

IN THE EXECUTIVE ETHICS COMMISSION
OF THE STATE OF ILLINOIS

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EXECUTIVE
ETHICS COMMISSION

RICARDO MEZA, in his capacity as)
EXECUTIVE INSPECTOR GENERAL for)
AGENCIES OF THE GOVERNOR, State)
of Illinois,)
Petitioner,)
v.)
JUDITH ERWIN,)
Respondent.)

No. 11-EEC-005

DECISION

This cause is before the Executive Ethics Commission ("Commission") for purposes of considering petitioner's motion for summary judgment. This decision will also serve as the Commission's final administrative decision in this matter.

Petitioner filed the present complaint with the Commission on August 19, 2010 and served respondent by U.S. Mail the same day. Respondent's attorney entered his appearance on August 23, 2010.

Respondent filed no answer to the complaint and the Commission determined that the complaint was sufficient to proceed on October 29, 2010. The parties entered into a stipulation of facts, which formed the basis for petitioner's motion for summary judgment, filed on January 14, 2011. In accordance with a scheduling agreement, respondent filed a response to the motion for summary judgment on January 28, 2011.

Petitioner is represented by Assistant Attorney General Barbara Delano. Respondent is represented by Tom Schanzle-Haskins.

FINDINGS OF FACT

The record of proceedings has been reviewed by the members of the Executive Ethics Commission. Based upon this record, the Commission makes the following findings of fact:

1. Respondent Judith Erwin served as Executive Director of the Illinois Board of Higher Education (IBHE) from August 2005 until August 15, 2010.
2. On July 11, 2008, respondent used her State email account to ask an IBHE employee to send information to her about a political fundraiser for a State Representative. She later

asked another IBHE employee to hand-deliver a campaign contribution check at the fundraiser.

3. Respondent misappropriated State time and resources to plan her trip to the 2008 Democratic National Convention, sending 18 emails in anticipation of her trip and almost daily updates from the convention. Respondent also instructed a State employee to make travel arrangements for respondent, her nephew and a friend to attend the Democratic National Convention, which the employee did during State compensated work time.
4. Respondent served on candidate Barack Obama's Education Policy Committee during his 2008 presidential campaign. She sent and received 22 campaign-related emails on her State email account and repeatedly gave her State-issued cellular telephone number as a way to reach her for campaign matters. She also communicated with the Obama campaign via her State email account concerning political contributions she made to that campaign.
5. On February 20, 2009, using her State telephone, respondent called a potential donor on behalf of a candidate for United States Congress. The same day, respondent sent an email on her State email account stating that she had made calls to donors and describing the outcome of those calls.
6. Following an investigation by the Office of the Executive Inspector General for the Illinois Governor, respondent resigned her position effective August 15, 2010, agreed not to seek or take employment with the State of Illinois in the future, and reimbursed IBHE \$1,281.63 for personal travel and telephone usage.
7. Respondent does not contest that the facts contained in the Stipulation of Facts establish violations of the State Officials and Employees Ethics Act (5 ILCS 430/1).

CONCLUSIONS OF LAW

1. Respondent Judith Erwin was at all times relevant to this complaint a State employee, as "employee" is defined in the State Officials and Employees Ethics Act ("Act") to include regular employees and appointees. 5 ILCS 430/1-5.
2. The Executive Ethics Commission has jurisdiction over respondent in the matter of her alleged misappropriation of State property or resources to engage in prohibited political activity. 5 ILCS 430/5-15(a).
3. "Prohibited political activity" means, among other things, "(12) Campaigning for any elective office or for or against any referendum question." 5 ILCS 430/1-5.
4. "Campaign for elective office" is defined as "any activity in furtherance of an effort to influence the selection, nomination, election or appointment of any individual to any federal, State, or local public office..." 5 ILCS 430/1-5.

5. "Prohibited political activity" also means, among other things, "(3) Soliciting, planning the solicitation of, or preparing any document or report regarding any thing of value intended as a campaign contribution." 5 ILCS 430/1-5.
6. Respondent Judith Erwin intentionally misappropriated State property or resources by engaging in prohibited political activity for the benefit of a campaign for elective office in violation of 5 ILCS 430/5-15(a) when on July 11, 2008, she used her State email account to ask an IBHE employee to send information to her about a political fundraiser for a State Representative. She also intentionally misappropriated State resources when she later asked another IBHE employee to hand deliver a campaign contribution check at the fundraiser.
7. Respondent Judith Erwin intentionally misappropriated State property or resources by engaging in prohibited political activity for the benefit of a political organization in violation of 5 ILCS 430/5-15(a) when she planned her trip to the 2008 Democratic National Convention, sending 18 emails in anticipation of her trip and almost daily updates from the convention. She also intentionally misappropriated State resources by engaging in prohibited political activity for the benefit of a political organization when she instructed a State employee to make travel arrangements for respondent, her nephew and a friend to attend the Democratic National Convention, which the employee did during State compensated work time.
8. Respondent Judith Erwin intentionally misappropriated State property or resources by engaging in prohibited political activity for the benefit of a campaign for political office in violation of 5 ILCS 430/5-15(a) when she sent campaign-related emails from her State email account and repeatedly gave her State-issued cellular telephone number as a way to reach her for campaign matters. She also intentionally misappropriated State property and resources for the benefit of a campaign for political office when she communicated with the Obama campaign via her State email account concerning political contributions she made to that campaign.
9. Respondent Judith Erwin intentionally misappropriated State property or resources by engaging in prohibited political activity for the benefit of a campaign for political office in violation of 5 ILCS 430/5-15(a) when on February 20, 2009, using her State telephone, respondent called a potential donor on behalf of a candidate for United States Congress. Respondent also intentionally misappropriated State property or resources by engaging in prohibited political activity for the benefit of a campaign for political office in violation of 5 ILCS 430/5-15(a) when the same day, respondent sent an email on her State email account stating that she had made calls to donors and describing the outcome of those calls.
10. There is no genuine issue of material fact that respondent intentionally misappropriated State property or resources by engaging in prohibited political activity for the benefit of a campaign for elective office or a political organization.

11. Petitioner is entitled to summary judgment as a matter of law.
12. Respondent has violated Section 5-15(a) of the State Officials and Employees Ethics Act. 5 ILCS 430/5-15(a).
13. The Executive Ethics Commission may levy an administrative fine of up to \$5,000 for a violation of the State Officials and Employees Ethics Act. 5 ILCS 430/50-5(e).

STANDARD OF REVIEW

Granting summary disposition in an administrative proceeding is comparable to granting summary judgment under section 2-1005 of the Code of Civil Procedure. *Bloom Tp. High School v. Illinois Commerce Com'n* (1999), 309 Ill. App. 3d 163, 177; 242 Ill. Dec. 892, 903; *Cano v. Village of Dolton* (1993), 250 Ill.App.3d 130, 138; 189 Ill.Dec. 883, 620 N.E.2d 1200. Because of the similarities in the two procedures, it is appropriate to apply the standards applicable to granting summary judgment under section 2-1005 when reviewing a summary determination entered by an administrative agency. See *Cano*, 250 Ill.App.3d at 138, 189 Ill.Dec. 883, 620 N.E.2d 1200.

Summary judgment is appropriate only where “the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” 735 ILCS 5/2-1005(c)

In determining whether a genuine issue as to any material fact exists, a court must construe the pleadings, depositions, admissions, and affidavits strictly against the movant and liberally in favor of the opponent. A triable issue precluding summary judgment exists where the material facts are disputed, or where, the material facts being undisputed, reasonable persons might draw different inferences from the undisputed facts. The use of the summary judgment procedure is to be encouraged as an aid in the expeditious disposition of a lawsuit. However, it is a drastic means of disposing of litigation and, therefore, should be allowed only when the right of the moving party is clear and free from doubt. *Adams v. Northern Illinois Gas Company* (2004), 211 Ill. 2d 32, 43; 284 Ill. Dec. 302, 310.

ANALYSIS

Respondent stipulated to a series of facts from which the Commission concludes that she engaged in prohibited political activity during compensated time and misappropriated State property and resources while doing so. In her response to the motion for summary judgment, respondent acknowledges that a violation has occurred. This acknowledgment leaves to the Commission the matter of an appropriate sanction. Petitioner seeks a fine of “up to \$5,000.00 per violation of the Act” and respondent suggests a fine of \$1,000.00.

Respondent has resigned her position, reimbursed the State for her personal travel and telephone usage, and agreed never to seek or accept State employment in the future. Therefore, the only

sanction available to the Commission in this matter is the imposition of a fine. The Ethics Act does not provide any aggravating or mitigating factors for the Commission to consider when levying a fine.

Respondent attached an affidavit to her response in which she gave some personal background and a more detailed explanation of the events surrounding the violation.

In the affidavit, respondent notes that she served as Director of Communications on the staff of Illinois Senate President Philip J. Rock from 1979 to 1992. She also served as a State Representative from 1992 to 2002 before entering the private sector. Ms. Erwin returned to the public sector in 2005 when she was appointed Executive Director of the IBHE. When she resigned in 2010, her annual salary was \$191,000.

Respondent asserts that her assistant from her private sector firm forwarded her State email and State telephone number to those who sought to contact her. She also notes that she faced a number of internal and external problems at IBHE, and considerable responsibilities requiring her to work long hours.

In response to each of the allegations of wrongdoing, respondent acknowledges acting inappropriately. By way of mitigation, respondent agrees that she was not careful enough in separating her political work from her State responsibilities. She also notes that some of her political activities were motivated by friendship, and also that she had become accustomed to using administrative assistants in the private sector in a way that is not permitted in the public sector.

Respondent appears to have owned up to her actions and cooperated in the investigation and with the Office of the Attorney General.

By way of aggravation is the fact that respondent was a high-level State official. She is sophisticated in the ways of State government, having served in a number of capacities since 1979. In recent years, she was required to take annual ethics training that covered issues related to prohibited political activity. She should have known better.

Also, the violations contained in the stipulation of facts are significant and numerous. They cannot be explained away as oversights or temporary lapses in judgment. Furthermore, respondent co-opted her own staff to engage in prohibited political activity.

The atmosphere for IBHE employees must have been heavily colored by Ms. Erwin's political activity on the job. Particularly troubling is her explanation for making a campaign contribution to a State Representative—she noted in her affidavit that he was the chairman of the appropriations committee with oversight over the IBHE budget. This suggests that she was responding to a real or imagined pay-to-play incentive within State government.

WHEREFORE, for the foregoing reasons, petitioner's motion for summary judgment is granted. The Commission levies an administrative fine of \$4,000.00 against Respondent Judith Erwin for

violation of 5 ILCS 430/5-15(a), prohibited political activities. This is a final administrative decision and subject to the Administrative Review Law.

ENTERED: