

IN THE EXECUTIVE ETHICS COMMISSION
OF THE STATE OF ILLINOIS

In re: JAIME VITERI

)

OEIG Case # 09-00860

OEIG FINAL REPORT (REDACTED)

Below is a final summary report from an Executive Inspector General. The General Assembly has directed the Commission to redact information from this report that may reveal the identity of witnesses, complainants or informants and “any other information it believes should not be made public.” 5 ILCS 430/20-52(b).

The Commission exercises this responsibility with great caution and with the goal of balancing the sometimes competing interests of increasing transparency and operating with fairness to the accused. In order to balance these interests, the Commission may redact certain information contained in this report. The redactions are made with the understanding that the subject or subjects of the investigation have had no opportunity to rebut its factual allegations or legal conclusions before the Commission.

The Executive Ethics Commission (“Commission”) received a final report from the Governor’s Office of Executive Inspector General (“OEIG”) and a response from the agency in this matter. The Commission redacted the final report and mailed copies of the redacted version and responses to the Attorney General, the Governor’s Executive Inspector General and to Jaime Viteri at his last known address.

These recipients were given fifteen days to offer suggestions for redaction or provide a response to be made public with the report. Certain information contained in the proposed public response may have been redacted in accordance with the Commission’s determination that it should not be made public. The Commission, having reviewed all suggestions received, makes this document available pursuant to 5 ILCS 430/20-52.

FINAL REPORT

I. BACKGROUND

(a) Initial Allegations

On August 13, 2009, the Office of Executive Inspector General (OEIG) received a complaint alleging that Jaime Viteri (Mr. Viteri), former Managing Director for the Bureau of Entrepreneurship and Small Business (Bureau) at the Department of Commerce and Economic Opportunity (DCEO), engaged in misconduct.¹ Specifically, the complaint alleged that Mr. Viteri: (1) performed work for his outside business on State time while using State resources, (2) engaged in prohibited political activities, (3) had a conflict of interest, (4) falsified his Statements

¹ Mr. Viteri resigned from the DCEO during this investigation, effective November 20, 2009.

of Economic Interests, (5) evaded paying personal income tax,² (6) falsified his employment application,³ (7) generally abused State time by arriving late, departing early, and taking extended lunches, and (8) consumed alcohol on State time.

(b) Initial Investigative Information

Mr. Viteri managed the Bureau for six years, until he resigned in November 2009. According to his DCEO Ethics Timesheets, Mr. Viteri worked 8 a.m. to 6 p.m. and took a lunch break from 12:00 p.m. to 1 p.m. on every full day that he worked between September 30, 2008 and October 23, 2009. Per his official position description, Mr. Viteri was supposed to spend approximately ten percent of his work time representing DCEO and acting as a liaison to the Hispanic business sector and an advocate for Hispanic business communities to secure funding or loans.

The Chicago Latino Network is an online marketing resource for Chicago Latino professionals and entrepreneurs, founded by Mr. Viteri.⁴

² [redacted].

³ The OEIG determined that this particular allegation fell outside the OEIG's statute of limitations because Mr. Viteri applied for the DCEO job in 2003. Thus, the OEIG did not investigate the matter further.

⁴In a letter dated November 3, 2009, [redacted], informed the OEIG that DCEO had no secondary employment request or approval records on file for Ms. Viteri.

II. INVESTIGATION

(a) Chicago Latino Network Electronic Communications

The OEIG received multiple electronic newsletters (e-newsletters) from the Chicago Latino Network, after subscribing to its email distribution list via a covert Yahoo email account. On September 11, 2009, the OEIG received an email confirming the subscription and containing a welcome from “Jaime Viteri, Chicago Latino Network, [email address redacted]”

Mr. Viteri’s relationship with the Chicago Latino Network was emphasized in “A Personal Note” he included at the beginning of the November 16, 2009 e-newsletter in which Mr. Viteri reminded colleagues that he founded the Chicago Latino Network, had continued to work with it for almost ten (10) years at that point, and announced his resignation from the DCEO. In that regard, he stated, “...While I am extremely proud of my accomplishments at DCEO, the demands of continuing with the pace of the Chicago Latino Network growth led me to submit my resignation from DCEO. I am thrilled that this decision enables me to dedicate all of my energy and time to the Chicago Latino Network, an endeavor that is truly imbedded in my heart and soul...”

Several of the e-newsletters received by the OEIG contained advertisements for political events, some of which were fundraisers in support of candidates for elective office. For instance, the August 24 and September 14, 2009, e-newsletters promoted the “State Senator Iris Y. Martinez 3rd Annual Golf Classic” for which people could sponsor holes, play golf, or go to dinner. The September 14 and 18, 2009 e-newsletters contained an ad for “One Night with Alexi,” that also solicited additional contributions for Alexi Giannoulis’ senatorial campaign. On September 30, 2009, another ad invited people to “Meet the Senator,” at an event hosted by the “Friends of Iris Y. Martinez Fundraising Committee” for the purpose of “Celebrating the Leadership of Senator Iris Y. Martinez (Another Wise Latina).” The e-newsletter from November 16, 2009, had three political event advertisements: a “2009 Kick Off Fundraiser honoring Cook County Commissioner Edwin Reyes,” “Meet the Commissioner Edwin Reyes” sponsored by “Friends of Edwin Reyes,” and the “IL State Representative Edward ‘Eddie’ Acevedo 2nd District Assistant Majority Leader 2009 Annual Fund Raiser.”

In its e-newsletters and supplemental emails, the Chicago Latino Network also promoted several events it hosted annually, such as Schmoozefest and an Awards Gala. In 2009, the Chicago Latino Network charged \$150 per person to attend its Awards Gala and \$30 for Schmoozefest, which were both sponsored by a variety of private companies.⁵ For \$150, e-newsletter subscribers also had the opportunity, in November 2009, to become “premium members” of the Chicago Latino Network.

⁵ After reviewing financial documentation provided by DCEO [redacted], the OEIG found that neither the Chicago Latino Network, nor any of its event sponsors, received any money directly from the DCEO or its Entrepreneurial Centers in Fiscal Year 2009. Furthermore, [redacted] confirmed that DCEO did not provide any funding directly to the Chicago Latino Network between Fiscal Years 2000 and 2010.

(b) Constant Contact

The OEIG obtained documentation from the Chicago Latino Network's email marketing provider, Constant Contact, which showed that Mr. Viteri identified the Chicago Latino Network as the company associated with his account, and listed his personal email address and the Chicago Latino Network website, as his "contact information." The Constant Contact website mentioned that its account subscribers could schedule email distributions for later dates and/or times.

Constant Contact also provided printouts reflecting the times Mr. Viteri logged into his account between October 2008 and November 2009. After reviewing the Internet Protocol (IP) addresses used to login to his account on each occasion, the OEIG determined that Mr. Viteri logged in on State time, through IP addresses registered to the State, approximately 360 times between October 7, 2008, and November 17, 2009.

(c) Personal Hotmail Email Account

The OEIG also acquired account subscriber and login data from Microsoft Online Services regarding Mr. Viteri's personal email address, [redacted]. The OEIG found that Mr. Viteri used State resources, such as IP addresses registered to the State, to access this account during State time on 53 occasions between September 20 and November 19, 2009. Mr. Viteri logged in on two occasions between 12:00 p.m. and 1:00 p.m., the time he identified as his lunch break.

(d) State Email Account

The OEIG reviewed thousands of emails and Outlook Calendar responses that Mr. Viteri sent and/or received through his State email account and discovered that Mr. Viteri frequently discussed Chicago Latino Network business, as well as personal matters relating to his family, third parties, and events he planned to attend. The OEIG noted that some of these events were identified by names of politicians, *i.e.*, "Alexi event," "Madigan event," and "Senator Martinez event."

Mr. Viteri also communicated with Chicago Latino Network potential volunteers, discussed events, answered questions, and designed e-newsletters. Mr. Viteri engaged in numerous business related emails including:

- March 12, 2009 - discussed the possibility of marketing the Chicago Fire at Schmoozefest;
- April 16, 2009 - responded to questions about Schmoozefest tickets;
- April 20, 2009 – discussed which photos to post in a Chicago Latino Network newsletter;
- April 23 and 30, 2009 - sent labels for Schmoozefest;
- April 29, and May 15, 2009 - discussed Schmoozefest with private citizens;

- May 4, 7, 8, and 11, 2009 - set a time⁶ to meet with a graphic designer to discuss redesigning the Chicago Latino Network website; and,
- August 18, and 19, 2009 - scheduled an appointment⁷ with another State employee, [redacted], to talk about the Chicago Latino Network and volunteer work.

(e) State Computer

The OEIG conducted a forensic examination of Mr. Viteri's State computer hard drive and found over 400 photos from the Chicago Latino Network's 2009 Awards Gala saved to Mr. Viteri's State hard drive, along with more than 250 photos of a personal nature, including one of Mr. Viteri with former Chicago alderman, Mr. Manny Flores, whose name was superimposed on the picture. The OEIG also discovered other documents relating to the Chicago Latino Network saved to the desktop that Mr. Viteri created and/or modified in 2009 on the State computer, including: a document entitled "CLN 2009 Online Sponsorships," three invoices for companies sponsoring or marketing with the Chicago Latino Network for a total of over \$37,000, a letter saved as "Schmoozefest_2009_Sponsor," a copy of a 2009 Schmoozefest event script, Schmoozefest labels, a professional services contract between the Chicago Latino Network and the Goodman Theatre, a letter inviting the 2009 Awards Gala speaker, a list of 2009 Awards Gala guests, a "Request for Taxpayer Identification Number and Certification" for the Chicago Latino Network, a PDF of the front of Mr. Viteri's Chicago Latino Network business card, a 2009 Awards Gala PDF advertisement, and the Chicago Latino Network 2010 Media Kit.

(f) Witness Interviews

In September and October 2009, the OEIG interviewed [redacted] and [redacted]. . Both witnesses reported that Mr. Viteri's interest in the Chicago Latino Network was known at DCEO. [Redacted] both stated that DCEO staff generally had difficulty locating Mr. Viteri, and [redacted] explained that the office perception was that Mr. Viteri consistently performed Chicago Latino Network work while at DCEO. These perceptions were based upon the fact that Mr. Viteri was frequently absent from the office, and that he was constantly working on his desk computer or I-Phone when people entered his office. [Redacted] indicated he had heard speculation that Mr. Viteri was doing something improper with the Chicago Latino Network, in relation to his DCEO duties, but was unaware of any specifics.

Both witnesses mentioned that Mr. Viteri's interest in the Chicago Latino Network was particularly noticed at events attended by both groups. For example, they commented that Mr. Viteri had not spent much time at DCEO's booth and/or table at the annual Illinois Hispanic Chamber of Commerce (Chamber) Expo and instead spent the majority of his time with Chicago Latino Network representatives. [Redacted] also said that Mr. Viteri was promoting his private business at these events, which she believed was a conflict of interest because he was supposed to be representing DCEO in his official capacity at these events.

⁶ Set for 4 p.m. on Thursday May 14, 2009.

⁷ On August 21, 2009, at 10 a.m.

III. ANALYSIS

(a) *Outside Business*

(i.) Applicable Agency Rules and Regulations

The DCEO Employee Policy Manual (Manual) states that employees “may not use equipment issued or available to them from the Department in any secondary employment and shall not conduct secondary employment on Department property or during Department work hours.”⁸ However, employees are permitted to hold secondary employment as long as it “does not interfere with the normal job activities and is not judged to be a conflict of interest.”⁹ “Secondary Employment” is defined as “the performance of any service which results in the payment of money, goods, or services, and/or the exercise of control of an enterprise either public or private, which results in profit.”¹⁰ Employees must submit a “Secondary Employment Form” if they wish to hold secondary employment.¹¹

(ii.) Analysis of Mr. Viteri’s Role with the Chicago Latino Network¹²

The OEIG investigation revealed that Mr. Viteri clearly conducted extensive work for the Chicago Latino Network while on State property, during work hours, using State equipment. Mr. Viteri habitually discussed Chicago Latino Network business with other individuals on State time through his State email account, and seemingly in person at scheduled meetings. Mr. Viteri also saved numerous documents and photos for the Chicago Latino Network on his State computer.¹³ In addition, Mr. Viteri repeatedly logged into his Constant Contact account through the State computer and Internet, despite having no reason to do so for his State job. Utilization of State time or equipment for Chicago Latino Network business in these ways amounted to a violation of DCEO policy. For these reasons, the allegation that Mr. Viteri performed work for his outside business, the Chicago Latino Network, on State time while using State resources, is **FOUNDED**.

Furthermore, as founder and owner, Mr. Viteri most likely made a profit from the Chicago Latino Network. The Chicago Latino Network collected money from sponsorships, advertisements, event tickets, and membership sales, yet Mr. Viteri never submitted a Secondary Employment Form for approval.

⁸ Manual, Section 3.6, “Secondary Employment Policy.”

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² Mr. Viteri also used his State email account to converse about other personal matters; however, use for this purpose seemed to be less than for Chicago Latino Network business, and may fall within the general “reasonable use” exception for personal emails unrelated to secondary employment. Thus, the OEIG is not citing Mr. Viteri for that use.

¹³ Mr. Viteri’s job description allowed him to spend up to ten percent of his work time advocating Hispanic interests. Thus, Mr. Viteri could have participated in some of these activities as part of his job. However, Mr. Viteri’s work for the Chicago Latino Network appeared to greatly exceed the ten percent threshold. There is clear indication that he focused on Chicago Latino Network’s interests more than DCEO’s, to the detriment of the State.

There is some indication to suggest that Mr. Viteri's private business conflicted with the interests of the State because he was able to earn a salary from the State while performing activities for his personal business. In fact, the Chicago Latino Network was specifically designed for the purpose of networking and marketing to Hispanic business professionals, which overlapped Mr. Viteri's DCEO duties requiring him to advocate for, and act as a liaison to, the Hispanic business community. Accordingly, Mr. Viteri's interrelated pursuits could have created at least the appearance of a conflict of interest. Thus, DCEO should consider this scenario in the future when hiring individuals specifically to promote the interests of a particular group.

(b) Prohibited Political Activity

(i.) Applicable Agency Rules and Regulations

Section 15-5 of the Illinois State Officials and Employees Ethics Act (Ethics Act) and the Manual prohibit State employees from using State resources or time to perform prohibited political activities.¹⁴ The Ethics Act delineates fifteen (15) types of "prohibited political activity" such as: participating in political events or fundraisers, soliciting contributions or votes for candidates, campaigning, or working on campaigns.¹⁵

(ii.) Analysis of the Conduct

The OEIG found photos and emails suggesting Mr. Viteri may have participated in political matters. For example, on the hard drive of his State computer there were photos of Mr. Viteri with an alderman advertising his political status. Furthermore, Mr. Viteri's State email account contained multiple Outlook Calendar invitations and responses that alluded to Mr. Viteri's participation in political events, *i.e.*, "Alexi event," "Madigan event," "Senator Martinez event," etc. However, without additional detail, the OEIG could not determine whether Mr. Viteri ultimately attended any of these events.

In addition, the OEIG reviewed numerous e-newsletters from the Chicago Latino Network containing advertisements for fundraising events in support of various candidates for elective offices, the creation or distribution of which could be a violation of the Ethics Act. Nevertheless, the OEIG was unable to conclude that Mr. Viteri necessarily sent these e-newsletters on State time or through State resources because the OEIG could not locate the e-newsletters on Mr. Viteri's hard drive. Moreover, while the OEIG found that Mr. Viteri frequently accessed his Constant Contact account on State time, through the State computer, the times he did so did not precisely correlate to the distribution of these e-newsletters. Since Constant Contact allowed its users to schedule the distribution of emails for later dates or times, the OEIG was unable to ascertain when exactly Mr. Viteri scheduled distribution of these specific newsletters, or if he was the only person that did so. Without that link, the OEIG could not definitively conclude that Mr. Viteri advertised for political fundraisers on State time or by using State resources.

¹⁴ Ethics Act, 5 ILCS 430/5-15(a); and the Manual, at Section 1.2 on the "Rules of Conduct," Rule #9 and Section 7.13 on "Unacceptable Use of Computer Resources."

¹⁵ 5 ILCS 430/1-5.

Therefore, because there is insufficient evidence to conclude that these photos and Outlook Calendar communications clearly fall within the cited categories in the Ethics Act, or that Mr. Viteri created and/or sent these e-newsletters on State time or through State resources, the allegation that Mr. Viteri engaged in prohibited political activity is **UNFOUNDED**.

IV. CONCLUSIONS

(a) Findings¹⁶

Following due investigation, the OEIG issues these findings:

- **FOUNDED** – Mr. Viteri performed work for his outside personal business on State time, while using State resources.
- **FOUNDED** - Mr. Viteri failed to submit a Secondary Employment Form for approval.
- **UNFOUNDED** – Mr. Viteri’s involvement with the Chicago Latino Network amounted to a conflict of interest with his DCEO job.
- **UNFOUNDED** – In violation of the Ethics Act, Mr. Viteri engaged in prohibited political activities.
- **UNFOUNDED** - Mr. Viteri falsified his Statements of Economic Interests by failing to disclose income from, or ownership interest in, the Chicago Latino Network.
- **UNFOUNDED** – In violation of DCEO policy, Mr. Viteri abused State time by arriving at work late, departing early, and taking extended lunch breaks.
- **UNFOUNDED** – Mr. Viteri consumed alcoholic beverages during State time.

(b) OEIG Recommendations

Because Mr. Viteri is no longer a State employee, the OEIG cannot recommend discipline. The OEIG therefore recommends that a copy of this report be placed in Mr. Viteri’s agency personnel file with a no re-hire recommendation.

The OEIG also suggests that DCEO review its current policy on secondary employment to determine whether it adequately contemplates the scenario wherein an employee is involved in an organization or business which is not easily recognizable as “profitable,” but the relationship constitutes a conflict of interest or interferes with the employee’s performance of DCEO duties.

In addition, the OEIG recommends that DCEO carefully monitor employees who are hired, in part, to advocate for the interests of a specific group of people, to ensure that they are not abusing the position to their personal advantage or acting in a manner which creates a conflict of interest.

No further investigative action is needed and this case is considered closed.

¹⁶The OEIG began investigating allegations relating to the following: Mr. Viteri’s purported falsification of his Statements of Economic Interests, conflict of interest, general time abuse, and consumption of alcohol on State time. Mr. Viteri, however, resigned before completion of the OEIG’s investigation. For that reason, in an effort to save State resources, the OEIG stopped investigating those matters. Thus, the allegations are deemed as UNFOUNDED.



Illinois Department of Commerce & Economic Opportunity

Pat Quinn, Governor • Warren Ribley, Director

November 16, 2010

Ricardo Meza
Acting Executive Inspector General
32 West Randolph Street, Suite 1900
Chicago, Illinois 60601
c/o sherry.bult@illinois.gov

Re: OEIG Case No. 09-00860 (Viteri)

Dear Mr. Meza:

DCEO is in receipt of your Final Report in the above-captioned case, dated October 21, 2010.

You have recommended that a copy of the Final Report be included in Mr. Viteri's personnel file with a no re-hire recommendation. I have consulted with the Deputy General Counsel for Personnel at Central Management Services to discuss how to effectuate these recommendations. He has recommended that DCEO include only a copy of the executive summary of the Final Report in Mr. Viteri's personnel file, that is the two-page cover letter that accompanied the Final Report and which includes your no re-hire recommendation. He has also advised that DCEO needs to afford Mr. Viteri the opportunity to submit a rebuttal or other statement that would also be included in his personnel file in order to ensure that he has not been denied his due process rights or rights under the Personnel Records Review Act. Therefore, DCEO will place a copy of the Executive Summary of your Final Report with its do not re-hire recommendation in Mr. Viteri's personnel file, and DCEO will also transmit a copy of the Executive Summary and Final Report to Mr. Viteri and advise him of the opportunity to submit a rebuttal or other statement to be included in his file as well.

DCEO has also considered the OEIG's recommendation to review its secondary employment policy. DCEO believes that the current policy addresses the situation in which an employee may be engaged in an activity that is not "profitable" in the normal sense but that might constitute a conflict of interest or interfere with the performance of required DCEO duties. The policy specifically provides that a DCEO employee may not hold secondary employment that competes in any way with the interests of the Department. It also provides that DCEO employees may "not use equipment issued or available to them from the Department in any secondary employment and shall not conduct secondary employment on Department property or during Department work hours." Further, DCEO agrees that it needs to monitor those employees whose

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jobs involve advocating for the interests of a specific group of people to ensure that they are not abusing their positions or acting in a manner that might create a conflict of interest.

Sincerely yours,

Gail A. Niemann
General Counsel and Ethics Officer

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