

No. 1-16-2530

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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COMMITTEE FOR FRANK J. MAUTINO,	)	Petition for Review of the
	)	Order of the Illinois
Petitioner-Appellant,	)	Board of Elections
	)	
v.	)	16 CD 093
	)	
ILLINOIS STATE BOARD OF ELECTIONS;	)	
CHARLES W. SCHOLZ, in his capacity as	)	
Chairman; ERNEST L. GOWEN, in his capacity as	)	
Vice-Chairman; WILLIAM M. McGUFFAGE, in his	)	
capacity as Member; JOHN R. KEITH, in his	)	
capacity as Member; ANDREW K. CARRUTHERS,	)	
in his capacity as Member; WILLIAM J. CADIGAN,	)	
in his capacity as Member; BETTY J. COFFRIN, in	)	
her capacity as Member; CASANDRA B. WATSON,	)	
in her capacity as Member; DAVID COOKE, the	)	
complainant; and PHILIP M. KRANSY, the hearing	)	
officer,	)	
	)	
Respondents-Appellees.	)	

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JUSTICE MASON delivered the judgment of the court.  
Presiding Justice Hyman and Justice Neville concurred in the judgment.

**ORDER**

¶ 1      *Held:* Appeal dismissed for lack of jurisdiction where the sole issue on appeal is whether an administrative agency erred in denying petitioner's motion for stay.

¶ 2 Petitioner the Committee for Frank J. Mautino (Committee) appeals the Illinois State Board of Elections' (Board) ruling denying its motion for stay relating to a complaint alleging violations of the Illinois Campaign Disclosure Act (10 ILCS 5/9-7, 9-8.10 (West 2016)). A federal criminal investigation on the same matter is purportedly pending. Complainant David Cooke filed a complaint with the Board questioning the veracity of documentation supporting certain expenditures by Mautino's campaign in violation of Article 9 (Disclosure and Regulation of Campaign Contributions and Expenditures) (10 ILCS 5/9-7, 9-8.10 (West 2016)) of the Illinois Election Code (Code). Specifically questioned were the veracity of expenditures recorded in whole dollar amounts, which the complaint alleged "strains reason to believe" that the expenses related to actual services rendered. The complaint also asserted that an unreasonable amount of expenses was allocated to Happy's Super Service Station for gasoline, vehicle repair and similar expenses. The Board appointed a hearing officer to conduct a closed preliminary hearing regarding Cooke's allegations to determine whether the complaint was filed upon justifiable grounds.

¶ 3 In response, the Committee filed a motion to strike and dismiss the complaint claiming that the Board lacked jurisdiction because the Committee had been dissolved, and that the complaint failed to state an offense upon justifiable grounds. The Committee, which had been formed in connection with Mautino's campaign for State Representative dissolved when, effective January 1, 2016, Mautino was appointed Auditor General of Illinois.

¶ 4 During the closed preliminary hearing, the hearing officer considered the Committee's motion and found that nothing in Article 9 of the Code prohibited the Board from hearing a complaint filed against a committee that had filed a final report. As to the merits, the hearing officer found that the complaint was filed upon justifiable grounds noting that the contested

expenditures lacked adequate details and recommended that the Committee's motion to strike and dismiss be denied. The hearing officer also recommended that the matter proceed to a public hearing unless the Committee filed amended campaign disclosure reports with sufficient details within 60 days of the date of the order, which was dated April 29, 2016. The Board's general counsel agreed with the hearing officer's recommendations, and further elaborated on the additional itemization and details required in the amended reports.

¶ 5 On May 16, 2016, the Board adopted the hearing officer's and general counsel's recommendations and denied the Committee's motion to strike and dismiss. The Board further ordered the Committee to file amended reports on or before July 1, 2016.

¶ 6 Following the Board's order, various campaign workers for the Committee received federal grand jury subpoenas in connection with the pending federal investigation also relating to the Committee's disclosure of campaign expenditures. Because a federal criminal investigation on the same subject was pending, the Committee filed a motion to stay the proceedings before the Board pending resolution of the federal investigation to prevent Mautino from being forced to claim or waive his Fifth Amendment right concerning any information or discovery in the Board's action. The Board's general counsel recommended granting the motion to stay.

¶ 7 The Board adopted in part and denied in part its general counsel's recommendation and extended the filing date of the Committee's amended reports to permit the Board to conduct additional inquiries relating to the pendency of the federal criminal investigation. But in reply to the Board's inquiry, the U.S. Attorney's Office for the Central District of Illinois stated that the office ordinarily does not "respond to or confirm the existence of any federal investigation" and that it did not wish to respond to whether there was a federal investigation pending. The Board then denied the Committee's motion to stay and ordered the amended reports to be filed by July 15, 2016. The Committee did not file amended reports and, instead, filed another motion to stay

requesting that the public hearing be stayed pending resolution of the federal investigation. The Board again denied the Committee's motion to stay.

¶ 8 The Committee now seeks direct review of the Board's ruling denying its motion to stay. But the Board claims that we lack jurisdiction to consider the Committee's appeal because the Board's ruling denying the motion was not a final judgment giving rise to jurisdiction in this court. We agree with the Board.

¶ 9 Section 9-22 of the Code (10 ICLS 5/9-22 (West 2016)) permits judicial review of Board decisions and states in relevant part:

"Any party to a Board hearing, any person who files a complaint on which a hearing was denied or not acted upon within the time specified in Section 9-21 of this Act, and any party adversely affected *by a judgment of the Board* may obtain judicial review, which shall be *governed by the provisions of the Administrative Review Law*, as amended." (Emphasis added.) 10 ILCS 5/9-22 (West 2016).

¶ 10 We are not persuaded by the Committee's claim that the term "judgment" as used in Section 9-22 is not limited to final judgments, but includes any order entered by the Board, even if interlocutory in nature. It is undisputed that section 9-22 expressly adopts and incorporates the Administrative Review Law (Review Law) (735 ILCS 5/3–101 to 3–113 (West 2012)). Section 3-102 of the Review Law states that it "applies to and governs every action for judicial review of a *final administrative decision* where its provisions are expressly adopted by the statute creating or conferring power on the agency." (Emphasis added.) *Slepicka v. Illinois Dept. of Pub. Health*, 2014 IL 116927, ¶ 12; 735 ILCS 5/3–102 (West 2012). Because the parties' dispute concerns whether any decision of the Board may be reviewed under the Review Law or just final decisions, the definition of "administrative decision" becomes relevant. Accordingly, the Review Law defines "administrative decision" or "decision" as "any decision, order or

determination of any administrative agency rendered in a particular case, which affects the legal rights, duties or privileges of parties *and which terminates the proceedings before the administrative agency.*" (Emphasis added.) 735 ILCS 5/3-101 (West 2016). Although the Committee asks this court to review the Board's decision denying its request to stay proceedings, we lack authority to do so because the Board's ruling does not comport with the Review Law's definition of "administrative decision." A ruling on the Committee's motion to stay would not *terminate* the proceedings before the Board in any way. Because the Board's order denying the Committee's motion to stay was not a final administrative decision, this court lacks jurisdiction to review it.

¶ 11 Moreover, we find the Committee's reliance on *Cook County Republican Party v. Illinois State Board of Elections*, 232 Ill. 2d 231, 240 (2009), misplaced. Although the Committee correctly quotes from the case that "[s]ection 9-22 clearly allows a party adversely affected by a judgment of the Board to seek judicial review," the case goes on to recognize that the relevant orders included "final and appealable" language and held that, "[h]ence, the orders are *judgments* of the Board." (Emphasis added.) *Id.* We simply cannot adopt the Committee's position that *Cook County Republican Party* stands for the proposition that any *ruling* of the Board adversely affecting a party may be judicially reviewed by this court, particularly where the court in that case expressly noted that the orders were "final and appealable" and no such finding or final order is involved here.

¶ 12 Likewise, we find no merit in the Committee's claim that the committee comments to Illinois Supreme Court Rule 335 (eff. Feb. 1, 1994) suggest that interlocutory orders may be reviewed by this court. Rule 335 outlines the procedure that must be followed to obtain review of an administrative agency's order assigned directly to the Appellate Court. Ill. S. Ct. R. 335 (eff. Feb. 1, 1994). The committee comment that the Committee relies on identifies the orders

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from the specific administrative agencies that may be appealed directly to this court in lieu of review in the circuit court. Ill. S. Ct. R. 335, Committee Comments (adopted Dec. 17, 1993).

Contrary to the Committee's position, nothing in the comments, or in Rule 335, confers jurisdiction on this court to review interlocutory orders.

¶ 13            Because the Board's ruling denying the Committee's motion to stay was not an administrative decision subject to our review, the Committee's appeal is dismissed for lack of jurisdiction.

¶ 14            Appeal dismissed.