

IN THE EXECUTIVE ETHICS COMMISSION  
OF THE STATE OF ILLINOIS

MARGARET HICKEY, in her capacity as	)	
EXECUTIVE INSPECTOR GENERAL for	)	
AGENCIES OF THE GOVERNOR, State	)	
Of Illinois,	)	
Petitioner,	)	
	)	
v.	)	No. 16-EEC-006
	)	
SHIRLEY J. SLUSSER,	)	
Respondent.	)	

**DECISION**

This cause is before the Executive Ethics Commission (“Commission”) for purposes of considering the parties’ cross-motions for summary judgment. This decision will also serve as the Commission’s final administrative decision in this matter.

On March 11, 2016, petitioner filed a complaint with the Commission which alleged respondent, Shirley J. Slusser, engaged in prohibited political activity in violation of the State Employees and Officials Ethics Act (“Ethics Act”) (5 ILCS 430/5-15(a)). An affidavit of service indicates that respondent was served a copy of the complaint on March 18, 2016. On May 19, 2016, the Commission entered an order finding the complaint sufficient to proceed.

On December 9, 2016, the parties filed cross-motions for summary judgment with an attached joint stipulation of undisputed material facts. Response briefs were filed by both parties on January 6, 2017. Reply briefs were filed January 23, 2017 and sur-reply briefs on January 30, 2017.

Petitioner is represented by Assistant Attorney General Neil MacDonald. Respondent is represented by Scott D. Miller.

**FINDINGS OF FACT**

The record of proceedings has been reviewed by the members of the Executive Ethics Commission. Based upon the record, including the parties’ joint stipulation of undisputed facts, the Commission makes the following findings of fact:

1. Respondent has been employed by the Illinois State Police (“ISP”) since December 1979, and has been an Office Associate (a clerical title) in the Firearm Services Bureau since 2002.

2. Respondent's approved work hours are from 7:30 a.m. until 4:00 p.m., with an unpaid lunch break from 12:30 p.m. to 1:30 p.m. She has two compensated rest periods of 15 minutes each: one in the first half of her daily shift, and one in the second half of her daily shift.

3. Respondent is a member of the Labor Union, American Federation of State, County and Municipal Employees ("AFSCME") Council 31, Local 1964.

4. A copy of the Collective Bargaining Agreement between AFSCME Council 31 and the State of Illinois operative at the time relevant to the incidents described herein is available at:

[https://www.illinois.gov/cms/Employees/Personnel/Documents/emp\\_afscme1.pdf](https://www.illinois.gov/cms/Employees/Personnel/Documents/emp_afscme1.pdf)

5. On or before September 7, 2014, Respondent attended an AFSCME meeting where she was provided with five flyers. In the ISP report of Respondent's 10/30/14 interview, the flyers were described as being 3- to 5-pages in length. However, only five single-sided documents purporting to be the flyers were included in the investigative file, and are attached hereto as Attachment A.

6. On the morning of September 8, 2014, Respondent used State paper and a State copier to make 50 copies of four of the flyers she had received at the AFSCME meeting (Attachment A, Exhibits A-D). Respondent distributed the flyers to approximately fifty State employees in two different ISP units (by laying them on her co-workers' desktops) until approximately 7:45 a.m. that morning; between approximately 10:00 and 10:15 a.m.; and again for approximately 15 minutes during her lunch break.

7. On the morning of September 11, 2014, Respondent again used State paper and a State copier to make 20 copies of another flyer, which she distributed to State employees (by laying them on her co-workers' desktops) until approximately 7:44 a.m. that morning (Attachment A, Exhibit E).

8. Bruce Rauner announced his candidacy for Governor of the State of Illinois in June of 2013. The Illinois Gubernatorial election was held on November 4, 2014.

9. On October 30, 2014, and again on January 27, 2015, Respondent was interviewed by ISP investigators in connection with her use of State resources to copy and distribute the flyers to ISP employees during compensated time. In her October 30 interview, Respondent admitted that she had used a State photo copier and State paper to make copies of the flyers, and that she had prepared and distributed the flyers for approximately "a half hour" into her work shift.

10. Based on the ISP investigators' determination that Respondent had engaged in prohibited political activity in violation of Management Directive

PER-103, Respondent was suspended without pay from work for four days. Respondent served her suspension between June 22, 2015 and June 25, 2015.

11. On November 4, 2015, Respondent was interviewed by OEIG investigators in connection with her use of State resources to copy and distribute the flyers to ISP employees during compensated time. In this interview, Respondent admitted that she knew, prior to distributing the flyers that she was not permitted to distribute the flyers at work during compensated time.

12. Respondent has no record of prior Ethics Act violations

### **CONCLUSIONS OF LAW**

1. Pursuant to 5 ILCS 430/20-5(d), the Illinois Executive Ethics Commission (the “Commission”) has jurisdiction over “all officers and employees of State agencies” for purposes of any matter arising under or involving the Ethics Act. Consequently, the Commission’s authority extends to officers and employees of ISP.

2. As an ISP employee, respondent was subject to the provisions of the Ethics Act, and therefore subject to the jurisdiction of the Commission with respect to matters arising under the Ethics Act. *Id.*

3. As an employee at ISP, Respondent took annual Ethics Act training, which includes a section regarding the restrictions placed on State employees against participating in prohibited political activity. Respondent has been participating in annual Ethics Act training since at least 2004.

4. The “ultimate jurisdictional authority” for ISP officers and employees, including respondent, is the Governor of the State of Illinois. 5 ILCS 430/1-5 (defining and identifying the “ultimate jurisdictional authority” for various state officers, employees, and the entities for which they work).

5. The Ethics Act provides, in relevant part, that the OEIG has jurisdiction over “all officers and employees of . . . executive branch State agencies under the jurisdiction of the Executive Ethics Commission,” 5 ILCS 430/20-10(c), and authorizes the OEIG to investigate allegations of fraud, waste, abuse, mismanagement, misconduct, nonfeasance, misfeasance, malfeasance, violations of the Ethics Act, or violations of other related laws and rules. *Id.*; accord 5 ILCS 430/20-20. Accordingly, the OEIG’s authority extends to ISP and its officers and employees.

6. Under the Ethics Act, “State employees shall not intentionally perform any prohibited political activity during any compensated time (other than vacation, personal, or compensatory time off).” 5 ILCS 430/5-15(a).

7. Under the Ethics Act, “State employees shall not intentionally misappropriate any State property or resources by engaging in any prohibited political activity for the benefit of any campaign for elective office or any political organization.” *Id.*

8. “Prohibited political activity” is defined by the Ethics Act to mean, in relevant part, “(11) Distributing, preparing for distribution, or mailing campaign literature, campaign signs, or other campaign material on behalf of any candidate for elective office or for or against any referendum question.” 5 ILCS 430/1-5.

9. “Prohibited political activity” is also defined by the Ethics Act to mean, in relevant part, “(12) Campaigning for any elective office of for or against any referendum question.” *Id.*

10. “Campaign for elective office” is defined by the Ethics Act to mean, “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 or office in a political organization, or the selection, nomination, or election of Presidential or Vice-Presidential electors, but does not include activities (i) relating to the support or opposition of any executive, legislative, or administrative action (as those terms are defined in Section 2 of the Lobbyist Registration Act), (ii) relating to collective bargaining, or (iii) that are otherwise in furtherance of the person’s official State duties.” *Id.*

11. Under the Ethics Act “Collective bargaining” has the same meaning as that term is defined in Section 3 of the Illinois Public Labor Relations Act. *Id.*

12. Under the Illinois Public Labor Relations Act, “Collective bargaining” is defined to mean “bargaining over terms and conditions of employment, including hours, wages, and other conditions of employment, as detailed in Section 7 and which are not excluded by Section 4.” 5 ILCS 315/3.

13. When respondent, during compensated time on September 8 and 11, 2014, distributed flyers to other State employees related to then Gubernatorial Candidate Rauner’s candidacy for office, she intentionally performed “prohibited political activity” as defined in the Ethics Act and in violation of 5 ILCS 430/5-15(a).

14. When respondent prepared, using State copiers and paper, copies of flyers to other State employees on September 8, 2014 and September 11, 2014 she intentionally misappropriated State property or resources by engaging in “prohibited political activity” as defined in the Ethics Act and in violation of 5 ILCS 430/5-15(a).

15. The Ethics Act provides, in relevant part, that the Commission may levy an administrative fine of up to \$5,000 against any person who violates the 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. Ill. Commerce Comm'n*, 309 Ill. App. 3d 163, 177, 242 Ill. Dec. 892, 903 (1999); *Cano v. Vill. of Dolton*, 250 Ill. App. 3d 130, 138, 189 Ill. Dec. 883, 620 N.E.2d 1200 (1993). 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.

Summary judgment is appropriate only where “the pleadings, depositions, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” 736 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. N. Ill. Gas Co.*, 211 Ill.2d 32, 43, 284 Ill. Dec. 302, 310 (2004).

## ANALYSIS

Respondent stipulated to a series of facts from which the Commission concludes respondent engaged in prohibited political activity in violation of the State Official and Employees Ethics Act (5 ILCS 430/5-15(a)). It is undisputed that respondent prepared the flyers using State copy machines and paper, and distributed at least some of the flyers during compensated time.

The definition of prohibited political activity includes a broad category of activity identified as “(12) Campaigning for any elective office or for or against any referendum question.” 5 ILCS 430/1-5. “Campaign for elective office” 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...” *Id.*

Respondent argues that the flyers she prepared and distributed were nothing more than merely issue advocacy and were not specific to any candidate for elective office. Therefore, she argues, the flyers fail to meet the definition of prohibited political activity.

It is true that the definition of “political” contained in the Ethics Act specifically carves out activities “(i) relating to the support or opposition of any executive, legislative, or administrative action (as those terms are defined in Section 2 of the Lobbyist Registration Act)...” 5 ILCS 430/1-5.

The flyers prepared and distributed by respondent, however, go far beyond supporting or opposing issues and were clearly intended to influence the election, although in a negative fashion, of an individual to State office. The flyer attached as Attachment 4 frames the issues by beginning, “With the Election season in full swing, billionaire Bruce Rauner’s trying to make us forget the real reason he wants to be governor...” (Attachment 4). The flyer attached as Attachment 1 encourages its readers to “STOP BRUCE RAUNER” and to walk in their communities on Saturdays two months before the election. (Attachment 1). Attachment 2 also expresses to readers the necessity “to stop Bruce Rauner.” (Attachment 2).

If these flyers were intended to be nothing more than issue advocacy, there would be no reason to frame or tie these issues to the election of candidate Bruce Rauner. Furthermore, the plea to “stop Bruce Rauner” appearing on flyers weeks before the general election, can only be reasonably interpreted as an effort to influence the outcome of the election.

Respondent also argues that the flyers she prepared and distributed constitute collective bargaining. The definition of “political” contained in the Ethics Act also specifically carves out activities “(ii) relating to collective bargaining...” *Id.* 12. According to the Illinois Public Labor Relations Act, “Collective bargaining” is defined as “bargaining over terms and conditions of employment, including hours, wages, and other conditions of employment, as detailed in Section 7 and which are not excluded by Section 4.” 5 ILCS 315/3. The preparation and distribution of the flyers in question is not collective bargaining.

The Commission therefore concludes that respondent violated 5 ILCS 430/5-15(a) on September 8 and 11, 2014 when she intentionally performed “prohibited political activity” during compensated time, by distributing political flyers to other State employees. Respondent also violated 5 ILCS 430/5-15(a) when on September 8 and 11, 2014, she misappropriated State property or resources by engaging in “prohibited political activity.”

Consequently, the Commission may levy an administrative fine of up to \$5,000 against respondent for her violation of the Ethics Act. 5 ILCS 430/50-5(a). Neither party has specifically addressed what amount of fine is appropriate. The Ethics Act does not provide any guidance for the Commission to consider when levying a fine. The Commission, however, has adopted rules, found at 2 ILL. ADMIN. CODE 1620.530(b), which outline fourteen aggravating and mitigating factors the Commission may consider in assessing an appropriate fine. In relevant part, these factors include: the nature of the violation, the scope of the violation, the extent of the use of resources, money, time to the State, and the extent of the respondent’s intent or knowledge of the facts surrounding the

violation. 2 ILL. ADMIN. CODE 1620.530(b)(1), (2), (4), and (5). In addition, it is noted that respondent was disciplined by the ISP as a result of her conduct being in violation of work rules and received a four-day suspension without pay.

WHEREFORE, for the foregoing reasons, petitioner's motion for summary judgment is granted and respondent's motion for summary judgment is denied. The Commission levies an administrative fine of \$1000.00 against respondent, Shirley J. Slusser, for violation of 5 ILCS 430/5-15(a). This is a final administrative decision subject to the Administrative Review Law.

ENTERED: March 27, 2017