

IN THE EXECUTIVE ETHICS COMMISSION
OF THE STATE OF ILLINOIS

JAMES A. WRIGHT, in his capacity as)	
EXECUTIVE INSPECTOR GENERAL for)	
AGENCIES OF THE GOVERNOR, State)	
Of Illinois,)	
Petitioner,)	
v.)	No. 09-EEC-011
MARY THOMAS,)	
Respondent.)	

DECISION

This cause is before the Executive Ethics Commission ("Commission") following an evidentiary hearing. This decision will also serve as the Commission's final administrative decision in this matter.

Petitioner filed a petition for leave to file complaint ("petition") and verified complaint with the Commission on April 28, 2009. After the Commission sought additional information in a June 17, 2009 order, Petitioner filed an amended complaint on August 10, 2009. Respondent filed no objections to the original petition or the amended complaint. On September 23, 2009, the Commission determined that the amended complaint was sufficient to proceed.

An evidentiary hearing was conducted on November 19, 2009 at which petitioner was represented by Assistant Attorney General Matthew Thomas Klein. Respondent was represented by Ralph Lowenstein.

FINDINGS OF FACT

A complete copy of the record of proceedings has been reviewed by all members of the Executive Ethics Commission. Based upon this record, the Commission makes the following findings of fact:

1. Respondent Mary Thomas has been employed by the Illinois Department of Children and Family Services for over thirty years.
2. On October 28, 2008, Respondent forwarded an email from her State computer during State work time to 17 recipients. Eight of the recipients were State employees she supervised. A redacted copy of the email is attached as Appendix "A" of this decision.
3. Respondent did not compose or edit this email, but instead, received it from another person. She does not recall who sent it to her.

4. Respondent entered each recipient's email address individually into the "To:" line before sending it.
5. The author of the email wrote in the opening paragraph: "After watching the final debate the other night, it dawned on me that Obama could actually win this thing." He or she concludes the email with: "Now go get your early vote on and let's make this thing happen."
6. The body of the email lists 13 suggestions for how people should behave the day following the election if Barack Obama is elected President of the United States. These suggestions are apparently intended to be humorous, though they rely heavily on racial and ethnic stereotypes.
7. Respondent claims to have read only the first few lines of the email before forwarding it to the recipients. She did not discuss the email with those to whom she forwarded it.
8. Respondent has no history of being politically active. She did no work for the Presidential campaign, and did not distribute literature, attend political rallies or have political signs placed in her yard. She did not solicit votes or contributions for any candidate.
9. This matter was the subject of a previous investigation by the DCFS Inspector General. Respondent received an oral reprimand for the inappropriate use of the State email system and intends to comply with departmental directives not to forward non work-related emails.

CONCLUSIONS OF LAW

1. Respondent Mary Thomas 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 performance of prohibited political activity during compensated time and 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, "(7) Soliciting votes on behalf of a candidate for elective office..." 5 ILCS 430/1-5.
4. "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.

5. "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.
6. On October 28, 2008, respondent Mary Thomas intentionally misappropriated State property or resources during compensated time to forward an email that solicited votes for Barack Obama, then a candidate for President of the United States.
7. On October 28, 2008, respondent Mary Thomas intentionally misappropriated State property or resources during compensated time to forward an email that constituted a campaign for elective office, in that it was an activity in furtherance of an effort to influence the election of Barack Obama to public office.
8. Respondent has violated Section 5-15(a) of the State Officials and Employees Ethics Act. 5 ILCS 430/5-15(a).
9. 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

On October 28, 2008, Mary Thomas, during compensated time and using a State computer, forwarded an email to 17 individuals, including eight whom she supervised. The email was in poor taste and violated departmental directives. The question before the Commission is whether the email violated the ban on engaging in prohibited political activities during compensated time or by misappropriating State property or resources.

The definition of "prohibited political activities" includes a very 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. Ms. Thomas's email, sent the week before the presidential election, was clearly partisan in nature. It was written to create excitement among Obama supporters and specifically encouraged the readers to vote for Obama.

The fact that the message of the email was masked in supposedly humorous language cannot remove it from the definition of prohibited political activities. Humor can be used to promote political messages effectively. Also, people can disagree about whether a particular message is humorous, which would extend the proposed "humorous exception" to nearly any political message.

Ms. Thomas further argues that she did not read the entire email before she forwarded it. The Commission does not find this argument credible. The email is not very long and Ms. Thomas testified that she found it funny—funny enough to email to 17 people. Furthermore, she entered the addresses of all 17 recipients individually, and not as a single email recipient group, suggesting that it was worth spending some of her time to forward it to so many people.

The violation, however, is quite small in nature. There is no evidence that Mary Thomas benefited personally from the violation or that she engaged in any other political activity, prohibited, or even permitted by the Ethics Act. This has already been the subject of a DCFS Inspector General investigation and Ms. Thomas admits that it was a violation of departmental directives to send non-work related materials on a State computer. For this violation, she received an oral reprimand.

WHEREFORE, for the foregoing reasons, the Commission finds that respondent Mary Thomas 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 \$100.00 is levied against respondent Mary Thomas in accordance with her 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: January 20, 2010