

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

UNO CHARTER SCHOOL NETWORK,)
INC., an Illinois not-for-profit corporation,)

Plaintiff,)

v.)

LISA MADIGAN, in Her Official)
capacity as Attorney General of the)
State of Illinois, and DAN)
MIHALOPOULOS,)

Defendants.)

No. 13 CH 18319

Calendar 16

Judge David B. Atkins

UNITED NEIGHBORHOOD)
ORGANIZATION OF CHICAGO, an)
Illinois not-for-profit corporation,)

Intervening Plaintiff,)

v.)

LISA MADIGAN, in Her Official)
capacity as Attorney General of the)
State of Illinois, and DAN)
MIHALOPOULOS,)

Defendants.)

No. 13 CH 18319

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MEMORANDUM OPINION AND ORDER

THIS CAUSE COMING ON TO BE HEARD on plaintiff UNO Charter School Network, Inc.'s Complaint for Administrative Review¹ pursuant to 735 ILCS 5/3-101 *et seq.*, the court having considered the briefs submitted and the arguments of counsel, and the court being fully advised in the premises,

IT IS HEREBY ORDERED that the administrative decision is affirmed.

Background

This case pertains to certain requests for records made by defendant Dan Mihalopoulos and his employer, Sun-Times Media, LLC pursuant to the Illinois Freedom of Information Act, 5

¹ Intervening plaintiff United Neighborhood Organization of Chicago also filed a brief in support of the complaint for administrative review.

ILCS § 140/1, *et seq.* (“the FOIA”). Mihalopoulos, a journalist, has written a series of investigative news reports published in the *Chicago Sun-Times* that focus on defendant United Neighborhood Organization of Chicago’s (“UNO’s”) alleged misuse of state funds furnished to defendant UNO Charter School Network a/k/a United Charter School Network (“UCSN”).

On February 15, 2013, Mihalopoulos submitted a FOIA request to UCSN seeking copies of the following records: (1) any contracts between UCSN and d’Escoto Inc. (“d’Escoto”); (2) any invoices or other bills that d’Escoto submitted to UCSN to receive payment with state grant money or money from other public sources; (3) any contracts by which state money or money from other public sources was paid to Reflection Window Co. Inc., Windy City Electric, Aguila Security, and Toltec Plumbing; (4) Any bid documents related to contacts that resulted in the payment of state grant money or money from other public sources to d’Escoto, Reflection Window Co. Inc., Windy City Electric, Aguila Security, and Toltec Plumbing, and; (5) all UCSN board meeting minutes since January 1, 2009. UCSN denied this request (“the February request”), except as to certain board meeting minutes, on the grounds that the subject documents do not exist or are not in UCSN’s possession or under its control. Indeed, UCSN asserted that UNO was in possession and control of the records in question.

Mihalopoulos requested a review of this denial from the Public Access Counselor (“the PAC”), a position established within the Attorney General’s Office to resolve FOIA-related disputes. 5 ILCS § 140/9.5. The PAC issued a binding opinion ordering any responsive records in UNO’s possession or under its control to be tendered to Mihalopoulos. The PAC found that any responsive records in UNO’s possession or control were also necessarily in the possession or control of UCSN “[b]ecause UNO and UCSN act as the same entity for the purpose of serving as the governing body of charter schools.” (PAC Opinion at 11, Compl. Ex. B) The PAC further found that, regardless of whether UNO and UCSN are effectively the same entity, the FOIA requires UCSN to obtain responsive records from UNO and UNO’s vendors. (*Id.* at 12)

On August 6, 2013, UCSN initiated the administrative review action numbered 13 CH 18319. Although not initially a party, UNO was granted leave to intervene in the administrative review action on July 23, 2014.²

Legal Standard

The Administrative Review Law provides that judicial review of an administrative agency decision shall extend to all questions of law and fact presented by the record before the court. 735 ILCS 5/3-110. An agency’s conclusions on a question of law are reviewed *de novo*. *Branson v. Dep’t of Revenue*, 168 Ill. 2d 247, 254 (1995).

An administrative agency’s findings of fact are *prima facie* true and correct and must be affirmed unless they are against the manifest weight of the evidence. *Goldberg v. Dep’t of Prof’l Regulation*, 331 Ill. App. 3d 797, 803-04 (1st Dist. 2002). An administrative agency’s decision is against the manifest weight of the evidence only if an opposite conclusion is clearly evident.

² As defendants point out in their briefs, UNO did not submit any “initial pleading or motion which [it] proposes to file” along with its petition to intervene. Accordingly, as did defendants, the court will presume that UNO intends to argue in support of UCSN’s complaint for administrative review.

Flaherty v. Retirement Bd. of the Policeman's Annuity & Benefits Fund, 311 Ill. App. 3d 62, 65 (1st Dist. 1999). "The mere fact that an opposite conclusion is reasonable or that the reviewing court might have ruled differently will not justify reversal of the administrative findings." *Abrahamson v. Ill. Dep't of Prof'l Regulation*, 153 Ill. 2d 76, 88 (1992).

"Mixed questions of fact and law are questions in which the historical facts are admitted or established, the rule of law is undisputed, and the issue is whether the facts satisfy the statutory standard..." *Cinkus v. Vill. of Stickney Mun. Officers Election Bd.*, 228 Ill. 2d 200, 211 (1988) (internal quotations omitted). A mixed question of law and fact is reviewed under the clearly erroneous standard. *Marconi v. Chicago Heights Police Pension Bd.*, 225 Ill. 2d 497, 532 (2006). An agency's decision is clearly erroneous when the reviewing court is "left with the definite and firm conviction that a mistake had been committed." *AFM Messenger Serv., Inc. v. Dep't of Emp't Sec'y*, 198 Ill. 2d 380, 393 (2001) (internal quotations omitted).

Discussion

The central question in this administrative review is whether the PAC erred in finding that UNO and UCSN are effectively the same entity for the purposes of the FOIA. A secondary issue is whether the records sought in defendants' FOIA request are directly related to UCSN's governmental function.

UNO was created in 1984 as "a community outreach organization to address the needs of the growing Hispanic community in Chicago." (R. 27) In this capacity, UNO performs various functions including the building of schools. (R. 27-28) In the last 15 years, UNO has built six schools in the Chicago area and has acquired six others. (R. 27) UCSN was created to operate the charter schools under UNO's control and it is governed by the Charter Schools Law, 105 ILCS 5/27A-6. (R. 31) Pursuant to this law, Illinois charter schools are deemed "public" institutions and "the governing body of a charter school shall be subject to the [FOIA]." 105 ILCS 5/27A-5(a), (c).

Private entities, such as UNO are generally not subject to FOIA. However, pursuant to section 7(2) of the FOIA:

A public record that is not in the possession of a public body but is in the possession of a party with whom the agency has contracted to perform a governmental function on behalf of the public body, and that directly relates to the governmental function and is not otherwise exempt under this Act, shall be considered a public record of the public body, for purposes of this Act.

5 ILCS 140/7(2).

The PAC found that "UNO and UCSN are substantively indistinguishable and constitute the same entity for the purpose of charter school operations, including with respect to serving as the governing body of the charter schools." (PAC Op. at *14) Accordingly, the PAC found that, "[t]herefore, records concerning the charter schools in the possession of UNO are public records

in the possession of UCSN.” (PAC Op. at *14) Contrary to plaintiffs’ assertion, this finding is not against the manifest weight of the evidence.

First, even before the PAC decision, the Illinois Department of Commerce and Economic Opportunity (“DCEO”), which awarded the grants upon which the subject FOIA requests are based, treated UNO and UCSN as a single entity. Indeed, the DCEO grant agreements expressly identifies UNO, not UCSN, as the grantee and provides that “[g]rantee has entered into a Charter School Agreement with the Chicago Board of Education which is valid from 7/1/08-6/30/13.” S.R. 196, 199, 910, 915. Likewise, Standard & Poor’s, along with other financial experts, have viewed UNO and UCSN as a single entity. (R. 8)

Yet the PAC made its own independent findings pertaining to the unity of UNO and UCSN. The PAC found that both entities were headed by the same individual, Juan Rangel, who served as President and CEO of UNO and President of UCSN. Similarly, the PAC correctly noted a complete overlap between the Board of Directors of each organization; that is, the boards were identical. Plaintiffs argue that this was a temporary situation and point out that it is no longer the case. However, the relevant circumstances are those in existence when the FOIA request was made.

The PAC further found that “both entities have the same business address, share the same record-keeping system and each have access to each other’s records.” (PAC Op. at *9) The PAC also found that UNO contracted to perform key services for UCSN. In fact, UCSN admitted that its delegations to UNO “encompass virtually all of the governance of the charter school.” (PAC Op. at *9)

The purported distinctions between UNO and UCSN noted in plaintiffs’ briefs are not as compelling as the similarities between the two entities. For instance, although UCSN’s teachers and staff are paid directly by UCSN, UCSN’s “top management officials and key employees” are paid by UNO. (R. 102) Moreover, one of plaintiff’s strongest arguments on this point, that the entities maintain separate agendas and minutes for their meetings, is now outside the scope of this administrative review pursuant to UCSN’s April 4, 2014 filing of its amended complaint.³

Therefore, the finding that UNO and UCSN are the same entity for the purposes of FOIA is not against the manifest weight of the evidence. Accordingly, the court need not address whether the records at issue are directly related to UCSN’s governmental function.

WHEREFORE, the administrative decision of defendant Lisa Madigan is affirmed. Plaintiff UNO Charter School Network, Inc. has until March 17, 2015 to comply with the decision of the Public Access Counselor and produce the records sought in defendant Dan Mihalopoulos’s February 15, 2013 FOIA request.

JUDGE DAVID B. ATKINS
ENTERED:

FEB 17 2015

Circuit Court 1879
Judge David B. Atkins

The Court.

³ The complaint was amended to expressly exclude the board meeting minutes from the administrative record.