

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.

CAROLYN BROWN HODGE,
Respondent.

No. 11-EEC-008

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 verified complaint with the Commission and respondent was served on January 31, 2011. Respondent's attorney entered his appearance on February 15, 2011.

Respondent filed no answer to the complaint and the Commission determined that the complaint was sufficient to proceed on March 28, 2011. The parties entered into a stipulation of facts, which formed the basis for petitioner's motion for summary judgment, both of which were filed on May 13, 2011. In accordance with a scheduling agreement, respondent filed a response to the motion for summary judgment on June 8, 2011.

Petitioner is represented by Assistant Attorney General Joanna Belle Gunderson. 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 Carolyn Brown Hodge served as Deputy Chief of Staff for the Office of the Illinois Governor at all times relevant to this matter. She resigned effective October 30, 2009.
2. At all times relevant to this matter, Governor Pat Quinn was engaged in a campaign for the Office of the Illinois Governor. He maintained a separate office and staff for this campaign.

3. Respondent used her State-issued computer to receive and send email messages from her State email account, but also used her State-issued computer to access email messages from her private email account. On multiple occasions, respondent used her State-issued computer to send emails of a political nature, either from her State email account or from her private email account.
4. In January 2009, respondent sent three emails from her State email account to assist an Illinois Democratic County Chairmen's Association official contact the campaign's political director. These emails were sent during respondent's work time.
5. In June 2009, respondent sent and received from her personal email account a total of eight email messages concerning Governor Quinn's availability to attend a meeting of the Democratic County Chairs. These messages were to and from an official of the Illinois Democratic County Chairmen's Association and the campaign's political director and were sent during respondent's work time.
6. Also in June 2009, respondent sent two email messages from her personal email account to the campaign's political director concerning a request for campaign signs for a parade. These emails were sent during respondent's work time.
7. In July 2009, respondent sent two email messages from her personal email account to the campaign's political director concerning campaign events and the two State Fairs. These emails were sent during respondent's work time.
8. 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). Respondent has waived any evidentiary hearing on the appropriateness of a fine.

CONCLUSIONS OF LAW

1. Respondent Carolyn Brown Hodge 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. Respondent Carolyn Brown Hodge 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 in January 2009, respondent sent three emails from her State email account to assist an Illinois Democratic County Chairmen's Association official contact the campaign's political director. These emails were sent during respondent's work time.
6. Respondent Carolyn Brown Hodge 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 in June 2009, she sent and received from her personal email account a total of eight email messages concerning Governor Quinn's availability to attend a meeting of the Democratic County Chairs. These messages were to and from an official of the Illinois Democratic County Chairmen's Association and the campaign's political director.
7. Respondent Carolyn Brown Hodge 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 in June 2009, she sent two email messages from her personal email account to the campaign's political director concerning a request for campaign signs for a parade.
8. Respondent Carolyn Brown Hodge 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 in July 2009, respondent sent two email messages from her personal email account to the campaign's political director concerning campaign events and the two State Fairs.
9. Respondent Carolyn Brown Hodge intentionally performed the prohibited political activity described in paragraphs 5-8, above, during State-compensated time in violation of 5 ILCS 430/5-15(a).
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. There is no genuine issue of material fact that respondent engaged in prohibited political activity during State-compensated time.
12. Petitioner is entitled to summary judgment as a matter of law.
13. Respondent has violated Section 5-15(a) of the State Officials and Employees Ethics Act. 5 ILCS 430/5-15(a).
14. Respondent cooperated in the investigation.

15. The verified complaint was timely filed.

16. 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 “in the range of \$3,000-\$4,000” and respondent suggests a fine of \$750.00.

As a result of the activity described in this decision, respondent resigned her position, which paid \$110,000 at the time of her resignation. 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.

Brown Hodge 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, Brown Hodge notes that she resided in Paris, Illinois during the time relevant to this complaint and lived in a motel in Springfield during the week. She worked long hours and accessed her personal emails from her State-issued computer. She received hundreds of work-related emails each day.

In response to each of the allegations of wrongdoing, respondent acknowledges acting improperly by following up on emails she forwarded to the campaign office. By way of mitigation, petitioner seized her computer and though having access to all of her email correspondence, has pursued only these four incidents of political activity. Also, the activity in question is limited to relatively short email exchanges.

Respondent's political activity is minor in nature compared to *Erwin* (11-EEC-005), where Erwin used State resources to seek information about political fundraisers, used her State telephone to call political donors, and co-opted State employees to deliver political contributions and make travel arrangements for her to attend political functions.

Respondent appears to be genuinely remorseful, to have owned up to her actions and to have cooperated in the investigation.

By way of aggravation is the fact that respondent was a high-level State employee. She is knowledgeable and sophisticated in the ways of State government. In recent years, she was required to take annual ethics training that covered issues related to prohibited political activity.

WHEREFORE, for the foregoing reasons, petitioner's motion for summary judgment is granted. The Commission levies an administrative fine of \$1000.00 against Respondent Carolyn Brown Hodge 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.