

IN THE EXECUTIVE ETHICS COMMISSION
OF THE STATE OF ILLINOIS

In re: ANDREW KILLIAN) OEIG Case: 12-00199
)

OEIG FINAL REPORT (REDACTED)

Below is a final summary report from an Executive Inspector General. The General Assembly has directed the Executive Ethics Commission (Commission) to redact information from this report that may reveal the identity of witnesses, complainants or informants and “any other information it believes should not be made public.” 5 ILCS 430/20-52(b).

The Commission exercises this responsibility with great caution and with the goal of balancing the sometimes-competing interests of increasing transparency and operating with fairness to the accused. In order to balance these interests, the Commission may redact certain information contained in this report. The redactions are made with the understanding that the subject or subjects of the investigation have had no opportunity to rebut the report’s factual allegations or legal conclusions before the Commission.

The Commission received a final report from the Governor’s Office of Executive Inspector General (“OEIG”) and a response from the agency in this matter. The Commission, pursuant to 5 ILCS 430/20-52, redacted the final report and mailed copies of the redacted version and responses to the Attorney General, the Governor’s Executive Inspector General and to Andrew Killian at his last known address.

The Commission reviewed all suggestions received and makes this document available pursuant to 5 ILCS 430/20-52.

FINAL REPORT

I. Allegations and Background

The Office of Executive Inspector General (“OEIG”) received a complaint alleging that Illinois Department of Children and Family Services (“DCFS”) employee Andrew Killian used a DCFS fax machine to file documents with the Illinois Board of Elections (“Board of Elections”) on behalf of the Candidate Political Committee Friends of Tom Bennett. In addition, during the investigation, OEIG investigators discovered evidence that Mr. Killian used his DCFS cellular telephone to call the Board of Elections.

Andrew Killian is DCFS’s Deputy General Counsel for the Central Region of Illinois. Mr. Killian is an attorney licensed to practice law in the State of Illinois. Mr. Killian’s duties and responsibilities include representing DCFS in litigation before various State and federal tribunals and serving as the Chief of the DCFS Office of Child and Family Policy.

II. Investigation

A. Review of Illinois Board of Elections Records

Illinois Board of Elections Internet database records relating to Friends of Tom Bennett revealed that Friends of Tom Bennett is a Candidate Political Committee founded to raise money in support of Tom Bennett's campaigns for the Illinois Community College Board and the Illinois General Assembly. According to the records, Mr. Bennett was a "non-partisan" candidate for the Community College Board and a Republican candidate for Illinois State House Legislative District 106. The records reflect that Mr. Killian signed and submitted the following documents to the Board of Elections on behalf of Friends of Tom Bennett via fax:

- Statement of Organization, sent March 24, 2011 at 1:31 p.m.; and
- Revised Statement of Organization, sent June 20, 2011 at 3:54 p.m.

Each faxed document included a notation along the top margin which contained the following: "DEPT CHILD FAM SERVS."

B. Review of DCFS Fax Machine Records

Investigators obtained and reviewed the records for the fax machine at Mr. Killian's DCFS work location. The records confirm that the faxed documents relating to Friends of Tom Bennett were sent from the fax machine located at Mr. Killian's DCFS work location.

C. First Interview of Subject Andrew Killian

On March 7, 2012, investigators interviewed Andrew Killian. During the interview, Mr. Killian said, on March 24, 2011 and June 20, 2011, he used a DCFS fax machine to file Statements of Organization with the Board of Elections on behalf of Friends of Tom Bennett. Mr. Killian explained that Friends of Tom Bennett is a Candidate Political Committee organized to raise and expend money to "promote Bennett's campaigns" for elective office. Investigators presented Mr. Killian with copies of the Statements of Organization obtained from the Board of Elections database. After reviewing the documents, Mr. Killian confirmed that they were copies of the filings he had submitted via fax from his DCFS office using DCFS equipment.

Mr. Killian said he believed he sent the March 24, 2011 fax during his lunch hour and sent the June 20, 2011 fax during a break. Investigators asked Mr. Killian if he conducted any other political activity on State time or used other State resources. In response, Mr. Killian said he may have made telephone calls related to Mr. Bennett's campaign, but was unable to recall.

D. Investigative Activity Following Andrew Killian's First Interview

A review of Mr. Killian's DCFS cellular telephone records revealed that, on June 17, 2011, he made three calls on his DCFS cellular telephone to the Illinois Board of Elections.

E. Second Interview of Subject Andrew Killian

On May 14, 2012, investigators re-interviewed Andrew Killian, during which he was asked about the June 17, 2011 telephone calls to the State Board of Elections. Mr. Killian reviewed his DCFS cellular telephone records and stated that, because he faxed a campaign filing on behalf of Friends of Tom Bennett shortly after making the calls, he believed that the calls likely related to that fax. Mr. Killian explained that he would not have had any reason related to his official duties to make the three telephone calls to the State Board of Elections on that date.

III. Analysis

The State Officials and Employees Ethics Act (“Ethics Act”) prohibits State employees from intentionally misappropriating State property or resources by engaging in prohibited political activity for the benefit of any campaign for elective office. 5 ILCS 430/5-15(a).¹ Under 5 ILCS 430/1-5, “prohibited political activity” includes, among other things, utilizing State resources to manage or work on a campaign for elective office. This section defines “campaign for elective office” 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.

A. Use of DCFS Fax Machine to Perform Prohibited Political Activity

Andrew Killian violated the Ethics Act by using the DCFS fax machine for the benefit of Tom Bennett’s campaigns for elective office. Mr. Killian admitted that he utilized a DCFS fax machine to file two Statements of Organization with the Board of Elections on behalf of the Candidate Political Committee Friends of Tom Bennett. The DCFS fax machine is a State resource. Mr. Killian informed investigators that Friends of Tom Bennett was founded to “promote Bennett’s campaigns.” Accordingly, filing Statements of Organization for an entity designed to promote an individual’s campaign for public office is an “activity in furtherance of an effort to influence the ... election of [that] individual.” Thus, Mr. Killian’s faxing Statements of Organization on behalf of Friends of Tom Bennett constitutes “work[ing] on a campaign for elective office,” and the allegation is **FOUNDED**.

B. Use of DCFS Cellular Telephone to Perform Prohibited Political Activity

Andrew Killian also violated the Ethics Act by using his DCFS cellular telephone for the benefit of Tom Bennett’s campaign for the Illinois House. Mr. Killian’s DCFS cellular telephone is a State resource. On June 17, 2011, Mr. Killian used his DCFS cellular telephone to call the Board of Elections three times. Mr. Killian stated that, because the calls occurred before he faxed the Board of Elections information on behalf of Friends of Tom Bennett, he believed that the calls must have related to that filing. The fact that Mr. Killian had no reason to

¹ State employees also “shall not intentionally perform any prohibited political activity during any compensated time.” 5 ILCS 430/5-15(a). Given Mr. Killian’s assertions that he conducted this limited activity during lunch or break times, and that his timesheets do not reflect when he took lunch or breaks, the OEIG does not make a finding regarding the performance of the activity during compensated time.

telephone the Board of Elections that related to his official duties supports the conclusion that the three calls related to political activity. Telephoning the Board of Elections regarding a campaign filing amounts to “work[ing] on a campaign for elective office” because making telephone calls regarding an item Mr. Killian intended to submit on behalf of Tom Bennett is “activity in furtherance of an effort to influence the ... election of [that] individual.” Therefore, the allegation that Andrew Killian engaged in prohibited political activity is **FOUNDED**.

IV. Recommendations

Following due investigation, the OEIG issues these findings:

- **FOUNDED** – Andrew Killian engaged in prohibited political activity, on March 24, 2011, by using a DCFS fax machine to file a Statement of Organization with the Board of Elections.
- **FOUNDED** – Andrew Killian engaged in prohibited political activity, on June 17, 2011, by using his DCFS cellular telephone to make telephone calls to the Board of Elections regarding campaign filings.
- **FOUNDED** – Andrew Killian engaged in prohibited political activity, on June 20, 2011, by using a DCFS fax machine to file a Statement of Organization with the Board of Elections.

The OEIG recommends that Andrew Killian be subject to discipline for using State resources to engage in prohibited political activity.

The OEIG will not request that the Illinois Attorney General file a complaint against Mr. Killian with the Illinois Executive Ethics Commission regarding his violation of Section 5-15 of the Ethics Act.

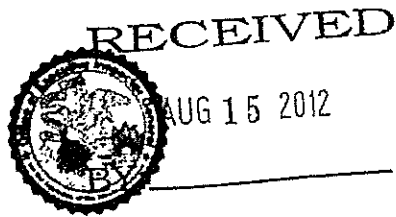
No further investigation is required and this matter is considered closed.

Date: **July 20, 2012**

Office of Executive Inspector General
for the Agencies of the Illinois Governor
607 East Adams, 14th Floor
Springfield, IL 62701

James Jennings
Assistant Inspector General

Kasey Cook
Investigator #119



OFFICE OF EXECUTIVE INSPECTOR GENERAL
FOR THE AGENCIES OF THE ILLINOIS GOVERNOR

32 WEST RANDOLPH STREET, SUITE 1900
CHICAGO, ILLINOIS 60601
(312) 814-5600

OEIG RESPONSE FORM

Case Number:
12-00199

Return By:
20 Days After Receipt of Report

Please check the box that applies.

- We have implemented all of the OEIG recommendations.
(Provide details regarding action taken.)

- We will implement all of the OEIG recommendations but will require additional time.
We will report to OEIG within 30 days from the original return date.
(Provide details regarding action planned / taken.)

The process has not yet taken place; will report within 30 days of
8/16/12.

(over)

- We are implementing one or more of the OEIG recommendations, however, we plan to depart from other OEIG recommendations.
(Provide details regarding action planned / taken and any alternate plan(s).)

- We do not wish to implement any of the OEIG recommendations.
(Explain in detail why and provide details of any alternate plan(s).)

Signature

DIXIE LEE PETERSON
Print Name

IDCFS GENERAL COUNSEL
Print Agency and Job Title

AUGUST 13, 2012
Date



OFFICE OF EXECUTIVE INSPECTOR GENERAL
FOR THE AGENCIES OF THE ILLINOIS GOVERNOR

32 WEST RANDOLPH STREET, SUITE 1900
CHICAGO, ILLINOIS 60601
(312) 814-5600

OEIG RESPONSE FORM

Case Number:
12-00199

Return By:
20 Days After Receipt of Report

Please check the box that applies.

- We have implemented all of the OEIG recommendations.
(Provide details regarding action taken.)

Discipline imposed 9/12/12 by written reprimand.

- We will implement all of the OEIG recommendations but will require additional time.
We will report to OEIG within 30 days from the original return date.
(Provide details regarding action planned / taken.)

(over)

We are implementing one or more of the OEIG recommendations, however, we plan to depart from other OEIG recommendations.

(Provide details regarding action planned / taken and any alternate plan(s).)

We do not wish to implement any of the OEIG recommendations.

(Explain in detail why and provide details of any alternate plan(s).)

Signature

DIXIE LEE PETERSON

Print Name

IDCFS GENERAL COUNSEL

Print Agency and Job Title

SEPTEMBER 17, 2012

Date