

SUPREME COURT OF LOUISIANA

No. 96-CC-1982

TRANSIT MANAGEMENT OF SOUTHEAST LOUISIANA, INC.

Versus

COMMISSION ON ETHICS FOR PUBLIC EMPLOYEES

PER CURIAM

In response to a request for an advisory opinion, the Commission on Ethics for Public Employees ruled that the employees of an allegedly private business corporation that provided the daily operations of the transit system in the New Orleans area were subject to the Code of Governmental Ethics. We granted certiorari to review the decision of the court of appeal that affirmed the advisory opinion. Without reaching the merits of the Commission's advisory opinion, we hold that advisory opinions of the Commission are not subject to the supervisory or appellate jurisdiction of the appellate courts.

At the pertinent time, La. Rev. Stat. 42:1153 authorized the Commission, after notice and hearings, to remove, suspend or order a reduction in pay or demotion of any public employee or person who violated the Code, or to impose a fine. La. Rev. Stat. 42:1134(6) also authorized the Commission, as part of its powers and duties, to render advisory opinions with respect to the Code of Governmental Ethics.¹

La. Rev. Stat. 42:1142A authorized an appeal to the court of appeal "[w]henver any action is taken against any public servant or person" by the Commission. Section 1142A further provided in part that "[a]ny preliminary, procedural or intermediate

¹The statute does not require notice or a hearing for the rendition of any advisory opinion.

action or ruling by an ethics body is subject to the supervisory jurisdiction of the appellate courts"

In Fulda v. State of Louisiana, Office of Public Health, Dep't of Health and Hosp., 95-1740 (La. App. 1st Cir. 2/23/96); 668 So. 2d 1381, the court of appeal held that although there was no actual case or controversy for the court to review, an advisory opinion rendered by the Commission is a preliminary or intermediate action or ruling by an ethics body within the meaning of Section 1142 and, as such, is subject to the court's supervisory jurisdiction. This decision followed previous rulings of the same circuit on the issue.

There is no constitutional or legislative authority for judicial review of an advisory opinion rendered by the Commission. Contrary to the Fulda reasoning, an advisory opinion by the Commission is not a "preliminary, procedural or intermediate action or ruling." The preliminary or procedural actions or rulings referred to in Section 1142A are those rulings which the Commission makes after a proceeding before the Ethics Commission has been commenced, such as by filing of a complaint. See La. Rev. Stat. 42:1141.

Section 1134(6), the authority for advisory opinions by the Commission, sets forth a procedure whereby a person may seek the advice of the Commission as to the conduct or status of that person or some other person under the Code of Governmental Ethics. The advisory opinion is simply that -- advice. It is not a ruling or action by the Commission that will affect the person whose conduct or status is questioned, and it cannot be enforced by any person.² See 2 Kenneth C. Davis &

²Other authoritative writings on administrative law confirm that review of agency advisory opinions generally is not advisable, especially where there is no claim of actual or impending injury. Alfred C. Aman, Jr. & William T. Mayton, Administrative Law, §12.10.3 (1993) (discussing "ripeness" for review); Davis & Pierce, supra, §§15.12 and 15.15 (discussing ripeness generally and in the context of informal agency action

Richard J. Pierce, Jr., Administrative Law §15.15 (1994).

After an advisory opinion by the Commission, the person seeking the advice about another person's conduct or status may file a complaint with the Commission against the other person if that person does not change his or her conduct or status to conform to the advisory opinion. Alternatively, the person who will be ultimately affected by a ruling of the Commission, if and when a complaint is filed, can file an action for a declaratory judgment in the district court to determine the legal correctness of the Commission's opinion on conduct or status.³ Other procedures may be available, either in an adjudicative action before the Commission or in an action in the district court. But until there is some proceeding before the Commission which could result in the Commission's imposing a penalty, there is no preliminary or procedural action or ruling by the Commission that is appropriate for judicial review, either by appeal or by supervisory writs. Indeed, there is no justiciable controversy for the courts to decide.

Accordingly, we vacate the judgment of the court of appeal, which lacked supervisory jurisdiction to review the advisory opinion of the Commission on Ethics for Public Employees.

such as advisory opinions).

³In Midboe v. Commission on Ethics for Public Employees, 646 So. 2d 351 (La. 1994), Midboe initially requested an advisory opinion by the Commission, but eventually filed a petition for a declaratory judgment in the district court.

In the Midboe case, we quoted jurisprudence from the intermediate court to the effect that an advisory opinion by the Commission was reviewable by that court as "a preliminary or intermediate action or ruling by an ethics body." Midboe, 646 So. 2d at 355 (citing Board of Comm'rs v. Commission on Ethics, 484 So. 2d 845 (La. App. 1st Cir. 1986)). We now retract that statement, made in dicta, and overrule the jurisprudence holding that advisory opinions by the Commission are reviewable as preliminary or intermediate actions or rulings.

