

IN THE EXECUTIVE ETHICS COMMISSION  
OF THE STATE OF ILLINOIS

JAMES A. WRIGHT, in his capacity as )  
EXECUTIVE INSPECTOR GENERAL, )  
Petitioner, )  
VS. )  
SHEILA NIX, ABIGAIL OTTENHOFF, )  
and REBECCA RAUSCH, )  
Respondents. )

No. 09 EEC 001

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EXECUTIVE  
ETHICS COMMISSION

DECISION

This cause is before the Illinois Executive Ethics Commission following an evidentiary hearing for purposes of issuing a final administrative decision. The members of the Commission have read the record.

PROCEDURAL HISTORY

On July 21, 2008, petitioner filed a petition for leave to file complaint ("petition") and verified complaint ("complaint") in this matter. The complaint alleges that respondents violated the State Officials and Employees Ethics Act ("Act") by purportedly engaging in "prohibited political activities" as a result of their roles in the preparation of a statement from Governor Rod Blagojevich, issued February 10, 2007, the same day Senator Barack Obama announced his bid for the presidency of the United States.

On September 19, 2008, respondents filed joint objections to the petition. Respondents argued that the press statement was a call for legislation and therefore not prohibited political activity. Further, respondents argued that the press statement did not fall within the definition of any of the fifteen enumerated prohibited political activities under the Act. Finally, respondents argued that their actions in creation of the Governor's February 10, 2007 statement are exempt from the Act's prohibitions under 5-15(e) because the statement underlying the complaint falls squarely within the respondents' official state duties and functions to communicate his legislative agenda to the General Assembly and to the public.

On November 12, 2008, the Commission, over respondents' joint objections, granted the petitioner leave to file the complaint. In its November 12, 2008 order, the Commission held that "[t]he parties will be given an opportunity to demonstrate at hearing whether the press release constitutes campaigning for an elective office as that is defined in the Act." The order further explained that "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...". (citing 5 ILCS 430/1-5).

The Commission noted that Section 5-15(e) exempts “activities that are otherwise appropriate for a State employee to engage in as a part of his or her official State employment duties...” (citing 5 ILCS 430/5-15(e)). Further, the Commission stated that the definition of “political” contained in the Ethics Act specifically excludes activities “that are otherwise in furtherance of the person's official State duties or governmental and public service functions.” (citing 5 ILCS 430/1-5). Finally, the Commission recognized that the definition of “campaign for elective office” “excludes activities relating to the support or opposition of executive, legislative and administrative action, collective bargaining or activities otherwise in furtherance of the person's official State duties.” (Nov. 12, 2008 Order.) Therefore, the Commission held that “[t]he parties will be given the chance to demonstrate that the language contained in the press release is or is not within the respondents' official State duties or governmental or public service function.”

On January 23, 2009, respondents filed a motion for leave to conduct formal discovery, seeking documents from House Speaker Michael Madigan, who sponsored the legislation that is the subject of the Governor's statement at issue in this matter, and from six other legislators who commented to the media on the legislation. On March 5, 2009 the administrative law judge denied respondents' motion for leave to conduct formal discovery from any legislators. The ALJ did grant the respondents' motion to conduct discovery from the Governor's Office, and respondents obtained documents in response to their subpoena, which respondents also provided to petitioner and as counsel, the Attorney General's Office. The documents provided by the Governor's Office included various emails to and from respondents and various drafts of the statement.

During a telephonic status conference on June 24, 2009, respondents discovered that this action was initiated as the result of an April 24, 2007 letter from Mr. Chad Fornoff, the Executive Director of the Executive Ethics Commission, to James A. Wright, the Executive Inspector General. The letter referred Bernard Schoenberg's column in the February 15, 2007 *State-Journal Register* to the Office of the Executive Inspector General. Respondents learned that the full Commission read the column and directed Mr. Fornoff to refer the matter to the Office of Executive Inspector General. Mr. Fornoff also drafted the legal analysis giving rise to the Commission's November 12, 2008 Order that allowed this matter to proceed over respondents' joint objections. Once the case proceeded on the complaint, the Commission decided to appoint Edward J. Schoenbaum to serve as the administrative law judge.

As a result of aforementioned information that respondents' learned on June 24, 2009, respondents filed an emergency motion to vacate the July 15, 2009 hearing date and to conduct discovery on the potential conflict of interest issue. In their motion, respondents expressed concern that Mr. Fornoff's referral to the Inspector General's Office and subsequent role in drafting the Commission's November 12, 2008 order may have tainted the Commission's decision to allow the matter to proceed. Respondents also expressed concern that the very Commission that referred the respondents to the Office of the Executive Inspector General would also sit in judgment of them. On July 8, 2009, the administrative law judge denied respondents' emergency motion to vacate the hearing date and to conduct discovery on the conflict issue.



This case was heard before Administrative Law Judge Schoenbaum on July 15, 2009. Respondents were represented by Matthew S. Ryan and Theodore Poulos of Cotsirilos, Tighe & Streicker. Petitioner was represented by Thomas Klein of the Attorney General's Office.

#### FINDINGS OF FACTS

1. Rebecca Rausch was employed by the Office of the Illinois Governor from January 2005 through June 2008.
2. Rebecca Rausch's first position with the Office of the Illinois Governor was Springfield Press Secretary. In that position, her duties included "being the original author or revising news release statements from the Governor."
3. Sometime in 2007, Rebecca Rausch became Deputy Director of Communications. Her job duties did not change significantly with this change in title, except that she had more direct contact with higher level agency staff.
4. Abigail Ottenhoff worked for the Office of the Illinois Governor from February 2003 through July 2008.
5. In February 2007, Abigail Ottenhoff was the Director of Communications for the Office of the Illinois Governor.
6. As part of her duties as Director of Communications, Abigail Ottenhoff reviewed and edited press releases and statements from the Governor and directed people under her supervision to prepare such press releases and statements.
7. Abigail Ottenhoff was Rebecca Rausch's immediate supervisor in February 2007.
8. Sheila Nix worked for the Office of the Illinois Governor as Deputy Governor from December 2006 through May 2008.
9. As part of her duties as Deputy Governor, Sheila Nix would review press releases from time to time and would generally review press releases that were issued as statements from the Governor.
10. On February 7 or 8, 2007, Abigail Ottenhoff instructed Rebecca Rausch to prepare a press release in recognition of the announcement of Barack Obama's presidential candidacy in Springfield, Illinois, on February 10, 2007.
11. Abigail Ottenhoff and Rebecca Rausch discussed the possibility of talking to the Office of the Illinois Governor's legal department about this press release.

12. Rebecca Rausch felt that the drafting of the press release was "kind of a gray area."
13. Despite her concerns about issuing the press release, Rebecca Rausch never checked with the legal department or the Ethics Officer.
14. Based on her conversation with Abigail Ottenhoff, Rebecca Rausch assumed someone would discuss the press release with the legal department, but never followed up to see if anyone had spoken to the legal department concerning it.
15. Despite her concerns about the press release, Rebecca Rausch never discussed the press release with the Ethics Officer of the Office of the Illinois Governor.
16. Abigail Ottenhoff never discussed the press release with the legal department and does not know if the press release was ever reviewed by anyone in the legal department.
17. Rebecca Rausch wrote the initial draft of the press release introduced at the hearing as petitioner's exhibit 2.
18. On February 8, 2007, at 9:53 a.m., Rebecca Rausch e-mailed from her State e-mail account a draft "Statement from Governor Rod R. Blagojevich" to Becky Carroll, then Director of Communications for the Governor's Office of Management and Budget.
19. This draft statement says, on behalf of Governor Blagojevich, that Barack Obama "has my complete support" in "his journey to take [his] priorities to the White House." It contains no mention of a call for the passage of legislation.
20. Rebecca Rausch authored the draft language contained in respondents' exhibit 21.
21. At 2:53 p.m. on February 8, 2007, Rebecca Rausch sent an e-mail from her State email account to Abigail Ottenhoff. Attached to this e-mail was another draft of the press release. This draft states in part, again on behalf of Governor Blagojevich, that "we need someone in the White House with these values who puts the needs of working families first. Senator Obama is that person and I am proud to give him my support as he begins this great journey." This draft contains no mention of a call for legislative action.
22. Respondents' exhibit 18 reflects revisions to the initial draft made by Becky Carroll.
23. Abigail Ottenhoff believed that the draft contained in respondents' exhibit 18 was on the right track of what she was looking for, but that it needed some revision.

24. At 4:00 p.m. on February 8, 2007, Abigail Ottenhoff sent an e-mail from her State email account to Rebecca Rausch. This e-mail contained Abigail Ottenhoff's revisions to the draft Rebecca Rausch sent her. This revised draft concluded with "We need someone in the White House with these values who puts the needs of working families first. Senator Obama is that person and I am proud to give him my support."
25. Neither Rebecca Rausch nor Abigail Ottenhoff ever talked to or consulted Governor Rod Blagojevich regarding the press release.
26. After 4:00 p.m. on February 8, 2007, Abigail Ottenhoff never saw another draft of the press release before it was issued on February 10, 2007.
27. At 4:06 p.m. on February 8, 2007, Rebecca Rausch sent an e-mail from her State email account to Sheila Nix and Abigail Ottenhoff. Attached to this e-mail was a draft of the press release which reflected Abigail Ottenhoff's revisions.
28. Sheila Nix reviewed this draft and made revisions to it.
29. Sheila Nix never discussed the press release with Governor Rod Blagojevich.
30. Sometime after 5:25 p.m. on February 9, 2007, Rebecca Rausch received Sheila Nix's revisions to the press release either orally or in an e-mail.
31. Sometime prior to 9:00 a.m. on February 10, 2007, Sheila Nix directed Rebecca Rausch to issue the press release.
32. At 9:00 a.m. on February 10, 2007, Grant Olan, Secretary to the Springfield Press Assistant in the Illinois Governor's Office, released the final version of the press release to various media outlets from his State e-mail account. Grant Olan is supervised directly by Rebecca Rausch.
33. The differences between the draft sent by Rebecca Rausch to Sheila Nix at 4:06 p.m. and the final version of the press release reflect the revisions of Sheila Nix.
34. Sheila Nix revised the press release to state "Senator Obama offers real hope for the American people and I am proud to give him my support."
35. Sheila Nix added the phrase "Senator Obama supports the very best of these Democratic values" to the press release.
36. The final version of the press release read as follows:



On this historic day, I am pleased to join many Illinoisans who are excited and proud to support Senator Obama in his bid for the presidency. I know that Senator Obama will fight to make sure that working families have access to health care, good paying jobs, and opportunities to provide for their children. Senator Obama supports the very best of these Democratic values; they are values that he and I share, values I know he will fight for.

Senator Obama has the vision, skills and dedication necessary to bring people together and make real progress in Washington to help solve our country's greatest and most pressing problems. Senator Obama offers real hope for the American people and I am proud to give him my support.

I want to take this opportunity on this historic day to urge the Legislature to immediately send me a bill to move our state's primary from March 18, 2008 to February 5, 2008. That will give Illinois voters an opportunity to send an early message in support of Senator Obama and send him to victory.

37. All of the work that Rebecca Rausch did in preparing and revising the press release occurred in a State office building using a State computer.
38. In her timesheet, Rebecca Rausch reported that she spent the time from 7:30 a.m. until 12:00 p.m. and from 12:30 p.m. until 7:00 p.m. on February 8, 2007, working on State business.
39. All of the work Abigail Ottenhoff did in reviewing and revising the press release occurred in her State office using her State computer during time that was reported as working on State business.
40. Sheila Nix either typed her revisions to the press release on her State computer in her State office or dictated her revisions while in her State office.

#### CONCLUSIONS OF LAW

All of the respondents were:

1. At all times relevant to this matter State employees, as "employee" is defined in the State Officials and Employees Ethics Act. 5 ILCS 430/1-5.
2. The Executive Ethics Commission has jurisdiction over respondents in the matter of their alleged prohibited political activities. 5 ILCS 430/5-15(a).
3. Section 5-15(a) of the Act provides "State employees shall not intentionally perform any prohibited political activities during any compensated time (other than vacation, personal or compensatory time off). 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.” 5 ILCS 430/5-15(a).

4. Prohibited political activity includes “campaigning for any elective office or for or against any referendum question.” 5 ILCS 430/1-5. “Campaign for elective office” means 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. On February 8, 2007 Rebecca Rausch intentionally performed prohibited political activity during compensated time when she prepared the first draft of the press release and sent it to Becky Carroll and to Abigail Ottenhoff.
6. On February 8, and 9, 2007 Rebecca Rausch intentionally misappropriated State property or resources by engaging in prohibited political activity for the benefit of any campaign for elective office when she used a State computer, and telephone lines to e-mail drafts of the press release for Senator Obama’s campaign for president.
7. On February 8, 2007 Abigail Ottenhoff intentionally performed prohibited political activity during compensated time when she edited the third draft of the press release.
8. On February 8, 2007, Abigail Ottenhoff intentionally misappropriated State property or resources by engaging in prohibited political activity for the benefit of any campaign for elective office when she used a State computer, and telephone lines to e-mail drafts of the press release for Senator Obama’s campaign for president.
9. On February 9, and 10, 2007 Sheila Nix intentionally performed prohibited political activity and used state equipment and employees to edit the final draft of the press release and to direct a state employee to issue it.
8. In February of 2007, the three respondents violated Section 5-15(a) of the State Officials and Employees Ethics Act. 5 ILCS 430/5-15(a).
9. None of the exceptions provided for in the Act apply to the present matter.
10. Respondents have violated Section 5-15 of the State Officials and Employees Ethics Act. 5 ILCS 430/5-15(a).
11. 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

In all proceedings before the Commission, the standard of proof is by a preponderance of evidence. 5 ILCS 430/20-50(k). Applying this standard to the evidence in this case, it is clear that the preparation, review, editing, and issuance of the press release was done using state equipment and resources, in government facilities, and except for Sheila Nix, during regular working hours.

### ANALYSIS

I. Each of the respondents played a role in creating a press release in support of the campaign of Barack Obama for president of the United States on State time, on State property, and using State equipment.

The press release, as issued, announced that Illinois Governor Rod R. Blagojevich was "pleased to join many Illinoisans who are excited and proud to support Senator Obama in his bid for the presidency." Also written in the press release was that Governor Blagojevich was "proud to give [Barack Obama] my support." None of the three respondents discussed the press release with Governor Rod Blagojevich.

In creating this press release, respondents campaigned on behalf of Barack Obama and, therefore, engaged in prohibited political activity as defined by the Ethics Act. 5 ILCS 430/1-5 ("Prohibited political activity means . . . (1) preparing for, organizing, or participating in any political meeting, political rally, demonstration or other political event . . ., (7) soliciting votes on behalf of a candidate for elective office . . ., (12) campaigning for elective office"). As defined by §1-5 of the State Officials and Employees Ethics Act (5 ILCS 430/1-5), "campaign for elective office" means "any activity in furtherance of an effort to influence the selection, nomination, election . . . of [an] individual to any federal . . . public office...."

It is undisputed that Rebecca Rausch created the initial draft of the press release using State equipment in a State building during time she reported that she was working on State business. The initial draft Rebecca Rausch created, introduced at the hearing as respondents' exhibit 8, is clearly supportive of Barack Obama's candidacy for president. Written as a statement from Governor Blagojevich, the initial draft states "as Senator Obama begins his journey to take these priorities to the White House, he has my complete support."

It is also undisputed that Abigail Ottenhoff directed Rebecca Rausch to draft the press release and that Abigail Ottenhoff reviewed and revised the second draft of the press release on State equipment in her State office during time she reported she was working on State business. The press release as revised by Abigail Ottenhoff, as reflected in respondents' exhibit 19, is clearly in furtherance of Barack Obama's presidential campaign. Again, written as a statement from Governor Blagojevich, Abigail Ottenhoff's draft states "We need someone in the White House with these values who puts the needs of working families first. Senator Obama is that person and I am proud to give him my support."



It is further undisputed that Sheila Nix directed a State employee under her supervision to issue the press release. It is also undisputed that she either typed in revisions to the press release on her State computer in her State office or she dictated the changes to someone while in her State office, Sheila Nix does not remember which. Sheila Nix's revision became the version that was issued. As reflected in petitioner's exhibit 24, this version is even more supportive of Barack Obama's candidacy than the previous versions. Once again written as a statement from Governor Blagojevich, the press release begins by saying "On this historic day, I am pleased to join many Illinoisans who are excited and proud to support Senator Obama in his bid for the Presidency." Later, the press release states "Senator Obama offers real hope for the American people and I am proud to give him my support."

All of the drafts of the press release constitute prohibited political activity. As evidenced by their very language, as detailed above, all of the drafts are in furtherance of and for the benefit of Barack Obama's presidential campaign. Each of the various drafts states support for Barack Obama's candidacy and gives reasons why Barack Obama should be president. This is precisely the type of statement that the Ethics Act prohibits State employees from preparing using State time or resources. By preparing this press release on State time using State resources, the respondents violated 5 ILCS 430/5-15(a), which states in relevant part "State employees shall not intentionally perform any prohibited political activity during compensated time. . . 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. . ." Further, by directing a State employee under her supervision to issue the press release, Sheila Nix violated 5 ILCS 430/5-15(b), which states in relevant part that "[at no time shall any. . . State employee intentionally misappropriate the services of any State employee by requiring that State employee to perform any prohibited political activity. . . as part of that employee's state duties. . ." As such, the Respondents are subject to a fine of up to \$5000 per violation of the Ethics Act pursuant to 5 ILCS 430/50-5.

The respondents argued that their press release support did not meet the technical definition of the term "endorsement" because it did not involve a promise to make resources available. This argument is not relevant to the issues in this case. Whether or not the press release is a formal "endorsement" as that term is used in the political world, it is a statement of support made for the benefit of and in furtherance of Barack Obama's political campaign and as such constitutes prohibited political activity as that term is defined by the Ethics Act.

II. The number of hours the respondents worked during the week in question is not relevant to the issues in this case.

Each of the respondents testified that, even subtracting the amount of time they spent working on the press release at issue in this case, they worked more than the required 37.5 hours for the week. Even if true, this fact is not relevant to this case. The Ethics Act prohibits State employees from performing prohibited political activity during compensated time. 5 ILCS 430/5-15(a). Compensated time is defined as "any time worked by or credited to a State employee that counts

toward any minimum work time requirement imposed as a condition of employment with a State agency." 5 ILCS 430/1-5.

As professionals, the respondents were salaried and did not receive overtime for working more than 37.5 hours per week. The time that Abigail Ottenhoff and Rebecca Rausch spent drafting and revising the press release was reported as having been spent on State business and counted towards their required minimum of work for the week. Their work was done during the regular working hours. Therefore, they performed the prohibited political activity during compensated time. Furthermore, all three respondents used State equipment and their State office to prepare the press release, which is a violation of the Ethics Act, whether or not done during compensated time. 5 ILCS 430/5-15(a).

III. The language of each version of the press release clearly demonstrates that the press release was meant to support the candidacy of Barack Obama and not merely his policies or priorities.

The respondents claim that the press release does not support the candidacy of Barack Obama but merely his policies and/or priorities. A plain reading of the press release, and all its drafts, shows that the press release goes beyond merely supporting Barack Obama's policies. Indeed, each draft of the press release includes a clear statement of support for the candidacy, not merely the policies, of Barack Obama.

Each draft of the press release does include a mention of Barack Obama's priorities or policies. However, none of the drafts merely state that Barack Obama and Governor Blagojevich share the same priorities or policy positions. The initial draft, prepared by Rebecca Rausch at the direction of Abigail Ottenhoff, announces Governor Blagojevich's "complete support" of Barack Obama. Likewise, the draft as revised by Abigail Ottenhoff announces that Governor Blagojevich is "proud to give [Obama] my support." The final version, reflecting the revisions of Sheila Nix, states that Governor Blagojevich is "excited and proud to support Senator Obama in his bid for the Presidency" and "proud to give him my support." There is no way to read any of the drafts of the press release as anything other than a statement that Governor Blagojevich supports Barack Obama in his campaign for the presidency. The fact that Barack Obama's policies and/or priorities are mentioned as the reason Governor Blagojevich supports Barack Obama does not remove the press release from the purview of the Ethics Act.

The prohibition of political activity would mean nothing if a State employee could use State time and equipment to support a political candidate as long as he or she made clear that the support was based on the candidate's priorities or policies. Indeed, a fundamental aspect of campaigning is to attempt to convince the electorate that they should support the candidate because of his or her policies or priorities. This is precisely what every draft of the press release attempts to do. A plain reading of each draft of the press release shows that it is to the benefit of and in furtherance of the candidacy of Barack Obama. As such, it constitutes prohibited political activity. And remains so even if, as all three testified, Governor Blagojevich did not like it that Barack Obama had passed him in his own quest to become president.



IV. The call for legislative action in the last two sentences does not change the fact that drafting this press release constitutes political activity.

Respondents contend that because the last two sentences of the press release call upon the General Assembly to pass a bill to advance the date of the Illinois primary to increase the chances of victory for Barack Obama, their conduct does not fall within the restrictions of the Ethics Act. In so arguing, respondents expect the Commission to ignore the first two paragraphs of the press release, as well as all its previous drafts, which mention nothing about legislative activity. The reference to legislation appears only in the final draft of the press release. Even in the final version, the first two paragraphs indicate the support of Governor Blagojevich for the Obama campaign and give reasons why the Governor believes Senator Obama would make a good president. Read as a whole, the press release is clearly a show of support for the presidential campaign of Barack Obama with a call for legislative action mentioned only in the final version near the end of the statement.

The argument of the respondents runs afoul to the purposes of the Ethics Act. The interpretation of the Ethics Act that respondents propose could allow government officials to use their State staffs, offices, and equipment to campaign for office as long as they included a request for some legislative action in each piece of campaign literature disseminated. Respondents have identified nothing in the legislative history of the Ethics Act to imply the legislature intended such a result.

It is also worth noting that Rebecca Rausch and Abigail Ottenhoff never included any reference to legislation in their drafts. Sheila Nix added this reference in the final revision of the press release without discussing it with either Rebecca Rausch or Abigail Ottenhoff. In fact, Abigail Ottenhoff never even saw a draft of the press release that contained a reference to legislation prior to the issuance of the press release. Even if a State employee could circumvent the prohibition of political activity by adding a call for legislation, neither Rebecca Rausch nor Abigail Ottenhoff could take advantage of this loophole.

V. The respondents intentionally performed prohibited political activity.

Respondents argue that they lack the requisite intent for a violation of the Ethics Act because they did not "know that in drafting and issuing the Statement they were performing prohibited political activity." (respondents' Brief at p. 16). This argument misconstrues the nature of the intent requirement. The record demonstrates that the respondents intentionally performed actions prohibited by the Ethics Act. Whether they intended to violate the Ethics Act is irrelevant.

The Commission's decision in the Sprague case (08-EEC-008) illustrates this point. Sprague was charged with violating the gift ban, which prohibits an employee from intentionally soliciting a gift from a prohibited source, by asking a vendor for a loan. Sprague admitted that he asked the vendor for a loan, but argued that this did not violate the gift ban because he asked for a loan and not a gift. The Commission found that the intent element was satisfied, stating that Sprague "intentionally solicited a loan from a prohibited source." OEIG v. Sprague, 08-EEC-008 (2008). Whether Sprague intended to violate the Ethics Act by soliciting the loan or whether he knew

that the Ethics Act defined "gift" to include a loan was not relevant to this analysis. The important fact was that Sprague intentionally solicited the loan.

Intent is treated similarly in the criminal law context. "If a man intentionally adopts certain conduct in certain circumstances known to him, and that conduct is forbidden by the law under those circumstances, he intentionally breaks the law in the only sense in which the law ever considers intent." Ellis v. United States, 206 U.S. 246, 258 (1907). For example, a person who intentionally enters the property of another after being instructed not to is guilty of trespass even if their intent was not to commit trespass. See People v. Likar, 329 Ill. App. 3d 654, 664 (2002) (Defendant was guilty of trespass even if he only stepped on property to retrieve an envelope that had blown there.) In this case, the respondents were aware that they were preparing and issuing a press release which supported and benefitted Barack Obama in his presidential campaign. They were also aware that they were doing so as State employees in State offices on State equipment during time they reported as having worked on State business for the purpose of meeting their minimum required hours. The Ethics Act prohibits this conduct. Therefore, they intentionally violated the Ethics Act in the only sense in which the law ever considers intent.

It is possible to conceive of examples of prohibited political activity conducted unintentionally. For instance, if an employee is handed a set of sealed envelopes containing campaign materials and told to address, stamp, and mail them, that employee would engage in prohibited political activity by complying with those instructions. However, that conduct would be unintentional if the employee did not know that the envelopes contained campaign materials, as the employee would be unaware of the circumstances that led to the violation. By contrast, in the current case, each of the respondents was aware that the press release supported the candidacy of Barack Obama. Therefore, they intentionally violated the Ethics Act by preparing the press release on State time, in State offices, using State equipment.

The very language of the press release demonstrates that the respondents intended the press release to support and benefit the candidacy of Barack Obama. Every draft of the press release contains direct language announcing that Governor Blagojevich supports Barack Obama in his candidacy. The initial draft, prepared by Rebecca Rausch at the direction of Abigail Ottenhoff, announces Governor Blagojevich's "complete support" of Barack Obama. Likewise, the draft as revised by Ottenhoff announces that Governor Blagojevich is "proud to give [Obama] my support." The final version, which reflected the revisions of Sheila Nix, states that Governor Blagojevich is "excited and proud to support Senator Obama in his bid for the Presidency" and "proud to give him my support." The language of the press release allows for only one inference: that the respondents intended the press release to do what it says it does, support the candidacy of Barack Obama. See People v. Phillips, 392 Ill. App. 3d 243, 259 (2009) ("[I]ntent may be inferred (1) from the defendant's conduct surrounding the act and (2) from the act itself.")

Respondents are also apparently arguing that the press release does not violate the Ethics Act because a legislative purpose of the bill to move the primary date was to improve Barack Obama's chances of winning. This argument might be persuasive if the final two sentences of the final version of press release were the only ones before the Commission. However, the question



for the Commission is not whether the third paragraph of the press release, standing alone, constitutes prohibited political activity. Rather, the question is whether the respondents can shield themselves from the Ethics Act because they inserted a call for legislative action at the end of an announcement of support for a presidential candidate prepared on State time using State resources. The legislative purpose of moving the primary date is not relevant to that question.

Each of the respondents used State equipment, State property, and with the exception of Sheila Nix since her work was Friday evening compensated State time to prepare a press release in the furtherance of and to the benefit of Barack Obama's presidential campaign. In doing so, each violated the Ethics Act by preparing a press release on State time and with State resources in support of the campaign of a presidential candidate. The inclusion of a call for legislative action does nothing to change this fact.

The respondent's objected to certain Department of Transportation records being admitted into evidence. The post-hearing briefs were not persuasive that the exhibit should not be admitted. In an administrative hearing, such documents should be admitted. The fact that the Governor's office recognized that the event was political by changing the original billing from government to political is relevant.

VI. Commission members are not required to recuse themselves from this matter.

Neither reading an article in the newspaper that was written as a result of the press release, nor asking the executive director to refer the incident to the Executive Inspector General, nor directing the executive director to respond to the respondents' initial motion to dismiss the complaint constitutes good cause for recusal. The Ethics Act provides that "[a]ny other allegations of misconduct received by the Commission from a person other than an Executive Inspector General shall be referred to the Office of the appropriate Executive Inspector General." 5 ILCS 430/20-15(2). Also, under the "rule of necessity," the Commission had to perform the duties they performed in processing this case.

After the Executive Inspector General concluded the investigation, and determined that reasonable cause exists to believe that a violation has occurred, he issued a summary report and filed pleadings through the Attorney General, who found reasonable cause exists to believe that a violation has occurred. 5 ILCS 430/20-50.

Once the petition was filed, the Commission had to perform its next duties under the law.

(f) The Commission shall meet, either in person or by telephone, in a closed session to review the sufficiency of the complaint. If the Commission finds that complaint is sufficient, the Commission shall grant the petition for leave to file the complaint. The Commission shall issue notice to the Executive Inspector General and all respondents of the Commission's ruling on the sufficiency of the complaint. If the complaint is deemed to sufficiently allege a violation of this Act, then the Commission shall notify the parties. 5 ILCS 430/20-50(f).

Directing the executive director to do ministerial or clerical duties for them would not be a reason for him to recuse himself or the Commission members to recuse themselves from this proceeding. It should be noted that four of the eight current Commission members had no involvement in referring the matter to the Executive Inspector General or in ruling on the respondents' joint objection to the petition.

WHEREFORE, for the foregoing reasons, the Commission finds that respondents Sheila Nix, Abigail Ottenhoff and Rebecca Rausch 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 \$1,500.00 is levied against Abigail Ottenhoff for assigning the duty of preparing a press release on behalf of Governor Blagojevich, and using State equipment and resources in support of prohibited political activity, administrative fine of \$1,000.00 is levied against Rebecca Rausch for preparing the press release on behalf of Governor Blagojevich, and using State equipment and resources in support of prohibited political activity, and administrative fine of \$1,000.00 is levied against Sheila Nix for reviewing and editing the press release on behalf of Governor Blagojevich, using State equipment in the State office building and directing a state employee to issue the press release in support of prohibited political activity in violation of 5 ILCS 430/50-5(e).

This is a final administrative decision and subject to the Administrative Review Law.

ENTERED: November 18, 2009