement indicates that no notice was received by Citizens; Lightford's statements indicate that she was unaware of the filing requirement and Citizens' counsel's statement simply states that he was not given a copy of and did not see any notice. However, under Illinois law, we cannot find that these statements are sufficient to render the Board's decision against the manifest weight of the evidence. At most, they demonstrate that a finding that no notice was received could have been reasonable, which is insufficient to justify reversal of the Board's decision. See *Abrahamson*, 153 Ill. 2d at 88 (the fact that the opposite conclusion is reasonable does not justify reversal of the administrative findings). Furthermore, the issue of notice was not raised by Citizens until the Board's August meeting; neither Lightford not Soblinskas mentioned that they had not received such a letter during the proceedings before the hearing officer or the Board, even after Citizens had retained counsel, and the issue was not raised in Citizens' additional brief before the Board. Indeed, even before the Board, Citizens' attorney simply stated that he had not seen any notices that may have been sent by the Board; he did not argue that Citizens received inadequate or no notice under the Election Code. Given the presence of the letters in the record on appeal and the absence of claims that no notice was received, we cannot say that the Board's decision was against the manifest weight of the evidence.

¶ 48 As a final note, while Citizens does not argue in its brief that the amount of the penalty should be reduced, during oral argument, Citizens' counsel noted that it was assessed the maximum penalty of $5,000 for its violation. As noted, section 125.425 of the Board's rules provides that in the case of a delinquent semiannual report, "the political committee shall be assessed a fine of $50 per business day for the first violation, $100 per business day for the second violation, and $200 per business day for the third and each subsequent violation, to a maximum of $5000." 26 Ill. Adm. Code 125.425 (2009). In the case at bar, Citizens' report was filed 234 days late, triggering the maximum $5,000 penalty. While we are sympathetic that $5,000 is a large sum in these hard economic times, the plain language of the Election Code and the Board's rules make the calculation of Citizens' penalty clear. This court does not have the authority under Illinois law to reduce that penalty. Consequently, we affirm the assessment of the $5,000 penalty for Citizens' delinquent filing of its semiannual report.

¶ 49 II. Schedule A-1 Report

¶ 50 Citizens also argues that the Board should not have imposed a fine for Citizens' "unintentional" violations of the contribution reporting requirements. The portion of section 9-10 relevant to Citizens' Schedule A-1 report provides as follows:

> "(b-5) Notwithstanding the provisions of subsection (b) and Section 1.25 of the Statute on Statutes, any contribution of more than $500 received (i) with respect to elections other than the general primary election, in the interim between the last date of the period covered by the last report filed under subsection (b) prior to

> the election and the date of the election *** shall be filed with and must actually be received by the State Board of Elections within 2 business days after receipt of such contribution. *** Failure to report each contribution is a separate violation of this subsection. In the final disposition of any matter by the Board on or after the effective date of this amendatory Act of the 93rd General Assembly, the Board may impose fines for violations of this subsection not to exceed 100% of the total amount of the contributions that were untimely reported, but in no case when a fine is imposed shall it be less than 10% of the total amount of the contributions that were untimely reported. When considering the amount of the fine to be imposed, the Board shall consider, but is not limited to, the following factors:
>
> (1) whether in the Board's opinion the violation was committed inadvertently, negligently, knowingly, or intentionally;
>
> (2) the number of days the contribution was reported late; and
>
> (3) past violations of Sections 9-3 and 9-10 of this Article by the committee." 10 ILCS 5/9-10(b-5) (West 2008).

¶ 51 In the case at bar, Citizens concedes that it violated section 9-10(b-5) by failing to file its Schedule A-1 report concerning the contributions made on November 1. However, Citizens

argues that, given the unintentional nature of the violation, it should not have been penalized.

¶ 52 In reviewing an administrative sanction, Illinois law requires that "a reviewing court defer[] to the administrative agency's expertise and experience in determining what sanction is appropriate to protect the public interest." *Abrahamson*, 153 Ill. 2d at 99 (citing *Massa v. Department of Registration & Education*, 116 Ill. 2d 376, 388 (1987)). Consequently, the agency's sanction will be reversed "if it is arbitrary or capricious or amounts to an abuse of discretion." *Grunwell v. Illinois Department of Financial & Professional Regulation*, 406 Ill. App. 3d 283, 295 (2010). " 'Agency action is arbitrary and capricious only if the agency contravenes the legislature's intent, fails to consider a crucial aspect of the problem, or offers an explanation which is so implausible that it runs contrary to agency expertise.' " *Deen v. Lustig*, 337 Ill. App. 3d 294, 302 (2003) (quoting *La Salle National Bank v. City Suites, Inc.*, 325 Ill. App. 3d 780, 786 (2001)). "An abuse of discretion is found when a decision is reached without employing conscientious judgment or when the decision is clearly against logic." *Deen*, 337 Ill. App. 3d at 302 (citing *Bodine Electric of Champaign v. City of Champaign*, 305 Ill. App. 3d 431, 435 (1999)). In the context of administrative fines, "an administrative agency abuses its discretion when it 'imposes a sanction that is (1) overly harsh in view of the mitigating circumstances or (2) unrelated to the purpose of the statute.' " *Grunwell*, 406 Ill. App. 3d at 295 (quoting *Siddiqui v. Department of Professional Regulation*, 307 Ill. App. 3d 753, 763 (1999)).

¶ 53 In the case at bar, we cannot find that the penalty imposed by the Board was "overly harsh" or unrelated to the purpose of the statute. Indeed, Citizens could have been fined a total of $30,250, but was only assessed a fine for 10% of that amount because it had not had any

section 9-10(b-5) violations in the past two years. See 26 Ill. Adm. Code 125.425(k)(1) (2009) (permitting committees to be considered as never having violated section 9-10 after a period of two years with no civil penalties). Additionally, despite being considered as never having violated section 9-10, the Board found that Citizens violated section 9-10(b-5) 11 times and had delinquently filed its semiannual reports four times, which is one of the factors that may be considered in imposing a penalty under section 9-10(b-5). Accordingly, despite the "unintentional" nature of the Schedule A-1 violation, we cannot find the Board's decision to be erroneous and affirm its imposition of a fine in the amount of $3,025.

¶ 54 CONCLUSION

¶ 55 We find that the Board did not err in imposing a $5,000 penalty for Citizens' failure to timely electronically file its semiannual report. We further find that the Board did not err in imposing a $3,025 penalty for Citizens' failure to file a Schedule A-1 report concerning campaign contributions received on November 1, 2010. Accordingly, we affirm the imposition of a fine against Citizens totaling $8,025.

¶ 56 Affirmed.