

CERTIFICATION OF PERSONNEL BOARD RECORDS

I certify that attached hereto is a true and correct copy of the Findings of Fact, Conclusions of Law, and Recommended Order and Final Order in the case of **DOTTIE STONE VS. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF JUVENILE JUSTICE (APPEAL NO. 2012-034)** as the same appears of record in the office of the Kentucky Personnel Board.

Witness my hand this 14th day of May, 2013.



MARK A. SIPEK, SECRETARY
KENTUCKY PERSONNEL BOARD

Copy to Secretary, Personnel Cabinet

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2012-034**

DOTTIE STONE

APPELLANT

**VS. FINAL ORDER ALTERING HEARING OFFICER'S
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
RECOMMENDED ORDER**

**JUSTICE AND PUBLIC SAFETY CABINET
DEPARTMENT OF JUVENILE JUSTICE
J. MICHAEL BROWN, APPOINTING AUTHORITY**

APPELLEE

** ** ** ** **

The Board, at its regular May 2013 meeting, having considered the Findings of Fact, Conclusions of Law, and Recommended Order of the Hearing Officer, dated March 13, 2013; having noted Appellant's exceptions, Appellee's response, oral arguments, and being duly advised,

IT IS HEREBY ORDERED that the Findings of Fact, Conclusions of Law, and Recommended Order of the Hearing Officer be altered, as follows:

- A. **Rename "II. STATEMENT OF FACTS" to "II. SUMMARY OF TESTIMONY."**
- B. **Rename "III. CONCLUSIONS OF LAW" to "III. FINDINGS OF FACT."**
- C. **Delete Findings of Fact paragraph numbers 14, 15, and 17.**
- D. **Renumber Findings of Fact paragraph number 16 as Finding of Fact number 14.**
- E. **Add Findings of Fact paragraphs as follows:**

15. The Board finds the Appellee did not abide by the clear provisions of KRS 237.115(2) which provides in pertinent part "Except as provided in KRS 527.020, the legislative body of a state, city, county, or urban-county government may, by statute, administrative regulation, or ordinance, prohibit or limit the carrying of concealed deadly weapons by licensees in that portion of a building owned, leased, or controlled by that unit of government. That portion of a building in which the carrying of concealed deadly weapons is prohibited or limited shall be clearly identified by signs posted at the entrance to the restricted area." The Board finds it is uncontroverted that no such signs are posted at the DJJ headquarters, nor was the DJJ policy in question which purported to restrict the carrying of concealed firearms ever adopted as a Kentucky Administrative Regulation as required by KRS 237.115(2).

16. The Board finds the failure of the Appellee to comply with KRS 237.115(2), by itself, necessarily voids any disciplinary action it took against Appellant for allegedly violating its policy. Had the Appellee, DJJ, properly gone through the legislative process of having its policy adopted and promulgated as an Administrative Regulation pursuant to KRS Chapter 13A and had it then posted signs at the required areas of the building announcing this policy, it may have had a case. However, it did not, and does not.

F. Add "IV. CONCLUSION OF LAW" as follows:

The Board thus concludes as a matter of law that the penalty imposed against Appellant for alleged violation of the DJJ internal policy is void and was necessarily taken without just cause.

G. Delete the Recommended Order.

IT IS HEREBY ORDERED that the appeal of **DOTTIE STONE VS. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF JUVENILE JUSTICE, (Appeal No. 2012-034)** be **SUSTAINED**, that Appellant's five-day suspension be set aside and that she be awarded back pay and benefits lost as a result of the suspension; that Appellant be reimbursed for any leave time she used attending the hearing and any pre-hearing conferences at the Board; that the disciplinary matter be entirely expunged from her record, and that she otherwise be made whole. **KRS 18A.105, KRS 18A.095(25) and 200 KAR 12:030.**

IT IS FURTHER ORDERED that the Findings of Fact, Conclusions of Law, and recommended Order of the Hearing Officer, as altered, be, and they hereby are, approved, adopted, and incorporated herein by reference as a part of this Order and the Appellant's appeal is therefore **SUSTAINED**.

The parties shall take notice that this Order may be appealed to the Franklin Circuit Court in accordance with KRS 13B.140 and KRS 18A.100.

SO ORDERED this 14th day of May, 2013.

KENTUCKY PERSONNEL BOARD


MARK A. SIPEK, SECRETARY

A copy hereof this day mailed to:

Hon. Wesley Duke
Hon. Paul Fauri
Joslyn Olinger Glover

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2012-034**

DOTTIE STONE

APPELLANT

**VS. FINDINGS OF FACT, CONCLUSIONS OF LAW
AND RECOMMENDED ORDER**

**JUSTICE AND PUBLIC SAFETY CABINET,
DEPARTMENT OF JUVENILE JUSTICE
J. MICHAEL BROWN, APPOINTING AUTHORITY**

APPELLEE

This matter came for an evidentiary hearing on December 10, 2012, at the Kentucky Personnel Board, 28 Fountain Place, Frankfort, Kentucky, before Hon. E. Patrick Moores, Hearing Officer. The proceedings were recorded by audio-video equipment pursuant to the authority found at KRS Chapter 18A.

The Appellant, Dottie L. Stone, was present and represented by Hon. Paul A. Fauri, of Frankfort, Kentucky. The Appellee, Department of Juvenile Justice (hereinafter "DJJ"), was represented by the Hon. Wesley W. Duke, Staff Attorney for the Justice and Public Safety Cabinet, Office of Legal Services, Frankfort, Kentucky.

I. STATEMENT OF THE CASE

1. **Dottie Stone** appeals her employer's decision on January 11, 2012, to suspend her from duty and pay for a period of five (5) working days, as an Administrative Specialist III with the DJJ central Office.

2. The suspension appealed was based on misconduct, pursuant to KRS 18A.095 (1) and (8), and 101 KAR 1:345, Section 1, for the reason of violating DJJ Policy #104, which prohibits employees from possession of a firearm in the office, on October 4, 2011.

3. The Appellant, Dottie Stone, was sent written notice from Hasan Davis, Acting Commissioner of the Justice and Public Safety Cabinet, that she was being suspended as a result of findings from an investigation by the Cabinet's Office of Investigations into the incident, as documented in an Internal Affairs Report #220-11, dated November 2, 2011, in which she

admitted having a firearm in her possession and office staff stated she showed them the firearm in the office.

4. Stone's appeal was timely filed with the Kentucky Personnel Board on February 16, 2012. The appeal was based on her argument that she was not aware of the policy prohibiting possession of a firearm at the office, as there were no signs posted prohibiting possession of firearms, and the suspension was without just cause and excessive. A Pre-Hearing Conference was held before the Board on March 29, 2012, and the matter was scheduled for an evidentiary hearing to be held before the Board on July 18, 2012. On June 12, 2012, Appellant requested a continuance of the Hearing, which the Board granted on June 15, 2012.

5. A second Pre-Hearing Conference was conducted before the Personnel Board on August 28, 2012, at which time the evidentiary hearing was scheduled for December 10, 2012, and the Board's Order from the Conference also granted Appellant an opportunity to review the personnel file of the staff person, Scott Parritt, who allegedly requested Stone to bring the gun into the office. The issue to be presented was whether the disciplinary action taken by the Cabinet against Stone was neither excessive nor erroneous and was taken with just cause. The Appellee Cabinet had the burden of proof.

6. The Hearing was conducted on December 10, 2012. At the initiation of the hearing, the Cabinet made a Motion in Limine to exclude any evidence as to the Statutes pertaining to firearms under KRS Chapter 237, which was overruled on the basis that the application of the statutory provisions in both the DJJ policy and the facility was clearly in issue by the DJJ's own disciplinary action against Stone. At the conclusion of the presentation of the evidence, the Hearing Officer requested, and the Board ordered, that the parties submit briefs on their respective position concerning the failure of the Cabinet to have a sign posted in the facility prohibiting the possession of firearms, and as to whether the punishment meted out by the Cabinet meets the requirement of KRS 13B.150(2)(d) that the agency's action is not "arbitrary, capricious, or characterized by abuse of discretion."

II. STATEMENT OF FACTS

1. The first witness for the Cabinet was **Stacy Haas Floden**, a Division Director of DJJ and Stone's supervisor. She testified that on October 4, 2011, a staff member, Jane Rutledge, came to her, in what Floden described in a panic, that Stone had a firearm in the office. Ms. Rutledge acknowledged to her that she had not seen the gun and was only told about the incident by other staff. Floden stated her immediate response was to contact the legal department, speaking with one of the staff attorneys, following which they took the matter to Commissioner Ron Haws. Commissioner Haws told them he would contact the Office of Internal Investigations.

2. Ms. Floden said she never saw the gun, and did not confront or make any inquiries to Stone about the incident. She added that although she did not experience any fear upon learning that a gun had been brought into the offices, she was concerned that a weapon was brought into the facility. She acknowledged the only knowledge she had of the incident was

what she was told by Ms. Rutledge and what she learned when the Investigative Report was issued. Based on the Investigative Report she formally requested disciplinary action against Stone on December 16, 2011. However, she testified that she had no involvement in deciding the amount of suspension. Floden testified that the only conversation she had with Stone was her response as to why she was being disciplined and that Scott Parritt, who asked her to bring the gun into the office, was not receiving any discipline. Floden said she responded to Stone that the reason was that Parritt was no longer working with the Department, but had transferred to another Cabinet

3. Floden's letter of December 16, 2011, requesting disciplinary action against Stone, focused on the policy being violated by Stone as DJJ 104: "Employee Code of Conduct." Section IV.O. prohibits employees from possessing firearms on the premises of any DJJ office. Floden was shown DJJ Policy 101: "Administrative Responsibility of Managers," and Section I provides that the administrative managers, which she acknowledged was her position, "shall ensure" that the DJJ Policy Manual is explained to all employees as part of their orientation, including all subsequent changes, and that all employees are to sign a statement acknowledging they have received the manual and all the changes.

4. The policy provides that training of all policy and any subsequent changes are to be disseminated and explained. Floden stated that they did not have any training or discussion programs in department policy and that typically any changes in the policy would be sent to the employees by email explaining the policy. She further acknowledged there were no signs posted anywhere at the entrance or in the facility prohibiting the possession of firearms.

5. **Ed Jewell**, an investigator for the Justice & Public Safety Cabinet, testified that he was instructed to do an internal affairs investigation by DJJ Commissioner Ron Haws concerning Dottie Stone having a gun on the premises. Jewell completed an investigation and submitted his report on November 10, 2011. After he interviewed several witnesses, all of whom cooperated with him, he interviewed Ms. Stone, who also was described as co-operative. Jewell testified that she told him that she had recently completed a concealed carry license training course taught by Parritt. Stone told him that when she had completed the course and purchased a handgun, she told Parritt about the gun, which was in her car, and that he asked her to bring the gun in to allow him to see it. Stone told Jewell that she was not aware of the DJJ policy against possession of firearms.

6. Jewell interviewed Parritt on two separate occasions, stating that he was less than truthful in the first interview. There had been allegations made by some of the workers in the department that Parritt was known to carry a concealed weapon on the premises. Parritt told Jewell that he was not aware of the policy prohibiting possession of a weapon, but stated that he kept his gun in his vehicle.

7. Jewell said that Parritt was interviewed a second time, in which he acknowledged he had previously given false information. Parritt stated he was not aware of a non-possession policy. Parritt advised he has a concealed-carry permit, and that he frequently carried his pistol on the property premises in an ankle holster. He acknowledged training Stone in a concealed firearm class, but added that he did not think she had her permit by the time of the incident. Jewell never asked Parritt whether he had asked Stone to bring the gun to him, as it was

generally stated by the other witnesses that she had brought the pistol into the offices to show to Parritt. Before Jewell completed his investigation, Parritt had resigned from his position with DJJ on October 20, 2011, transferring to a job with another Cabinet at the end of the month.

8. Jewell interviewed B.J. Norris, who informed him that she had a concealed carry permit for more than three years, and that she carried her firearm in her purse. She advised Jewell that she was not aware of the DJJ policy that prohibited possession of firearms on the property, but that once she became aware of the policy following the Stone incident, she no longer carried the firearm.

9. Jewell said that all his interviews were done at the central office of the DJJ, where the incident occurred, and that he observed that there were no signs posted at the entrance or inside the premises that prohibited the possession of firearms on the premises.

10. **Sherre Smith-Jones** is a Deputy DJJ Commissioner, and was involved in the decision of the disciplinary action to be handed out against Stone, making the recommendation of suspending her for five days. Smith-Jones said she initially determined that a one day suspension would be appropriate, and that was the amount of suspension that was given to Ms. Norris for her having brought a concealed weapon into the facility. Ms. Smith-Jones testified that upon further review of the facts, she felt that Stone's conduct was a more serious violation of department policy in that Stone displayed the gun in the office, placing it in view of others and circulating it among other employees, which she considered it to be a safety issue. Accordingly, she recommended Stone be given a five-day suspension. The fact the gun was not loaded and that Parritt asked Stone to let him see the gun made no difference in her decision. She further stated that a prior written reprimand given to Stone was taken into consideration, although adding that it was not given very much weight.

11. Smith-Jones further acknowledged that a progressive discipline practice was not followed, but that the reason she decided on recommending five-day suspension for Stone was to get her attention. She believed that a serious violation of policy required the violator to be held accountable by a more severe consequence, even if she had a permit to carry a concealed weapon, and that Stone's actions of "brandishing" the weapon in the office in the presence of other employees warranted a more severe penalty. She further said that where an event involves danger or safety issues, progressive discipline "goes out the window."

12. **Alfreddie Hasan Davis** is Commissioner of DJJ, however, when he signed the notice of disciplinary action, he was serving as a Deputy Commissioner. He said he decided to follow Deputy Commissioner Smith-Jones' recommendation on the disciplinary action to be taken against Stone. Davis added that as a result of his many years served in the DJJ, he was also aware of "a lot of tension" between Stone and Floden in the office, which imposed on him an "imminent concern to do something." Davis testified that someone else expressed concern for the safety of Stacy Floden, but Davis was unable to articulate the alleged tension or the reason of the belief that Floden might be at risk, and he acknowledged there was no reference by any of the witnesses to any alleged tension between Stone and Floden in the internal investigation by Jewell. Davis further explained that even though he was unable to state the basis for his concern about this tension, his concern about this was part of the basis of the decision he made

concerning the disciplinary action, and that his fear of what might have happened had an impact on his decision.

13. Davis testified that as a result of this incident, he also became concerned over the disclosure that there was an abject lack of attention to duties and policies by the staff, as it was clear that a lot of the employees had not read the policy concerning possession of weapons as part of their expectation for employment. As a result, he discussed the issue with Commissioner Haws and a memorandum was circulated in response to all DJJ staff concerning "workplace safety" and the prohibition of employees from possession of firearms or other deadly weapons on the premises or grounds of any DJJ office. He testified as to his concern about an employee showing off a weapon, stating that having a weapon was one thing, showing it was another, which he considered a real clear distinction in the prohibited conduct. It was his perspective that one must always assume a weapon is loaded. However, he also testified that after this incident occurred, and his "imminent concern" for Stacy Floden's safety, to his knowledge there was no follow-up investigation by anyone to determine if Stone was still bringing a weapon into the office, thereby continuing to create a safety concern.

14. **B.J. Norris**, who was also disciplined for having a concealed weapon on DJJ premises, is now retired from the DJJ. She stated that she was asked by Ed Jewell as to whether she carried a concealed weapon, and she told him she had been carrying a firearm in her purse since 2008. She gave as her reason the fact that she is the first to report to work at the facility and has to unlock the building and walk up a stairwell to her office in an open area of the complex. She testified that she did not know that her having a weapon was against DJJ policy, as she never knew DJJ had a policy prohibiting possession of firearms, stating that the policy had never been brought to her attention. When asked if she was even shown an employee policy manual, she responded that she never read it, nor was it explained to her.

15. Norris stated that she knew Parritt taught a concealed carry class, but didn't know he carried a weapon on the premises. She testified that on an earlier occasion when some discussion was occurring in the office about Parritt teaching a concealed carry class, she informed Ms. Barnes that she already had taken the class in 2008. Ms. Norris testified that she had already left work when the incident with Stone exhibiting the weapon occurred. However, she became involved in the investigation when Jewell made inquiries during his investigation about other employees having weapons in the facility and Traci Barnes informed him about Norris possessing a concealed weapon in her purse. As a result of her disclosure about carrying a weapon in her purse on the premises, Norris received a one-day suspension.

16. **Daniel E. Walls** is employed at the DJJ as a Program Coordinator. He testified that he observed the gun brought into the premises by Stone. He said he was sitting in his office, and she brought the gun in to show him, saying her husband had purchased it for her. Walls said he thought nothing of it, and actually held it in his left hand. He said he did not know if the gun was loaded and that he did not ask. Walls testified that he has no use for weapons as his father had tried to commit suicide. He said that Traci Barnes was in his office when Stone brought in the gun to show them.

17. Walls testified he worked for the Kentucky State Police for five years as an automotive technician, and that he has worked with the DJJ for the past 11 years. He stated that

he has not seen any signs posted on the property prohibiting weapons on the premises, and that he was not aware of any written policy prohibiting employees from bringing firearms onto the premises. He further testified that he was aware of a couple of co-employees carrying concealed weapons, although adding that he had never seen them.

18. **Traci Barnes** has been employed as a state employee for 17 years, spending the last 8 years as an Internal Policy Analyst with the DJJ. She testified that when she previously worked in the Office of Economic Development in the State Office Tower, there were signs prohibiting weapons on the premises posted everywhere. There were no signs prohibiting firearms posted at the DJJ facility. She acknowledged that she was in Walls' office when Stone brought in the pistol, admitting that she even held it in her hand. She testified that she told Stone that she had also taken a conceal carry class from Parritt, and the gun Stone was showing was the type of gun she wanted.

19. Barnes testified that she was not aware of the DJJ policy prohibiting possession of firearms on the property until this incident occurred. She acknowledged that she was probably given a copy of the Employee Code of Conduct, but that she did not recall reading anything about guns. She also acknowledged receiving notifications of any policy changes, but added that once she read what the policy was about and saw it didn't apply to her, she filed it away. She said that when she saw Stone's gun, she did not think "that's a policy violation."

20. **Scott Parritt**, was employed with the DJJ as a Human Resources Generalist, doing payroll services, at the time of the event that Stone brought the weapon into his office. He transferred out of DJJ effective November 1, 2011, approximately three weeks after this incident, and is currently employed as a Human Resources Specialist with the Finance Cabinet. He has been a concealed carry instructor for almost six years. He taught the instruction needed to obtain a permit to carry a concealed weapon to Stone.

21. Parritt testified that Jewell began threatening him in his first interview, telling him that he was going to lose his job, that he would have the state police arrest him, that this was a big mess and that Parritt was right in the middle of it. Parritt said that Jewell's verbal remarks scared him and that he at first decided not to co-operate. After reflecting on the investigation he called Jewell back to correct some of the information he had given Jewell.

22. Parritt testified that Stone approached him in his office to see if she could show him the gun her husband had purchased for her. Parritt testified that he compared her small gun with his, holding them both below his desk. He carried his gun in an ankle holster. Her gun was not loaded and Parritt said he did not remember any other people present. Parritt said the reason he held the gun behind and under his desk was that he didn't want anyone passing by to become concerned.

23. Parritt testified that no disciplinary action was taken against him, although he expected to face some type of discipline because of the threats Jewell directed at him. Parritt further testified that he was not aware of any DJJ policy that prohibited the possession of firearms on the premises. He said that when Jewell showed him the statute (KRS 237.115) concerning the prohibition by government units of carrying concealed deadly weapons into governmental buildings, he noted that the second section of the statute also said that signs are

required to be posted at the entrances of the restricted areas clearly identifying the portion of a restricted area where carrying of concealed weapons are prohibited. He said there were no signs posted on or in their facility.

24. Parritt said that he really wasn't surprised when a big deal was made over Stone having a gun in her possession. He said that Stone was always picked on at DJJ. Parritt stated that if he walked down the hallway carrying a gun there would be nothing said, but that if Dottie Stone walked down the hall carrying a gun, chaos would break out. He gave no reason for the conflicts involving Stone.

25. **Dottie Stone** has been employed with the Kentucky State government for 24 years, with her last 10 years with the DJJ. She testified that she had taken a concealed carry class necessary to obtain a permit from Scott Parritt, and that during the class the students had discussed buying guns. She testified that she had a .38 revolver and that Parritt had recommended she try another type gun, and that her husband had bought her a .32 Luger, which she wanted Parritt to look at. She testified that Parritt told her to bring the gun in, whereupon she went to her car and carried the gun inside the building in a zipped bag. After Parritt looked at the gun, she went to Dan Walls office and Traci Barnes was in there and Stone had heard her previously say she was interested in buying a gun. Upon looking at Stone's gun, Barnes asked Stone if she would be willing to sell the gun to her. Stone said that was when Holly Likes walked by, saw the gun and reacted.

26. Stone testified that she did not know about the policy prohibiting employees from carrying a concealed weapon on the DJJ premises. She said she told Jewell she was not aware of the policy. She acknowledged that the policy may have been forwarded to her by email, but she did not recall reading it. She said that she was aware for a long time that Parritt carries his gun on his person at work, having previously told her that he carried his gun 24/7. Stone said that she thought Scott Parritt, being an authority on gun training, would know what employees could do and were prohibited from doing with guns. She said this incident was the first and only time she ever brought a gun into the office. She said that she believed she was being picked on with selective enforcement by the department, but no explanation was provided.

27. **Christie Stivers** is a HR Specialist with the DJJ, and shares an office with Rhonda Sears. She testified that she saw the gun Stone brought into the office to show it to Parritt. She said she believed that Ms. Sears was also present. She testified that she also knew that Parritt always carried a gun on him, saying she had seen his pistol on several occasions strapped to his ankle.

28. Stivers said she was not upset by the gun being shown by Stone. She said she was not aware of the DJJ policy until this incident. She said she had never read the policy, and that she never was made aware of a gun policy by her supervisor.

29. **Rhonda Sears** has been a state employee for more than 12 years, having spent the last two years with DJJ. She shares office space with Scott Parritt, and she overheard Stone ask him if she could show him a gun her husband had purchased for her. She testified that Parritt told her to bring the gun in and show it to him. She testified that she remembered him pulling his gun out, which she knew he carried since the first week she was employed there. Sears said

she had no fear of the gun, adding that she had served in the military service and was used to being around weapons. She also acknowledged that she was aware of the gun prohibition policy since her time in service training.

III. CONCLUSIONS OF LAW

1. The irrefutable facts of this case are that the Appellant, Dottie Stone, brought an unloaded weapon into the DJJ offices, in violation of departmental policy. However, there is a perplexing lack of evidence as to the sufficiency of the notice of the DJJ policy having been furnished to the employees as to impart on them knowledge that such an act of bringing a weapon onto the premises was prohibited and punishable. The issue presented before this evidentiary hearing is whether the Cabinet had just cause to impose the disciplinary action against Stone, and whether the penalty given was erroneous or excessive.

2. The Department has a legitimate interest in regulating the conduct of its members to ensure the integrity of the classified service. The Appellant, Dottie Stone, is a classified employee, with status. KRS 18A.095(2) states that "a classified employee with status shall not be dismissed, demoted, suspended, or otherwise penalized except for cause." The question in this case is whether the DJJ provided sufficient evidence to show cause for the Appellant Stone's five-day suspension. Our Supreme Court has held that all of Kentucky's "adjudications, whether judicial or administrative, " are protected by due process guarantees "whereby Kentucky citizens may be assured of fundamentally fair and unbiased procedures." *Commonwealth Natural Resources and Environmental Protection Cabinet v. Kentec Coal Co., Inc.*, 177 S.W.3d 718, 724 (Ky. 2005). If the state agency's decision is unsupported by substantial evidence or law, then it is clearly erroneous or arbitrary. *Kentucky Bd. of Nursing v. Ward*, 890 S.W.2d 641, 643 (Ky. App. 1994). If the findings of fact are supported by substantial evidence of probative value, then they must be accepted as binding and it must then be determined whether or not the administrative agency has applied the correct rule of law and penalty to the facts so found. *Southern Bell Telephone and Telegraph Co. v. Kentucky Unemployment Ins. Comm'n*, 437 S.W.2d 775, 778 (Ky. 1969).

3. The difficulty presented by the evidence in this case is two-fold. First, the penalty is being imposed on the clear violation of a policy prohibiting firearms on the DJJ premises, which has effectively not given notice to the employees, as most of the employees interviewed in the investigation proclaimed to not even know of the policy. Further, the statutory provision on which the policy is based contains a requirement that if a governmental unit desires to exclude the statutory right to carry concealed weapons within its facility, then notice of said policy shall be prominently displayed at the entrance of the facility, which the evidence also shows was not done by the DJJ. Secondly, the evidence suggests an underlying implication that the penalty imposed on Stone is the result of a repercussion arising from a personal conflict between Stone and her supervisor and other co-workers, which no one in the DJJ was able to explain.

4. It is uncontroverted in the evidence that Ms. Stone brought the firearm into the DJJ offices, which she states was at the request of Mr. Parritt. Stone claims that she was unaware of the policy she was alleged to have violated. Further, Parritt was an instructor for

obtaining a conceal carry permit, and was known to carry a concealed weapon on the premises. It was not unreasonable for Stone to rely on Parritt's experience training her co-workers in the use of firearms that if he requested she bring the gun to him that she would consider there must be nothing wrong with her complying with his request.

5. The Cabinet argues that Stone "knowingly violated" DJJ Policy and Procedure 104, Employee Code of Conduct, Section O. However, there is a compelling lack of evidence that Stone in fact knew about the policy, as neither did Parritt, Norris, Walls, Barnes and Stivers. The policy that Stone is accused of violating states:

In accordance with KRS 237.110(13), KRS 237.110 (14) and KRS 237.115(1) employees are prohibited from possession of firearms, or any other deadly weapon as defined in KRS 500.080(4), on the premises or grounds of any DJJ office, program, treatment facility, or detention center and in any vehicle transporting DJJ youth per DJJPP.

However, DJJ Policy and Procedure 101, Administrative Responsibility of Managers, Section IV. I, provides:

Administrative managers **shall ensure** that the Department of Juvenile Justice Policy and Procedure (DJJPP) manual is **explained to all employees**, interns, and volunteers within their respective organizational unit as part of their orientation training.

1. **All subsequent changes** to the manual **shall** be disseminated and **explained** by the Administrative Manager.

2. All staff, interns, and volunteers **shall sign a statement acknowledging they have reviewed the manual and all subsequent changes**. These acknowledgements are to remain on file at the facility or office on all current employees, interns, and volunteers and for at least three (3) years after an employee, intern, or volunteer has left.

3. The administrative manager shall be responsible for ensuring the manuals are up to date with the latest changes.

[Emphasis added.]

6. It is interesting to note that Commissioner Davis, at the time a Deputy Commissioner, testified that as a result of his learning of this incident was his imminent concern as to the safety of Stacy Floden, because of his knowledge of the tension between the two, which he could not explain. He said he also became concerned over the abject lack of attention to duties and policies by a lot of the employees. The clear testimony from Stone's supervisor and administrative manager, Stacy Floden, was that they did not ensure the policy was explained to the employees, nor was she involved in conducting any training or discussion programs in department policy. Her explanation was that typically any changes in the policy would be sent to the employees by email explaining the policy, without administrative management explanation. She was not involved in any "explanation" or other form of training of the employees to "ensure" that the employees were aware of the policy. There also was no evidence presented of an acknowledgment statement signed by Stone, as directed by DJJPP 101.IV.I.2, that would

establish proof that Stone and the other employees involved in this incident were aware of the policy that she allegedly “knowingly violated.”

7. As a result of this failure to attend to the duties by the Administrative Managers, and the apparent widespread lack of knowledge by the employees concerning the prohibition of bringing weapons onto the facilities, Davis testified that he discussed the issue with Commissioner Haws and that a memorandum was circulated in response to all DJJ staff concerning “workplace safety” and the prohibition of employees from possession of firearms or other deadly weapons on the premises or grounds of any DJJ office.

8. Floden further acknowledged there were no signs posted anywhere in the facility prohibiting the possession of firearms. The statutory provision cited in Floden’s request for disciplinary action, KRS 237.115, provides in section 2: “That portion of a building in which the carrying of concealed deadly weapons is prohibited or limited **shall be clearly identified by signs posted at the entrance to the restricted area.**” [Emphasis added.] The evidence is undisputed that no such signs were ever posted on the DJJ premises.

9. The suspension meted out to Stone was five days, which Smith-Jones stated she recommended in order to get Stone’s attention, and that she felt the open showing of the gun on this one occasion was significantly more severe than Norris’ carrying a concealed weapon onto the premises for more than four years. She said she felt the showing of the gun was more of a safety issue, which in her mind causes “any progressive discipline to go out the window,” and required a more severe penalty.

10. There was a disturbing disclosure during the hearing that there was what Davis described as a “tension” between Floden and Stone. Commissioner Davis said that he had served with the DJJ long enough that he was aware of this contentious situation, but he was unable to verbalize the basis of this alleged controversy. Parritt stated that Stone had always been “picked on” in the DJJ, and that it was apparent that if he walked down the hallway carrying a gun, there would be nothing said, but that if Dottie Stone walked down the hall carrying a gun, chaos would break out. Commissioner Davis admitted that the alleged conflict between Stone and Floden was a part of his decision on the discipline meted out against Stone. This evidence raises a disturbing indication that the motivation for the punishment directed at Stone was predicated on repercussions against Stone because of this problem, whatever it was, between Stone and Floden and others. However, nowhere in the notice of the investigative report, or in the notice of the disciplinary action is there any reference to this alleged concern that Commissioner Davis described as his “imminent concern.” The testimony presented gave a clear indication of some conflict within the office that the administration of the DJJ apparently sought to solve with this opportunity presented by the incident of possessing a weapon on the premises, yet made no effort to clear up the issue that brought about such “imminent concern.”

11. Substantial evidence has been defined as “being evidence of substance and relevant consequence, having the fitness to induce conviction in the minds of reasonable men.” *Kentucky State Racing Commission v. Fuller*, 481 S.W.2d 298, 308 (Ky. 1972); *O’Nan v. Ecklar Moore Express, Inc.*, 339 S.W.2d 466 (Ky. 1960)). In *Fuller*, the court further stated that “[t]he test of substantiality of evidence is whether when taken alone or in the light of all the evidence it has sufficient probative value to induce conviction in the minds of reasonable men.” *Id.*

12. "If the Board's decision is unsupported by substantial evidence or law, then it is clearly erroneous or arbitrary. *Johnson v. Galen Health Care, Inc.*, 39 S.W.3d 828 (Ky. App. 2001). Decision makers are not free to be biased or prejudicial when performing nonjudicial functions. To the contrary, any bias or prejudicial conduct which demonstrates "malice, fraud, or corruption" is expressly prohibited as arbitrary. Furthermore, decisions tainted by conflicts of interest or blatant favoritism are also prohibited as arbitrary. *Hilltop Basic Res., Inc. v. County of Boone*, 180 S.W.3d 464, 469 (Ky. 2005).

13. Based on the foregoing evidence and findings of fact, it is the conclusion of the Hearing Officer that there is a significant lack of evidence that Stone knowingly violated the policy she is being punished under. Although it was clear in the Commissioner's testimony that the staff is responsible for knowing the policy under which they are to serve the people of the Commonwealth of Kentucky, the testimony of many other witnesses in this event that they also were unaware of the policy. Further, it is clear on the record that the DJJ had failed in its duty to post a notice of the prohibition on the entrance and inside the premises. Thus, the Commissioner's concern over the "abject lack of attention to details" was a management issue, which none of this has addressed or solved by the action taken. While a subsequent memoranda was issued by the Commissioner to all staff concerning adherence to DJJ policies, there was no evidence of any follow up or of any consequences to the persons designated to administer the policy. Instead, all the desired attention was hammered on Stone.

14. Further, there was no rational explanation of the basis for giving Norris a one day penalty and giving Stone a five day penalty, other than they wanted to get her attention. It was admitted by Stone that she violated the policy that on this one occasion she brought the weapon into the offices of the DJJ. Although she alleged to not know of the policy, which lack of knowledge was also demonstrated by most of the witness interviewed in the internal investigation, such lack of knowledge does not excuse her duty to review the policies that she is to perform under. However, there is a lack of substantial evidence to support the basis for the punishment meted out to Stone, therefore the decision of the penalty of the DJJ to give Stone a five-day suspension is clearly arbitrary.

15. It requires mentioning that there was a lack of evidence that the administrative management of the DJJ was performing their duties concerning the disseminating and posting the prohibition of the possession of firearms, which undoubtedly greatly contributed to the occurrence of this incident. Although the actions of administering the DJJ policy is not before this tribunal, it cannot help but take notice that if consequences are mandated by this incident, there is likewise no explanation to explain the lack of disciplinary action against management for its failure to conduct the mandatory explanation of the policy to the staff, obtain signatures from the employees to provide proof that they were knowledgeable of the policy, and failure to post the statutory notice of the prohibition that no weapons shall be brought onto the premises.

16. KRS 18A.095(1) provides that "A classified employee with status shall not be dismissed, demoted, suspended, or otherwise penalized except for cause." This statutory provision protects classified employees with job security by shielding them from arbitrary sanctions. The remedies provided under (22) of the statute provide:

- (a) If the board finds that the action complained of was taken by the appointing authority in violation of laws prohibiting favor for, or discrimination against, or bias with respect to, his political or religious opinions or affiliations or ethnic origin, or in violation of laws prohibiting discrimination because of such individual's sex or age or disability, the appointing authority shall immediately reinstate the employee to his former position or a position of like status and pay, without loss of pay for the period of his penalization, or otherwise make the employee whole unless the order is stayed by the board or the court on appeal.
- (b) If the board finds that the action complained of was taken without just cause, the board shall order the immediate reinstatement of the employee to his former position or a position of like status and pay, without loss of pay for the period of his penalization, or otherwise make the employee whole unless the order is stayed by the board or the court on appeal.
- (c) If the board finds that the action taken by the appointing authority was excessive or erroneous in view of all the surrounding circumstances, the board shall direct the appointing authority to alter, modify, or rescind the disciplinary action.
- (d) In all other cases, the board shall direct the appointing authority to rescind the action taken or otherwise grant specific relief or dismiss the appeal.

17. It is the conclusion of the Hearing Officer, after considering all the facts and documentation produced at the hearing that although there was a violation of the policy, there was not just cause for the action taken by an employee, whose actions were unknowing of the violation, and who was considered to be a risk to the safety of the co-workers on which absolutely no evidence was produced other than unsupported speculative comments. Therefore, without substantial evidence to establish the just cause for the punishment, and the different levels of punishment handed out for no reason other than to get someone's attention, the action of the Cabinet against the Appellant Stone was clearly arbitrary.

IV. RECOMMENDED ORDER

Having considered and weighed all the evidence and the laws of the Commonwealth of Kentucky, and based upon the foregoing findings of fact and conclusions of law, it is the recommendation of the Hearing Officer:

- (1.) That the Personnel Board reverse and set aside the five-day suspension by the DJJ of the Appellant, Dottie Stone, and that it be removed from her record.

- (2.) That Dottie Stone be given the same penalty as her co-worker, B.J. Norris, of a one-day suspension, and that she be otherwise restored to her back pay and benefits.

NOTICE OF EXCEPTION AND APPEAL RIGHTS

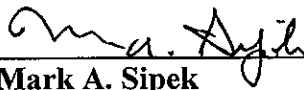
Pursuant to KRS 13.B.110(4), each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file exceptions to the Recommended Order with the Personnel Board. In addition, the Kentucky Personnel Board allows each party to file a response to any exceptions that are filed by the other party within five (5) days of the date on which the exceptions are filed with the Kentucky Personnel Board. 101 KAR 1:365, § 8(1). Failure to file exceptions will result in preclusion of judicial review of those issues not specifically excepted to. On appeal, a circuit court will consider only the issues a party raised in written exceptions. See *Rapier v. Philpot*, 130 S.W.3d 560 (Ky. 2004).

The Personnel Board also provides that each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file a Request for Oral Argument with the Personnel Board. 101 KAR 1:365, § 8(2).

Each Party has thirty (30) days after the date the Personnel Board issues a Final Order in which to appeal to the Franklin Circuit Court pursuant to KRS 13B.140 and KRS 18A.100.

ISSUED at the direction of the **Hearing Officer E. Patrick Moores**, this 13th day of March, 2013.

KENTUCKY PERSONNEL BOARD



Mark A. Sipek
Executive Director

A copy hereof this day mailed to:

Hon. Paul F. Fauri
Hon. Wesley W. Duke