STATE OF WISCONSIN CIRCUIT COURT BRANCH 10 DANE COUNTY

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ROGER E. ALFF, *

Petitioner, *

VS. * Case No. 81 CV 5489

STATE PERSONNEL COMMISSION, *

Respondent. *

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DECISION AND ORDER

This is a petition for review of a decision of the Personnel Commission in connection with the termination of petitioner's employment as Director of the State Bureau of Municipal Audit (BMA). For the reasons stated below I affirm the decision and order of the Personnel Commission.

FACTS

At the time of his termination in November of 1978, petitioner Roger Alff was the Director of the State Bureau of Municipal Audit, a position he had held since 1970. Prior to that time, he was employed at the BMA or its predecessor since 1949. Alff has been a Licensed Certified Public Accountant in Wisconsin since 1970. The BMA's function is to audit local units of government at their request and for a fee. At the time in question herein BMA also had the responsibility for conducting audits of certain nursing home cost reports filed under the Medicaid program.

On October 6, 1978, Alff was suspended from his employment for three working days. On November 6, 1978, he was notified that he was discharged. The letter of suspension contains two specific charges; the letter of termination contains eleven. The gist of these charges is that Alff, in his position as Director of BMA, failed to see to it that the audits conducted by BMA were done in accordance with Generally Accepted Auditing Standards (GAAS) promulgated by the American Institute of Certified Public Accounts (AICPA).

After an extensive hearing, the Personnel Commission found that the Department of Revenue (of which BMA is a part) had sustained its burden of proof with regard to both charges in the suspension letter and seven of the charges in the letter of termination. The Commission found that these charges constituted just cause for suspension and discharge and that the discipline imposed was not excessive. Alff appeals to this court from that decision.

OPINION

The standard of review of an administrative decision is found in Reinke v. Personnel Board, 53 Wis. 2d 123 (1971). The test is one of substantial evidence, that is, whether a reasonable person, acting reasonably, could have reached the decision reached by the Commission. The credibility of the witnesses and the weight of the evidence are issues that are to be decided exclusively by the Commission. Using this standard of review, I find that the decision of the Commission is supported by

substantial evidence.

Alff's first contention is that GAAS do not apply to the activities of the BMA because it is a government entity auditing other government entities. His basis for this assertion is that there is "no reference to it (GAAS) in any official authoritative state document." However, petitioner has overlooked many government documents which expressly require that GAAS be applied. Specifically, the contract between BMA and the Department of Social Services for nursing home cost reports provided that the audits be done in accordance with certain federal requirements, and those requirements incorporated GAAS. The federal revenue sharing act provided that audits of entities receiving these funds be done in accordance with GAAS. Section PI 14.03, Wis. Adm. Code requires that school district audits be in compliance with GAAS. In addition, petitioner signed all the audit reports of the Department as "Roger E. Alff, C.P.A." Section Accy 1.202, Wis. Adm. Code provides that a CPA shall not "permit his name to be associated with financial statements in such a manner as to imply that he is acting as an independent public accountant, unless he has complied with the applicable generally accepted auditing standards. . . ." Furthermore, the audit opinions in evidence all indicated that the audits had been conducted in accordance with GAAS. Finally, the court notes, there was evidence at the hearing to the effect, that courts around the country have used GAAS as the minimum standard by which accountants are judged in professional liability actions.

The evidence is overwhelming that GAAS applies to the work done by the BMA and did apply at the time that petitioner was Director.

Petitioner next contends that if GAAS applies to the BMA, they were followed. In the section of its opinion dealing with this contention, the Commission has set out at length the evidence which supported its conclusions. I find it unnecessary to repeat that evidence here, and adopt the extensive opinion of the Commission on the subject. In general, the petitioner was found guilty of failure to establish procedures to insure adequate review of the work papers before the issuance of the audit opinion, failure to properly date the opinions, failure to obtain client representations, failure to develop policies and procedures for the evaluation of the internal controls of BMA clients, failure to insure proper documentation in the audit work papers, and misrepresenting facts to the Federal Office of Revenue Sharing.

The evidence was clear that GAAS require review of the auditor's work papers to insure that the audit was done in accordance with GAAS. Petitioner argues that there was review of the work papers. However, the evidence shows that any review was done by an auditor who was actually involved in the auditing process, which is not acceptable under GAAS, or was done only for the purposes of checking the grammar, spelling and punctuation of the report. I find that there was substantial evidence to support the Commission's findings on this point.

The next category of charges involves the dating of the

audit opinions. The overwhelming evidence at the hearing was that the opinions should be dated as of the last day of field work. Petitioner admitted that, up until he was directed to stop the practice, the opinions of the Bureau were dated as of the day they were typed. The consequences of dating the opinion on the later date were severe: the Bureau was subject to liability for events occurring subsequent to the date of the end of the field work up to the date on the report. Petitioner responds that the auditing standard which deals with the dating of the report is not mandatory because it uses the term "generally." This does not render the standard optional; all expert testimony agreed that the only exceptions to the dating requirement were those listed in the standard itself. I find that there was substantial evidence to support the Commission's findings on this point.

Petitioner was also charged with failure to insure that the BMA obtained client representations from its clients. That an auditor must obtain a client representation is mandated by section 333.01 of the GAAS. Petitioner does not dispute that the BMA did not obtain such representations. I find that there was substantial evidence to support the Commission's findings on this point.

Petitioner was charged with failure to establish written policies and procedures for the evaluation of the internal controls of BMA clients. Evaluation of internal controls of the auditee is required by section 320.01 of GAAS. The testimony

of experts who reviewed the files and of auditors within the BMA established that proper evaluation of internal controls was not done. It is unquestioned that there were no set policies and procedures for such evaluations. I find that there was substantial evidence to support the Commission's findings on this point.

Petitioner was charged with failure to establish policies and procedures to insure proper documentation in the working papers of what work was actually done in the audit. Proper working papers are necessary to determine the adequacy of the audit conducted. GAAS s. 338.01 et seq. The testimony of both the consultants hired by DOR and the auditor from the Federal Office of Revenue Sharing indicated that the files of the BMA were inadequate to support the audit opinions rendered, in violation of GAAS. I find that there was substantial evidence to support the findings of the Commission on this point.

Finally, petitioner was charged with submitting a report to the Office of Revenue Sharing stating that the audits done by the BMA were being done in accordance with GAAS, when petitioner knew or should have known that the audits were not in compliance. As noted above, many practices of the BMA were not in compliance with GAAS. Petitioner should have been aware of these departures from GAAS if for no other reason than the report of the consultants hired by DOR and indicating that BMA was not complying with GAAS was prepared and available by June 6, 1978, several months before petitioner wrote to the Office of Revenue Sharing. I find that there was substantial evidence to support the Commission's

findings on this point.

Petitioner next claims that the discipline imposed, termination of employment, was excessive. The evidence at the hearing was that Sylvan Leabman, petitioner's immediate superior, considered the possibility of demotion and discarded it because there were no available positions for someone of petitioner's qualifications. In addition, there was evidence at the hearing of petitioner's resistance to the notion that GAAS were to be applied by BMA auditors. There was also evidence that petitioner did not appreciate the significance or importance of GAAS in performing audits.

The BMA has an important role to play; its audits are relied upon not only by government entities, but by the financial community at large. The Director of the Bureau must be one who will adhere to at least the minimum standards of the accounting profession. I find that the discipline imposed by the Commission was not excessive.

Petitioner claims that much of the decision of the Commission was based on inadmissible hearsay evidence. Specifically, the testimony and report of Murray Dropkin and Edward Kitrosser, and the testimony of Thomas Stolper and accompanying report of the Clifton, Gunderson firm. I find that this evidence was properly admitted.

Section 227.08(1) of the Statutes provides that administrative agencies are not bound by the common law or statutory rules of evidence, and that basic principles of relevance, materiality,

and probative force shall govern. Much of these experts' testimony, aside from interpretation of GAAS, was what documents they observed or did not observe in the audit files, such as client representation, audit programs, etc. They had actually examined the files and thus were speaking from first hand knowledge as expert witnesses. This testimony did not necessarily go to the truth of any information contained on those papers that were in the files. The written reports of these experts were their opinions based on what they had observed, for the most part from looking in the files. Even under the rules of evidence the bases for opinion testimony of expert witnesses need not be admissible in evidence. See, sec. 907.03, Stats. Finally, with the exception of the objection to the admission of the Clifton, Gunderson report, petitioner made no objections to this evidence on the ground of hearsay at the hearing. As to the Clifton, Gunderson report, the objection was made on the ground that the co-author of the report had not testified. The objection was overruled based on the representation of counsel that the co-author would appear. Later in the day, this witness did appear and petitioner stipulated to his testimony, including that he was a co-author of the report and that he agreed with the conclusions and findings therein. Petitioner should not be heard to argue about hearsay on judicial review when he failed to make the proper objections at the hearing.

CONCLUSION AND ORDER

Based on the foregoing reasons, I affirm the decision of the Personnel Commission.

Dated this 3rd day of January, 1984.

BY THE COURT:

Angela B. Bartell, Judge
Circuit Court Branch 10
Dane County, Wisconsin

cc: Atty. Richard Graylow, 110 E. Main St., Madison, WI 53703
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