

postmarked April 25, 1982, and was actually received by the Commission on April 27, 1982. A member of the Commission's staff had telephoned the complainant on April 22, 1982, to remind him that the 30 day period for appealing the initial determination was about to run out. The resolution of complainant's request rests on an analysis of §PC 4.03(3), Wis. Adm. Code, which provides in part:

(3) NO PROBABLE CAUSE DETERMINATIONS. When there is an initial determination of no probable cause to believe that discrimination has been or is being committed, notice thereof shall be served upon the parties, together with copies of the complaint and the initial determination. Within 30 calendar days after the date of such service, the complainant may petition the commission for a hearing on the issue of probable cause wherein the commission may affirm or reverse the initial determination.

The manner of service referred to in this provision is not specified within the terms of the Commission rules. There is a statement within §PC 1.08, Wis. Adm. Code, that "[s]ervice by mail is complete upon mailing." However, this provision relates to service of papers by a party and there is nothing within its terms suggesting that it should be applied to initial determinations issued by the Commission's equal rights officers.

Wisconsin case law indicates that in the absence of a statute (or, presumably, an administrative rule) to the contrary, service of a notice does not become effective until the party receives it. Boeck v. State Highway Commission, 36 Wis. 2d 440, 444, 153 NW. 2d 610 (1967); Hotel Hay Corp. v. Milner Hotels, Inc., 255 Wis. 482, 39 NW 2d 363 (1949).

In the recent case of In re Proposed Incorporation of Pewaukee, 72 Wis. 2d 593, 241 N.W. 2d 603 (1976), the Court was faced with interpreting §227.16(1), Wis. Stats., which provides for filing a petition for judicial review "within 30 days after the service of the decision of the agency on all parties."

The Court relied on a clear statutory provision (§227.14, Wis. Stats.) in concluding that service was complete on mailing.

In the present case, given the absence of any interpretive or qualifying administrative rule, the 30 day period referred to in §PC 4.03(3), Wis. Adm. Code, commences on the date that notice of the initial determination was received by the parties. There is no clear language defining "service" that would permit the opposite result.

The complainant has stated he received the initial determination on March 26, 1982. Thirty calendar days from March 26th is April 25, 1982. However, pursuant to §PC 1.09, Wis. Adm. Code, and §801.15(1), Wis. Stats., where the last day in the time period is a Sunday, it is not to be included in the computation. Therefore, complainant had until April 26, 1982, in which to "petition" the Commission for a hearing.

It is undisputed that the complainant wrote his request for hearing on April 22nd and placed it in a mailbox on April 23rd. The letter bears a postmark of April 25th and the Commission received it on April 27, 1982. The second issue in this matter therefore becomes one of determining which of these steps constitutes petitioning the Commission.

The Commission's rules do not define the verb "petition" as that term is used to describe the conduct that tolls the 30 day limit. There is also an absence of case law defining "petition" as a verb. Given the lack of any other aids to construction, the Commission relies on §111.31(3), Wis. Stats. (1979), which provides:

(3) In the interpretation and application of this subchapter, and otherwise, it is declared to be the public policy of the state to encourage and foster to the fullest extent practicable the employment of all properly qualified persons regard-

less of their age, race, creed, color, handicap, sex, national origin or ancestry. This subchapter shall be liberally construed for the accomplishment of this purpose.


A liberal construction of the verb "petition" in this instance requires the conclusion that complainant's letter requesting a hearing was timely where the letter was drafted, mailed and postmarked before the running of the 30 day period. Only by strictly construing this term could the Commission reach an opposite result and conclude that actual receipt of the petition within the 30 day period is necessary.

This result is readily distinguishable from the various decisions by the Commission interpreting §230.44(3), Wis. Stats. Richter v. DP, 78-261-PC (1-30-79). That provision states that an appeal filed under §230.44, Wis. Stats., "may not be heard unless the appeal is filed within 30 days." The term "filed" has frequently been construed as requiring actual receipt by the Commission.

ORDER

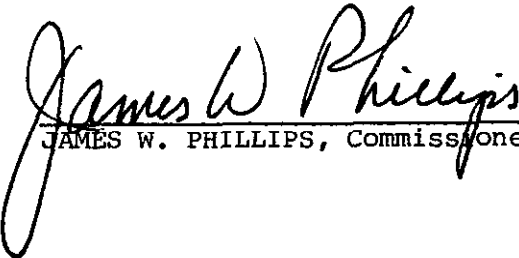
Complainant's petition for rehearing is granted, the Commission's Order dated April 29, 1982, is hereby withdrawn, and this matter may proceed to a hearing on the probable cause issue. The parties will be contacted to set a date for a prehearing conference.

Dated: June 4, 1982 STATE PERSONNEL COMMISSION


DONALD R. MURPHY, Chairperson


LAURIE R. MCCALLUM, Commissioner

KMS:jmf


JAMES W. PHILLIPS, Commissioner

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