

STATE OF CONNECTICUT
DEPARTMENT OF ENVIRONMENTAL PROTECTION
STATE BOARD OF EXAMINERS OF ENVIRONMENTAL PROFESSIONALS

In the Matter of	:	Case No.: No. 02-100
	:	LEP License #161
	:	:
	:	:
	:	:
DANIEL KOGUT	:	November 26, 2002
	:	:
	:	:
	:	:
	:	:

FINAL DECISION

A Recommended Action was issued on September 17, 2002, by Janice B. Deshais, the Board's designated hearing officer, concerning the impact of the expiration of respondent's license on this pending proceeding. At the Board meeting held on November 14, 2002, the Board received the attached Recommended Action and voted to adopt the Recommended Action.

Therefore, the administrative proceeding in this matter is hereby terminated.

THE STATE BOARD OF EXAMINERS
OF ENVIRONMENTAL
PROFESSIONALS

//s/ Robert L. Smith

Robert L. Smith
Chairman

c. Janice B. Deshais, Hearing Officer
John M. Looney, Esq.
Thomas F. Harrison, Esq.

OFFICE OF ADJUDICATIONS

IN THE MATTER OF : **CASE #02-100**
LEP LICENSE #161

DANIEL KOGUT : **SEPTEMBER 17, 2002**

EXPIRATION OF LICENSE/TERMINATION OF PENDING PROCEEDING

On May 31, 2002, the State Board of Examiners of Environmental Professionals (the Board or LEP Board) issued a notice to the respondent Daniel Kogut, a licensed environmental professional (LEP), of its intent to revoke or suspend his license. General Statutes §22a-133v(g). Mr. Kogut did not timely file a renewal of his license by June 1; his license therefore expired on July 1, 2002. Regs., Conn. State Agencies §22a-133v-4(a)(2) and (d)(2)(A).

Counsel for the DEP and the respondent informed me of this situation shortly after I had conducted a status conference on July 23, 2002. At my direction, they each filed a legal memorandum addressing the impact of the expiration of the respondent's license on this pending proceeding. The DEP wants this matter to move forward. The respondent asks that the Board be directed to determine that the proceeding has terminated within the meaning of §22a-133v-7(c)(2)(D).¹

As a hearing officer, I have certain powers and duties that are enumerated in §22a-3a-6(d) of the DEP Rules of Practice. §§22a-3a-2 through 22a-3a-6. Acting as an agent of the Commissioner, I have the specific authority to “[d]ispose of all motions *and requests* and make all necessary or *appropriate* rulings”. (Emphasis added.) §22a-3a-6(d)(2)(B). I may issue proposed final decisions and final decisions as authorized. §22a-3a-6(d)(2)(H). I may also “[d]o any other acts and take any other measures to administer this section....” §22a-3a-6(d)(2)(I).

I do not find any authority granted to me in the Rules of Practice, or implied by the authority delegated to me by the Commissioner of the DEP or the LEP Board that would permit me to *direct* the Board to take a specific action based on my ruling. I have the delegated authority to conduct hearings and submit proposed decisions for the

¹ Section 22a-133v-7(c)(2) lists three reasons why a proceeding before the Board will terminate. Subpart (D) provides that a proceeding may also terminate when “the Board otherwise determines that the proceeding has terminated”.

Board's final consideration. I therefore issue this ruling as a recommended action to the Board, which may then make a decision pursuant to its authority.

The DEP argues that an expired license does not end agency jurisdiction when proceedings begin while a license is still in effect. It claims that the expiration also does not render this proceeding moot because certain "prejudicial collateral consequences" could adversely impact the DEP and the public interest if this matter is not allowed to continue and produce a record that includes findings on the respondent's alleged misconduct.

The respondent maintains that the lapsed license deprives the DEP of jurisdiction, and, alternatively, argues that this proceeding is moot since there is no actual controversy between the parties and no "practical relief" that the Board can order following an adjudication and a decision on the merits of this matter. The respondent notes that the Board may only revoke or suspend a license, and contends that neither the Board nor DEP staff are authorized to pursue charges "for the record" where an LEP license has expired.

Section 22a-133(b) established the Board and authorized it to administer the "LEP program". Under that program, the Board may issue licenses to persons whom it determines are qualified as described in §22a-133v(a). The regulations give the Board authority relating to the conduct of a licensed environmental professional, defined as a "...professional who *is* licensed" under the provisions of §22a-133v-1(p).

It seems clear that neither the LEP Board nor DEP staff would have jurisdiction to act to revoke or suspend an LEP license that has expired before proceedings are initiated. See *Stern v. Medical Examining Board*, 208 Conn. 492 (1988). However, if a license is valid when an action is initiated but lapses during the course of the proceeding, the query is whether a board has continuing jurisdiction over a respondent with an expired license. A board may have continuing jurisdiction if its legislative grant of authority allows it to seek disciplinary measures against a respondent that are not affected by a lapsed license.

In *Stern*, the critical issue for the court was not the timing of the initiation of the disciplinary proceeding. The crucial matter was the fact that the board did not include in its statement of charges other options for relief available to it under §19a-17, which authorized it to take various disciplinary actions.² "Central to our conclusion is the narrow scope of the...prayer for relief, which requested only the revocation of the ...license." *Id.* at 501. If the prayer for relief had been broader, the court noted, "the board in this case might have had...continuing jurisdiction to levy a monetary fine ...pursuant to 19a-17...." *Id.* at 503.

² These actions include the revoking or suspending a practitioner's license, censuring a practitioner, issuing a letter of reprimand; and placing a practitioner on probationary status. §19a-17 (1) - (5). Physicians are included in the definition of "practitioner".

Section 22a-133v authorizes the LEP Board to administer its provisions regarding “licensure and issuance, reissuance, [and] *suspension or revocation of licenses...*” (Emphasis added.) §22a-133v (b). An administrative board has no inherent power. It cannot lawfully act beyond the “terms and necessary implications” of its legislative grant of authority. *Nizzardo v. State Traffic Commission*, 259 Conn. 131, 155 (2002); *Stern v. Medical Examining Board*, supra, 498. Regardless of when this action was initiated, the Board can only suspend or revoke a license. It cannot issue an order that would revoke or suspend an expired license. No statutory scheme such as §19a-17 allows the Board to extend its authority to seek other penalties. The Board has no continuing jurisdiction in this matter.

An appeal is moot if events have occurred during its pendency so as to render a court incapable of granting practical relief through a disposition on the merits. *Loisel v. Rowe*, 233 Conn. 370 (1995); *Housing Authority v. LaMothe*, 225 Conn. 757 (1993). However, mootness does not defeat an appeal if “potentially prejudicial collateral consequences” could impact a party if the matter is dismissed. *Id.* There is still a controversy if the actual injury gives rise to collateral injury from which the court can grant relief. *State v. McElveen*, 261 Conn. 198 (2002).³

This proceeding is moot because expiration of the respondent’s license during this proceeding has made impossible practical relief through a disposition on the merits. As argued by the DEP, there is a “reasonable possibility” that “potentially prejudicial collateral consequences” could occur as a result of the termination of this proceeding. See *Williams v. Ragaglia*, 261 Conn. 219 (2002); *State v. McElveen*, supra, 205. A licensee who is faced with possible revocation or suspension of his license could let his license lapse to avoid prosecution. It is also possible that if this respondent reapplies for a license at a later date, the Board’s investigation of the respondent as an applicant could be impaired by the passage of time between this proceeding and the date of the application. It is also probable that this respondent will continue to act as an environmental professional in other jurisdictions. However, despite these potential consequences, the limited jurisdiction of the Board makes it impossible for the Board to issue any “practical relief” that would prevent any of these consequences.

The Board can deny a future license application from this respondent following an investigation concerning his conduct, but cannot pursue these charges to create a record and findings for any future application procedure. §22a-133v(g). The Board’s limited jurisdiction prohibits its pursuit of this proceeding to obtain a complete record, including findings of fact, regarding the respondent’s alleged misconduct. “An administrative agency, as a tribunal of limited jurisdiction, must act strictly within its statutory authority. (Citations omitted.)” *Stern v. Medical Examining Board*, supra, 498. “It is well established that an administrative agency ‘possesses no inherent power. Its

³ Mootness is also overridden under the limited exception that unless the matter is finally decided, it is “capable of repetition yet evading review”. See *Loisel v. Rowe*, supra, 378. The DEP did not offer this exception to defeat a claim of mootness. The respondent notes this exception, but maintains that the alleged conduct is not capable of repetition as it could only reoccur when and if a new license is issued.

authority is found in a legislative grant, beyond the terms and necessary implications of which it cannot lawfully function.’ *Adam v. Connecticut Medical Examining Board*, 137 Conn. 535, 537-538, 79 A. 2d 350 (1951).” *Nizzardo v. State Traffic Commission*, supra, 155.

The Board cannot pursue an action for which it is not authorized, even if it believes it will serve a public purpose in accord with its statutory authority. The Board is authorized to administer the provisions of §22a-133v regarding licensure and issuance, reissuance, suspension or revocation of licenses concerning licensed environmental professionals. The gathering of evidence for possible future reapplication by the respondent, or to inform other jurisdictions of his alleged misconduct to protect the public interest, are actions beyond the Board’s authority.

The LEP Board and the DEP have no continuing jurisdiction over this respondent whose license has expired. There is no actual controversy from which the Board can grant practical relief following adjudication on the merits of the Board’s allegations. It is not my role “to decide moot questions, disconnected from the granting of actual relief or from the determination of which no practical relief can follow.” *Reynolds v. Vroom*, 130 Conn. 512, 515 (1944). See *State v. Nardini*, 187 Conn. 109 (1892).

I recommend that the Board take action to terminate this proceeding.

September 17, 2002
Date

/s/ Janice B. Deshais
Janice B. Deshais, Hearing Officer

cc: Thomas Harrison, Esq.
AAG John Looney
Kim Maiorano, Board Administrator