



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

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GOVERNMENTAL ETHICS AND
CONFLICT OF INTEREST:
Executive Ethics Commissioners
and Employees - Restrictions
on Political Activities

Mr. Scott Turow, Chair
Illinois Executive Ethics Commission
c/o Sonnenschein, Nath & Rosenthal
8000 Sears Tower
Chicago, Illinois 60606

Dear Mr. Turow:

I have your letter inquiring about the interpretation and constitutionality of subsection 20-5(f)(4) of the State Officials and Employees Ethics Act (the Ethics Act) (5 ILCS 430/20-5(f)(4) (West 2003 Supp.)). This subsection provides that neither commissioners nor employees of the Illinois Executive Ethics Commission may "actively participate in any campaign for any elective office." You have specifically asked whether subsection 20-5(f)(4) prohibits a commissioner from making a campaign contribution to a candidate for elective office

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or to a political party, or from attending a political event relating to a campaign for elective office. For the reasons discussed more fully below, it is my opinion that the prohibition against commissioners and employees of the Executive Ethics Commission actively participating in any "campaign for elective office," as that term is defined in section 1-5 of the Ethics Act (5 ILCS 430/1-5 (West 2003 Supp.), as amended by Public Act 93-685, effective July 8, 2004), clearly precludes both the making of campaign contributions to candidates for election to public office and to political parties and attending political events relating to a campaign for elective office.

Originally enacted by Public Act 93-615, effective November 19, 2003, the State Officials and Employees Ethics Act (5 ILCS 430/1-1 *et seq.* (West 2003 Supp.)) represents a comprehensive revision and expansion of State laws relating to governmental ethics and conflicts of interest. The provisions of the Ethics Act pertaining to the formation and operation of the Executive Ethics Commission (the Commission) were added by Public Act 93-617, effective December 9, 2003. The Ethics Act grants extensive powers to the Commission to administer and enforce the provisions of the Ethics Act, as it pertains to officers and employees of the executive branch of State government, including the power to investigate alleged violations of the Ethics Act and to impose fines and recommend discipline, if warranted. The qualifications for appointment to the Commission were carefully drawn to ensure that commissioners meet the highest standards of personal integrity and that a political balance is maintained in its membership. *See* 5 ILCS 430/20-5(b), (c) (West 2003 Supp.).

There can be no doubt that in enacting the new law, it was of paramount importance to the General Assembly to restore the public's confidence in its governmental officers and institutions. In order to achieve that goal, both the public generally, as well as the governmental officers and employees subject to the provisions of the Act, must have complete confidence in the impartiality and fairness of the process and of the commissioners and employees whose duty it is to enforce compliance with the Ethics Act. The General Assembly obviously considered restrictions on political activity essential to insulating the commissioners and employees of the Executive Ethics Commission from the risk of undue political pressure that might affect their public duties or call into question the Commission's fairness in executing its duties to enforce the provisions of the Ethics Act. Accordingly, subsection 20-5(f) of the Ethics Act provides:

(f) No commissioner or employee of the Executive Ethics Commission may during his or her term of appointment or employment:

- (1) become a candidate for any elective office;
- (2) hold any other elected or appointed public office except for appointments on governmental advisory boards or study commissions or as otherwise expressly authorized by law;
- (3) be actively involved in the affairs of any political party or political organization; or
- (4) *actively participate in any campaign for any elective office.* (Emphasis added.)

The phrase "campaign for elective office" has been defined, for purposes of the Ethics Act, 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 or office in a political organization, or the selection, nomination, or election of Presidential or Vice-Presidential electors[.] 5 ILCS 430/1-5 (West 2003 Supp.), as amended by Public Act 93-685, effective July 8, 2004.

When the General Assembly specifically defines a term in a statute, that definition is authoritative evidence of legislative intent and should be given controlling effect. *Caterpillar Finance Corp. v. Ryan*, 266 Ill. App. 3d 312, 318 (1994). Inserting the statutory definition of "campaign for elective office" into the text of subsection 20-5(f) results in the following:

(f) No commissioner or employee of the Executive Ethics Commission may during his or her term of appointment or employment:

* * *

(4) actively participate in *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.*

So construed, the intent of subsection 20-5(f)(4) is clear. The General Assembly has expressly prohibited commissioners and employees of the Executive Ethics Commission from engaging in any and all activities that may further an effort to influence the selection of a person to fill a public or political office. Although restrictions upon the political activities of

public officers and employees must be sufficiently specific to inform them of the conduct prohibited (*see generally Redemske v. Village of Romeoville*, 85 Ill. App. 3d 286 (1980)), there can be no uncertainty regarding whether making campaign contributions or attending campaign events are activities which subsection 20-5(f) prohibits. As the court stated in *International Brotherhood of Electrical Workers v. St. Louis County*, 117 F. Supp. 2d 922, 933 (E.D. Mo. 2000), "[m]aking contributions to a party or candidate or attending picnics, rallies, dinners or other social functions for a party or candidate are nothing more than actively participating in fundraising activities for, or soliciting votes for a partisan candidate or political party[.]" *See generally United States Civil Service Comm'n v. National Ass'n of Letter Carriers*, 413 U.S. 548, 568-80, 93 S. Ct. 2880, 2892-98 (1973) (rejecting vagueness challenge to similar provisions in Federal Hatch Act).

These activities fall squarely within the plain language of subsection 20-5(f)(4) of the Ethics Act. Therefore, it is my opinion that subsection 20-5(f)(4) prohibits a commissioner or an employee of the Executive Ethics Commission from making a campaign contribution to a candidate for elective office or to a political party, or from attending a political event relating to a campaign for elective office.

You have further inquired whether such a prohibition impermissibly infringes upon the commissioners' rights of free speech and association under the First Amendment to the United States Constitution and article I, section 4 of the Illinois Constitution of 1970. Although subsection 20-5(f) of the Ethics Act places significant restrictions upon activities that are

generally protected by the First Amendment, because of the extremely sensitive nature of the duties of the Commission and the importance of avoiding any doubt as to its impartiality, these restrictions are neither unreasonable nor inappropriate. Various restrictions upon political activities by public officials and employees have been determined, in a number of reported cases, to serve a compelling State purpose, and have been upheld against First Amendment challenges. *See Annotation, Validity, Construction, and Effect of State Statutes Restricting Political Activities of Public Officers or Employees*, 51 A.L.R. 4th 702 (2000). In this regard, public officers and employees stand on a different footing from members of the public generally. As the court noted in *Reeder v. Kansas City Board of Police Commissioners*, 733 F.2d 543, 547 (8th Cir. 1984), *cert. denied*, 479 U.S. 1065, 107 S. Ct. 951 (1987):

The fact is that public employees are subject to more severe restrictions than the public at large. * * * People who become public employees receive certain benefits and undertake certain duties. One of those duties may require the surrender of rights that would otherwise be beyond the reach of governmental power.
* * *

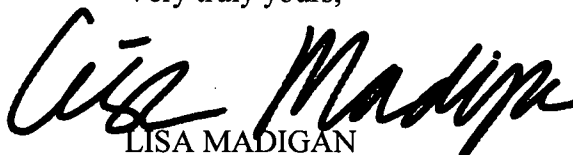
It is undeniable that this kind of restriction does abridge the freedom of speech in a literal sense. But the Supreme Court has often stated that First Amendment rights, despite their preferred position in our constitutional scheme, are not absolute. They must yield on occasion to the demands of public safety. The Supreme Court has clearly stated that government may impose on its own employees rather substantial restrictions on political activity that is open without question to the citizenry at large.

See also Broadrick v. Oklahoma, 413 U.S. 601, 616-17, 93 S. Ct. 2908, 2918 (1973); *National Ass'n of Letter Carriers*, 413 U.S. at 556-67, 93 S. Ct. at 2886-91 (1973).

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The commissioners and employees of the Executive Ethics Commission are a very select group whose actions will be subject to intense scrutiny, and their fairness and impartiality must, at all times, be beyond reproach. The General Assembly could logically and reasonably determine that the involvement of the commissioners or the employees of the Executive Ethics Commission in political matters might jeopardize that impartiality or cause an appearance of partiality, thus undermining the confidence in our public institutions that the Ethics Act was intended to restore. Consequently, significant restrictions on the political activities of the commissioners and the employees of the Executive Ethics Commission can be justified in these circumstances. Therefore, it is my opinion that subsection 20-5(f)(4) does not impermissibly restrict the constitutionally protected First Amendment rights of these commissioners and employees.

Very truly yours,


LISA MADIGAN
ATTORNEY GENERAL