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November 17, 2010

General Advisory Opinion

Re: 10 A 0008 – Electronic Communications during Election Periods

ISSUE

The Cook County Board of Ethics has chosen to issue this general advisory opinion in response to several questions from Cook County officials and County employees. The common question is whether a Cook County elected official who is a candidate for office in a primary or general election can use County resources to produce and distribute electronic communications, such as, newsletters or brochures during the period beginning January 1 of the year of a general primary election and ending the day after such general election and during a period beginning September 1 of the year of a general election and ending the day after such general election.

APPLICABLE SECTIONS OF THE ETHICS ORDINANCE

Section 2-561- Definitions

Whenever used in this Ordinance, the following terms shall have the following meanings:

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 or office in a political organization, or the selection, nomination, or election of Residential or Vice-Presidential electors, but does not include activities:

- 1) Relating to the support or opposition of any executive, legislative, or administrative action;
- 2) Relating to collective bargaining; or

- 3) That are otherwise in furtherance of the person’s official duties.

Candidate means any person who has filed nominating paper or petitions for nomination or election to an elected office, or who has been appointed to fill a vacancy in nomination, and who remains eligible for placement on the ballot at either a general primary election or general election or who has raised or expended money in pursuit of elected office.

County means the County of Cook and all government agencies of the County of Cook.

Employee means an individual employed by the County whether part-time or full-time or by a contract of employment. The term “employee” shall include individuals employed by County Officers as referenced in Article VII, Section 4 of the Illinois Constitution. The term “employee” shall not include judges of election.

Official means any elected County official or appointed official regardless of whether the official is compensated or any appointed non-employee member of any agency of the County.

Person means any individual, entity, corporation, partnership, firm, association, union, trust, estate, as well as any parent or subsidiary of any of the foregoing, and whether or not operated for profit.

Political activity means any activity in support of or in connection with any campaign for elective office or any political organization, but does not include activities relating to the support or opposition of any executive, legislative or administrative action; relating to collective bargaining; or that are otherwise in furtherance of the person’s official duties.

Political organization means a party, committee, association, fund, or other organization (whether or not incorporated) that is required to file a statement of organization with the State Board of Elections or a county clerk under Section 9.3 of the Election Code (10 ILCS 5/9-3), but only with regard to those activities that require filing with the State Board of Elections or a county clerk.

The term “Electronic Communications” as used in this opinion is defined by the University of California Santa Cruz: Glossary of UCSC IT Policy-Related Terms (as revised 5/12/10)

Electronic Communications means any information that is transmitted electronically. This includes, but is not limited to, email and email attachments, web pages, phone calls, faxes, broadcasts, electronically transmitted files, information submitted online, etc.

Section 2-586 Newsletters, brochures, public service announcements and promotional materials

- (a) County funds and resources may not be used by any elected County official to print or pay for the printing of any newsletters or brochures during the period

beginning January 1 of the year of a general primary election and ending the day after such general election and during a period beginning September 1 of the year of a general election and ending the day after such general election if the elected County official is a candidate in such primary or general election. A County elected official may not mail, during the period beginning January 1 of the year of a general primary election and during a period beginning September 1 of the year of a general election and ending the day after such general election, any newsletters or brochures that were printed at any time using County funds or resources if the elected County official is a candidate in such primary or general election.

Section 2-576 County-owned property

No official or employee shall engage in or permit the unauthorized use of County-owned or County-leased property. County-owned and County-leased property shall only be used for official business.

DISCUSSION

Section 2-586 of the Cook County Ethics Ordinance prohibits Cook County elected officials from printing and mailing with County funds any brochures or newsletters during a primary or general election period that contain the proper name or image of a Cook County official if the official is a candidate in said primary or general election. The intent of Section 2-586 is to prohibit incumbent candidates from using public funds or resources to create and or share communications during defined election periods that might give unfair advantage to the incumbent. The rationale behind the Ordinance prohibitions pertaining to the printing or mailing of newsletters or brochures is to limit the unfair advantage or appearance of an unfair advantage that an incumbent candidate or his or her supporters may garner from linking or inking the incumbent's name and image on a newsletter or brochure having to do with a government sponsored or administered program during the election cycle. The government programs should speak for themselves during this time – and not for the incumbent candidate.

When the Cook County Ethics Ordinance was drafted, popular and common methods of communication included printed newsletters and printed brochures. In the past few years new communication technologies have been adopted not only by many elected officials but by Cook County employees that call for further clarification from the Board of Ethics as to the scope of Section 2-586.

The Board interprets Section 2-586 of the Cook County Ethics Ordinance which currently prohibits certain publicly funded forms of communication during election periods to also include by inference electronic communications as defined by the University of California Santa Cruz's Glossary of IT Policy Related Terms. This means that any information, such as newsletters or brochures which are transmitted electronically, which includes but is not limited to, via email and email attachments, web pages and faxes, and which contain the proper name, image, or voice of

any elected County official at any time on or after the date that the elected County official files nominating papers, and for any time thereafter, that the elected County official remains a candidate for any office is also prohibited by Section 2-586. This means that the limitations or prohibitions which apply to “traditionally printed and or mailed” newsletters or brochures under 2-586, also applies to those newsletters or brochures which could be “electronically created and or mailed.”

In addition, Section 2-576 prohibits the unauthorized use of County-owned or County-leased resources for anything but official County business. Therefore, use of County-owned or County-leased resources such as, computers or cell phones, to transmit electronically or otherwise distribute, e-newsletters or e-brochures which contain the proper name or image of a Cook County elected official who is also a candidate during the period beginning January 1 of the year of a general primary election and ending the day after such general election and during a period beginning September 1 of the year of a general election and ending the day after such general election when the elected County official is a candidate in such primary or general election may be a violation of Section 2-576.

Please note the Board’s determinations herein are based solely on the application of the Cook County Board of Ethics Ordinance to the general questions posed in this opinion. Other laws or rules also may apply to this situation.

Please do not hesitate to contact our office if you have questions or require additional information.

Sincerely,
THE COOK COUNTY BOARD OF ETHICS

A handwritten signature in blue ink that reads "John J. Pikarski, Jr." The signature is written in a cursive style with a large, sweeping initial "J".

John J. Pikarski, Jr., Chairman