



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

March 15, 2011

The Honorable Ronald Sandack
State Senator, 21st District
105E Capitol Building
Springfield, Illinois 62706

Dear Senator Sandack:

I have your letter inquiring, on behalf of the Village of Downers Grove (Village), whether the Village's employees may tape and broadcast on the Village's public access channel: (1) a candidates' forum organized by the League of Women Voters; and (2) candidates' spots (short segments in which candidates speak on issues of interest to them), without violating the State Officials and Employees Ethics Act (the Ethics Act) (5 ILCS 430/1-1 *et seq.* (West 2008)) and Downers Grove's ethics ordinance. Because of the nature of your inquiry, I do not believe that the issuance of an official opinion of the Attorney General is appropriate. I will, however, comment informally on the questions you have raised.

BACKGROUND

Your letter indicates that the Village operates its own public access channel (DGTV 6). "Village employees operate DGTV 6 and are charged with taping and broadcasting all programming that is aired [on the channel]. Village equipment is used for taping and Village employees are compensated [by the Village] for time spent taping programs to be aired on DGTV 6." The League of Women Voters (the League) is organizing a candidates' forum. The forum consists of questions posed to all candidates participating in the forum and allows for the candidate's response to the posed questions. Your letter suggests that the League would like the Village's employees to tape and later broadcast on DGTV 6 the candidates' forum. Village employees would receive their regular compensation when engaged in such activities.

ANALYSIS

The Ethics Act regulates ethical conduct, political activities, and the making and acceptance of gifts by specified State officers and employees. Although the provisions of the Ethics Act do not apply directly to officers and employees of units of local government, section

70-5 of the Ethics Act (5 ILCS 430/70-5 (West 2008)) requires all "governmental entities," a term defined to include units of local government (5 ILCS 430/1-5 (West 2009 Supp.), as amended by Public Act 96-1533, effective March 4, 2011), such as villages (Ill. Const. 1970, art. VII, §1), to adopt comparable ethics ordinances or resolutions. The ordinances or resolutions of governmental entities, among other things, are to regulate, "in a manner no less restrictive than Section 5-15 and Article 10 of" the Ethics Act, "the political activities of officers and employees of the governmental entity[.]" 5 ILCS 430/70-5 (West 2008). You have not provided us with a copy of the Village of Downers Grove's ethics ordinance. Therefore, our comments are limited to the provisions of the Ethics Act.

Section 1-5 of the Ethics Act (5 ILCS 430/1-5 (West 2009 Supp.), as amended by Public Act 96-1533, effective March 4, 2011) sets out those political activities that are prohibited under the Act and provides, in pertinent part:

"Prohibited political activity" means:

(1) Preparing for, organizing, or participating in any political meeting, political rally, political demonstration, or other political event.

* * *

(12) Campaigning for any elective office or for or against any referendum question.

As used in the Ethics Act, the term "political" refers to:

any activity in support of or in connection with any campaign for elective office or any political organization, 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 or governmental and public service functions. (Emphasis added.) 5 ILCS 430/1-5 (West 2009 Supp.), as amended by Public Act 96-1533, effective March 4, 2011.

In informal opinion No. I-07-043, issued August 2, 2007, we were asked the analogous question of whether, under the Ethics Act and the Model Ethics Ordinance (the Ordinance) prepared by the Attorney General's office as required by section 70-5 of the Ethics Act, a governmental entity is prohibited from allowing the use of its property or facilities for political functions. We reviewed the definitions of "political activity" and "prohibited political activities" and then concluded:

The Ethics Act and the Ordinance do regulate political activities of public officers and employees occurring on property under control of the governmental entity that the public officer or employee serves. *Assuming, however, that a governmental entity has the authority to permit its property to be used for political functions^[1] and applies content-neutral policies that do not favor one candidate or political organization over another, the Ordinance was not intended to prohibit a public officer or employee from merely facilitating the use of such public property for a political function, as long as the officer or employee does not otherwise prepare for, organize, or actively participate in the political event.* If, however, a public officer or employee, while on compensated time or on public property, engages in organizing a prohibited political activity or otherwise actively participates in a political activity, for example, by giving an introduction or endorsement of a candidate, then the officer's or employee's conduct would violate the Ordinance. (Emphasis added.) Ill. Att'y Gen. Inf. Op. No. I-07-043 at 4.

Based on the foregoing, Village employees who are simply performing the technical aspects of taping television content and then broadcasting that content are not engaged in prohibited political activity, as long as the Village is following content-neutral policies that do not favor one candidate or organization over another and the employees are not providing introductions of the candidates, asking the candidates questions, or endorsing particular candidates or parties as part of the taping process. In this regard, I would note that this office has informally taken the position that hosting candidates' forums and similar public service activities is not a "prohibited political activity."

¹See Ill. Const. 1970, art. VII, §§7, 8 (counties and municipalities which are not home rule units, townships, school districts, special districts, and units designated by law as units of local government have only those powers granted to them by law).

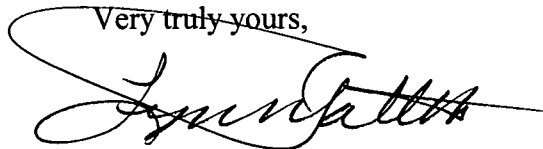
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CONCLUSION

Village employees who tape and broadcast, on the village's own public access channel, candidates' forums and candidates' spots do not violate the State Officials and Employees Ethics Act, as long as the village follows content-neutral policies in allowing access to its public access channel and television facilities and the employee is not providing introductions of the candidates, asking questions of the candidates, or endorsing particular candidates or parties as part of the taping and broadcasting process. Thus, when taping and broadcasting television content in the foregoing circumstances, a village employee would simply be acting "in furtherance of the person's official * * * duties or governmental and public service functions" as contemplated by section 1-5 of the Ethics Act and would not be engaging in a "political" activity.

This is not an official opinion of the Attorney General. If we may be of further assistance, please advise.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Lynn E. Patton", written over a horizontal line.

LYNN E. PATTON
Senior Assistant Attorney General
Chief, Opinions Bureau

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