



4. Respondent also took several photographs of campaign activity by Stanley Moore, including circulating petitions and distributing campaign literature at residences (Tr. 14-15, Petitioner's Group Exhibit #1).
5. Respondent took the aforementioned photographs on his own digital camera and downloaded them, and others, to his work computer (Tr. 20). Respondent testified that he did not know that the photographs of campaign activity were among those that he downloaded to his work computer (Tr. 20).
6. Stanley Moore's campaign web site contained a photograph that respondent took of Moore in the IDOT office (Tr. 22, Petitioner's Exhibits #2 and #3). Petitioner's Exhibit #2 is a "screen shot" of Moore's campaign web site dated December 4, 2007. The photograph is an "above the waist" shot of Moore that respondent displayed and edited on respondent's State computer in the presence of Moore during compensated work time (Tr. 24-25).
7. The record does not indicate how that photograph specifically became added to Moore's campaign web site. Respondent testified that he did not work on Moore's campaign web site (Tr. 45).
8. Esparanza Esparza testified that on or about October 16, 2007 she saw respondent, Moore, Gilbert Villegas and Issa Lozada editing the photograph at work that later appeared on Moore's web site (Tr. 121-122). Villegas, after considerable prompting, admitted that he served as Moore's campaign manager (Tr. 175). Lozada testified that she volunteered for Moore's campaign (Tr. 163-164).
9. Two hours later that day Esparza walked past respondent's cubicle again and saw respondent editing the same photograph (Tr. 125-126). Claudia Gonzales also testified that she saw the photograph used on Moore's web site displayed on respondent's State computer while respondent and Moore were in respondent's cubicle (Tr. 111).
10. Esparza testified that she heard respondent say that he could change the background of the photograph to include the capitol, city hall, or a flag (Tr. 125). Respondent denied that he talked about different backgrounds that could be added to the photograph (Tr. 25).
11. As part of his official duties, respondent took photographs for a newsletter or for flyers advertising upcoming events (Tr. 35). Respondent estimated that prior to 2008 he had taken thousand of photographs in connection with his job at IDOT (Tr. 36). These photographs would be uploaded to his computer (Tr. 37) and be available to others on a shared drive (Tr. 43).
12. No evidence was presented that the photo edited by respondent and appearing on Moore's web site appeared on any official IDOT newsletters or flyers or other publications.

13. It was respondent's habit to upload the photographs from his camera to his computer's "P" drive and then transfer them over to a shared "O" drive in order to have more space available on his computer (Tr. 49).
14. As people or groups needed photographs, respondent would show them what he had and would work with them to edit the photographs (Tr. 37-38). Respondent would do this work at his IDOT desk (Tr. 39).

### CONCLUSIONS OF LAW

1. Respondent Carl Thurman 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 his 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. On or about October 16, 2007, respondent Carl Thurman intentionally misappropriated State property or resources during compensated time by editing a photograph of Stanley Moore that was used on Moore's campaign web site.
6. Respondent Carl Thurman has violated Section 5-15(a) of the State Officials and Employees Ethics Act. 5 ILCS 430/5-15(a).
7. 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).

### ANALYSIS

Respondent Carl Thurman's official duties included taking and editing photographs of IDOT personnel to be used in IDOT publications. One photograph that Thurman admitted he took and edited was used on Stanley Moore's campaign web site. The question before the Commission is whether Thurman's photographic activities crossed over the line from authorized, official activity to prohibited political activity.

Viewing the facts in a light most favorable to respondent, it is possible that respondent took and edited the photograph of Moore that appeared on his campaign web site for legitimate, work-related, non-political reasons, but someone else, perhaps Moore or his campaign staff, misappropriated the photograph and placed it on Moore's campaign web site without respondent's knowledge.

Circumstantial evidence, however, suggests that Thurman was knowingly and intentionally engaged in prohibited political activity. First, Thurman was actively involved in Moore's campaign, taking photographs and checking voter rolls. Second, IDOT employee eyewitnesses testified that several people, all of whom worked on Moore's campaign, including his campaign manager, were in or near Thurman's cubicle while he edited the photograph in question. One employee testified that respondent was editing the photograph in question when she passed by his cubicle and still editing the same photograph when she passed by two hours later. The employee also testified that respondent suggested to others that the photograph's background could be changed to include the capitol, city hall or a flag, though respondent denied this. Third, there is no evidence that the photograph in question was used in any newsletters, flyers or other IDOT publications, though respondent spent considerable time editing it.

Finally, other photographs depicting Moore's campaign activity were found on Thurman's own computer hard drive, the "C" drive. Thurman testified that it was his habit to download photographs from his camera to his computer and then move them over to a shared "O" drive. He did this so that other employees could have access to the photographs, but also in order to have more space available on his computer. He also testified that he was surprised that the campaign photos were on his computer and that he had downloaded all the photos on his camera onto his hard drive, unaware that campaign photos were among others he downloaded.

The fact that the photographs depicting Stanley Moore's campaign activity were found on respondent's "C" drive, however, suggests that he did not on that occasion follow his practice of moving the photographs to the shared "O" drive. Or, if he did move them, he maintained a copy of them on his State-owned computer's hard drive. It is not clear why he did not follow his practice of moving the campaign photos in this particular case, but a reasonable inference could be made that he wanted them to remain on his hard drive for some purpose.

By a preponderance of the evidence, petitioner has proven that respondent intentionally misappropriated State property and resources by engaging in prohibited political activity for the benefit of a campaign for elective office. The definition of "prohibited political activity" includes a broad category: "campaigning for any elective office." This is further 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. Mr. Thurman's taking and editing of a photograph used on Stanley Moore's campaign web site constitutes "campaigning for any elective office."

Respondent is free to engage in political activity outside compensated time, and so long as he does not misappropriate State property and resources to do so. In this case, his activity crossed the line. It also appears, however, that he was encouraged to cross that line by other high-

ranking employees in his office. While this does not serve as a defense, it is a factor that the Commission will consider in mitigation.

WHEREFORE, for the foregoing reasons, the Commission finds that respondent Carl Thurman violated Section 5-15(a) of the State Officials and Employees Ethics Act (5 ILCS 430/5-15(a)).

IT IS FURTHER ORDERED that an administrative fine of \$1,000.00 is levied against respondent Carl Thurman in accordance with his violation of Section 5-15(a) of the State Officials and Employees Ethics Act (5 ILCS 430/5-15(a)).

This is a final administrative decision and subject to the Administrative Review Law.

ENTERED: May 19, 2010