

STATE OF ILLINOIS

COUNTY OF KANE

ORDINANCE NO. 05-434

KANE COUNTY ETHICS ORDINANCE

WHEREAS, the Illinois General Assembly has enacted the State Officials and Employees Ethics Act (Public Act 93-615, effective November 19, 2003, as amended by Public Act 93-617, effective December 9, 2003), which is a comprehensive revision of State statutes regulating ethical conduct, political activities and the solicitation and acceptance of gifts by State officials and employees; and

WHEREAS, the Act requires all units of local government and school districts, within six months after the effective date of Public Act 93-615, to adopt ordinances or resolutions regulating the political activities of, and the solicitation and acceptance of gifts by, the officers and employees of such units "in a manner no less restrictive" than the provisions of the Act; and

WHEREAS, it is the clear intention of the Act to require units of local government and school districts to implement regulations that are at least as restrictive as those contained in the Act, and to impose penalties for violations of those regulations that are equivalent to those imposed by the Act, notwithstanding that such penalties may exceed the general authority granted to units of local government to penalize ordinance violations; and

WHEREAS, it is the clear intention of the Act to provide units of local government with all authority necessary to implement its requirements on the local level regardless of any general limitations on the power to define and punish ordinance violations that might otherwise be applicable; and

WHEREAS, because the Act provides for the imposition of significant penalties for violations of said local regulations, it is necessary to adopt the required regulations by Ordinance rather than by Resolution.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNTY BOARD OF THE COUNTY OF KANE, AS FOLLOWS:

SECTION 1: The Code of Ordinances of Kane County is hereby amended by the addition of the following provisions:

**ARTICLE 1
DEFINITIONS**

Section 1-1. For purposes of this ordinance, the following terms shall be given these definitions:

"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 Presidential or Vice-Presidential electors, but does not include activities (i) relating to the support or opposition of any executive, legislative, or administrative action, (ii) relating to collective bargaining, or (iii) that are otherwise in furtherance of the person's official duties.

"Candidate" means a person who has filed nominating papers 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 a regular election, as defined in section 1-3 of the Election Code (10 ILCS 5/1-3).

"Collective bargaining" has the same meaning as that term is defined in Section 3 of the Illinois Public Labor Relations Act (5 ILCS 315/3).

"Compensated time" means, with respect to an employee, any time worked by or credited to the employee that counts toward any minimum work time requirement imposed as a condition of his or her employment, but for purposes of this Ordinance, does not include any designated holidays, vacation periods, personal time, compensatory time off or any period when the employee is on a leave of absence. With respect to officers or employees whose hours are not fixed, "compensated time" includes any period of time when the officer is on premises under the control of the employer and any other time when the officer or employee is executing his or her official duties, regardless of location.

"Compensatory time off" means authorized time off earned by or awarded to an employee to compensate in whole or in part for time worked in excess of the minimum work time required of that employee as a condition of his or her employment.

"Contribution" has the same meaning as that term is defined in section 9-1.4 of the Election Code (10 ILCS 5/9-1.4).

"Employee" means a person employed by the County of Kane, whether on a full-time or part-time basis or pursuant to a contract, whose duties are subject to the direction and control of an employer with regard to the material details of how the work is to be performed, but does not include an independent contractor.

"Employer" means the County of Kane.

"Gift" means any gratuity, discount, entertainment, hospitality, loan, forbearance, or other tangible or intangible item having monetary value including, but not limited to, cash, food and drink, and honoraria for speaking engagements related to or attributable to government employment or the official position of an officer or employee.

"Leave of absence" means any period during which an employee does not receive (i) compensation for employment, (ii) service credit towards pension benefits, and (iii) health insurance benefits paid for by the employer.

"Officer" means a person who holds, by election or appointment, an office created by statute or ordinance, regardless of whether the officer is compensated for service in his or her official capacity.

"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 (i) relating to the support or opposition of any executive, legislative, or administrative action, (ii) relating to collective bargaining, or (iii) 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.

"Prohibited political activity" means:

(1) Preparing for, organizing, or participating in any political meeting, political rally, political demonstration, or other political event.

(2) Soliciting contributions, including but not limited to the purchase of, selling, distributing, or receiving payment for tickets for any political fundraiser, political meeting, or other political event.

(3) Soliciting, planning the solicitation of, or preparing any document or report regarding anything of value intended as a campaign contribution.

(4) Planning, conducting, or participating in a public opinion poll in connection with a campaign for elective office or on behalf of a political organization for political purposes or for or against any referendum question.

(5) Surveying or gathering information from potential or actual voters in an election to determine probable vote outcome in connection with a campaign for elective office or on behalf of a political organization for political purposes or for or against any referendum question.

(6) Assisting at the polls on Election Day on behalf of any political organization or candidate for elective office or for or against any referendum question.

(7) Soliciting votes on behalf of a candidate for elective office or a political organization or for or against any referendum question or helping in an effort to get voters to the polls.

(8) Initiating for circulation, preparing, circulating, reviewing, or filing any petition on behalf of a candidate for elective office or for or against any referendum question.

(9) Making contributions on behalf of any candidate for elective office in that capacity or in connection with a campaign for elective office.

(10) Preparing or reviewing responses to candidate questionnaires.

(11) Distributing, preparing for distribution, or mailing campaign literature, campaign signs, or other campaign material on behalf of any candidate for elective office or for or against any referendum question.

(12) Campaigning for any elective office or for or against any referendum question.

(13) Managing or working on a campaign for elective office or for or against any referendum question.

(14) Serving as a delegate, alternate, or proxy to a political party convention.

(15) Participating in any recount or challenge to the outcome of any election.

"Prohibited source" means any person or entity who:

(1) is seeking official action (i) by an officer or (ii) by an employee, or by the officer or another employee directing that employee;

(2) does business or seeks to do business (i) with the officer or (ii) with an employee, or with the officer or another employee directing that employee;

(3) conducts activities regulated (i) by the officer or (ii) by an employee, or by the officer or another employee directing that employee; or

(4) has interests that may be substantially affected by the performance or non-performance of the official duties of the officer or employee.

ARTICLE 5 PROHIBITED POLITICAL ACTIVITIES

Section 5-1. Prohibited political activities. (a) No officer or employee shall intentionally perform any prohibited political activity during any compensated time, as defined herein. No officer or employee shall intentionally use any property or resources of the County of Kane in connection with any prohibited political activity.

(b) At no time shall any officer or employee intentionally require any other officer or employee to perform any prohibited political activity (i) as part of that officer or employee's duties, (ii) as a condition of employment, or (iii) during any compensated time off (such as holidays, vacation or personal time off).

(c) No officer or employee shall be required at any time to participate in any prohibited political activity in consideration for that officer or employee being awarded additional compensation or any benefit, whether in the form of a salary adjustment, bonus, compensatory time off, continued employment or otherwise, nor shall any officer or employee be awarded additional compensation or any benefit in consideration for his or her participation in any prohibited political activity.

(d) Nothing in this Section prohibits activities that are permissible for an officer or employee to engage in as part of his or her official duties, or activities that are undertaken by an officer or employee on a voluntary basis which are not prohibited by this Ordinance.

(e) No person either (i) in a position that is subject to recognized merit principles of public employment or (ii) in a position the salary for which is paid in whole or in part by federal funds and that is subject to the Federal Standards for a Merit System of Personnel Administration applicable to grant-in-aid programs, shall be denied or deprived of employment or tenure solely because he or she is a member or an officer of a political committee, of a political party, or of a political organization or club.

ARTICLE 10 GIFT BAN

Section 10-1. Gift ban. Except as permitted by this Article, no officer or employee, and no spouse of or immediate family member living with any officer or employee (collectively referred to herein as "recipients"), shall intentionally solicit or accept any gift from any prohibited source, as defined herein, or which is otherwise prohibited by law or ordinance. No prohibited source shall intentionally offer or make a gift that violates this Section.

Section 10-2. Exceptions. Section 10-1 is not applicable to the following:

(1) Opportunities, benefits, and services that are available on the same conditions as for the general public.

(2) Anything for which the officer or employee, or his or her spouse or immediate family member, pays the fair market value.

(3) Any (i) contribution that is lawfully made under the Election Code or (ii) activities associated with a fundraising event in support of a political organization or candidate.

(4) Educational materials and missions.

(5) Travel expenses for a meeting to discuss business.

(6) A gift from a relative, meaning those people related to the individual as father, mother, son, daughter, brother, sister, uncle, aunt, great aunt, great uncle, first cousin, nephew, niece, husband, wife, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister, and including the father, mother, grandfather, or grandmother of the individual's spouse and the individual's fiancé or fiancée.

(7) Anything provided by an individual on the basis of a personal friendship unless the recipient has reason to believe that, under the circumstances, the gift was provided because of the official position or employment of the recipient or his or her spouse or immediate family member and not because of the personal friendship. In determining whether a gift is provided on the basis of personal friendship, the recipient shall consider the circumstances under which the gift was offered, such as: (i) the history of the relationship between the individual giving the gift and the recipient of the gift, including any previous exchange of gifts between those individuals; (ii) whether to the actual knowledge of the recipient the individual who gave the gift personally paid for the gift or sought a tax deduction or business reimbursement for the gift; and (iii) whether to the actual knowledge of the recipient the individual who gave the gift also at the same time gave the same or similar gifts to other officers or employees, or their spouses or immediate family members.

(8) Food or refreshments not exceeding \$75 per person in value on a single calendar day; provided that the food or refreshments are (i) consumed on the premises from which they were purchased or prepared or (ii) catered. For the purposes of this Section, "catered" means food or refreshments that are purchased ready to consume which are delivered by any means.

(9) Food, refreshments, lodging, transportation, and other benefits resulting from outside business or employment activities (or outside activities that are not connected to the official duties of an officer or employee), if the benefits have not been offered or enhanced because of the official position or employment of the officer or employee, and are customarily provided to others in similar circumstances.

(10) Intra-governmental and inter-governmental gifts. For the purpose of this Act, "intra-governmental gift" means any gift given to an officer or employee from another officer or employee, and "inter-governmental gift" means any gift given to an officer or employee by an officer or employee of another governmental entity.

(11) Bequests, inheritances, and other transfers at death.

(12) Any item or items from any one prohibited source during any calendar year having a cumulative total value of less than \$100.

Each of the exceptions listed in this Section is mutually exclusive and independent of every other.

Section 10-3. Disposition of gifts. An officer or employee, his or her spouse or an immediate family member living with the officer or employee, does not violate this

Ordinance if the recipient promptly takes reasonable action to return a gift from a prohibited source to its source or gives the gift or an amount equal to its value to an appropriate charity that is exempt from income taxation under Section 501 (c)(3) of the Internal Revenue Code of 1986, as now or hereafter amended, renumbered, or succeeded.

ARTICLE 15 ETHICS ADVISOR

Section 15-1. The Chairman of the County Board, with the advice and consent of the County Board, shall appoint an Ethics Advisor for the County of Kane. Applications for the Ethics Advisor appointment may be solicited by way of a Request for Qualifications. Minimum qualifications for the position may include, but shall not be limited to, the following:

Desired Qualifications for Appointment:

- a) Has not been convicted of any felony under the laws of the State of Illinois, another State or the United States; *and*
- b) Has Juris Doctorate or master's degree in public administration; *and*
- c) Has five (5) or more years of cumulative service (1) with a federal, state or local law enforcement agency, with investigatory experience; (2) as a federal, state, or local prosecutor or public defender; (3) as a senior manager, executive, or official of a federal, state or local agency; (4) as a state or federal judge; (5) as an elected officer of a unit of local government; (6) as a law professor; (7) as an ethics professor; (8) as an attorney in private practice; (9) as a member of the clergy; or (10) with a combination of (1) through (9); *and*
- d) Has skills to resolve conflict and make decisions in a fair, unbiased and non-partisan manner; *and*
- e) Has strong oral and written communication skills; *and*
- f) Has the ability to interpret, explain and apply laws and regulations; *and*
- g) Has high level of integrity and ability to maintain confidentiality.

Additional Qualifications During Term of Appointment:

- a) May not become a candidate for any elective office; *and*
- b) May not hold any other elected or appointed public office, except for appointments on governmental advisory boards or study commissions; *and*
- c) May not be actively involved in the affairs of any political party or political organization; *and*
- d) May not currently be employed by the County of Kane or any of its employing units.

The Human Services Committee shall initially review all timely responses to the Request for Qualifications and shall forward responses of appropriately qualified candidates to the Chairman of the County Board for review. The Chairman of the County Board shall then review the responses forwarded by the Human Services Committee and may, in his or her sole discretion, interview potential candidates prior to recommending the appointment of a particular candidate to the full County Board. The

Ethics Advisor may be compensated as an independent contractor, as determined by the County Board.

Section 15-2. The Ethics Advisor shall provide guidance to the officers and employees of the County of Kane concerning the interpretation and compliance with the provisions of this Ordinance. The Ethics Advisor shall assist the Kane County Human Resource Management Department in conducting ethics training programs and in preparing informational materials concerning this Ordinance, as deemed necessary by the Kane County Board, its Chairman or its Human Services Committee.

Section 15-3. The Ethics Advisor may seek and receive legal advice from the Kane County State's Attorney or his or her designee.

Section 15-4. The Ethics Advisor shall receive complaints concerning violations of this Ordinance. Upon receipt of a signed and notarized, written complaint, the Ethics Advisor shall provide notice to each person alleged to have violated this Ordinance in accordance with the provisions contained herein. The Ethics Advisor shall then conduct a preliminary investigation and, within 30 days after the complaint was filed, unless good cause exists to extend the time period, shall determine whether sufficient evidence exists to support the complaint. If the Ethics Advisor finds there is sufficient evidence to support the complaint, he or she shall refer the complaint to the Kane County State's Attorney for further investigation and shall provide the State's Attorney with a report summarizing the preliminary investigation. If the Ethics Advisor finds there is not sufficient evidence to support the complaint, he or she shall so inform the complainant and the person alleged to have violated the Ordinance (the "respondent") in writing of the determination.

Section 15-5. The Ethics Advisor shall conduct an investigation concerning a violation of this Ordinance only upon receipt of a signed and notarized, written complaint alleging a violation of this Ordinance. The Ethics Advisor shall not act or initiate an investigation on his or her own prerogative.

Section 15-6. If the Ethics Advisor receives a complaint concerning an allegation with which the Ethics Advisor is conflicted in interest, the Ethics Advisor shall immediately refer the complaint to the Kane County State's Attorney for investigation.

Section 15-7. The Ethics Advisor shall endeavor to keep the identity of a complainant confidential unless:

- a) public legal proceedings have been initiated regarding the complaint, or
- b) the complainant consents to disclosure, or
- c) the interests of fairness or due process require disclosure, or
- d) disclosure is otherwise required by law or court order.

Section 15-8. It is the obligation of all officers and employees to cooperate with the Ethics Advisor during his or her investigation. Failure or refusal to cooperate with

requests by the Ethics Advisor may constitute grounds for discipline or discharge of an employee.

Section 15-9. The Ethics Advisor shall compile and deliver to the Chairman of the County Board and to the Kane County Board Human Services Committee an annual statistical report for each year consisting of (i) the number of inquiries received concerning interpretation of this Ordinance and the State ethics laws, (ii) the number of complaints filed with the Ethics Advisor, (iii) the number of complaints deemed to sufficiently allege a violation of this Ordinance, (iv) the number of complaints deemed to be insufficient, (v) the number of complaints found to be supported by substantial evidence, (vi) the number of complaints found not to be supported by substantial evidence, (vii) the number of complaints filed in Circuit Court, (viii) the number of complaints settled prior to court ruling, (ix) the disposition of each complaint, and (x) the status of pending complaints.

Section 15-10. The Ethics Advisor shall perform such other duties as may be delegated by the County Board.

ARTICLE 20 COMPLAINT FILING PROCEDURE

Section 20-1. Complaints alleging a violation of this Ordinance shall be in writing, signed by the complainant and notarized, and shall be filed with the Ethics Advisor. If the complaint is filed other than with the Ethics Advisor, it shall be immediately transmitted by the receiving Kane County officer, department or employee to the Ethics Advisor.

Section 20-2. A complaint alleging a violation of this Ordinance must be filed by the complainant within thirty (30) days following knowledge of the alleged violation, but in no event more than one year after the alleged violation.

Section 20-3. A complaint shall describe in detail the act or acts complained of and provide a list of witnesses to the act or acts.

Section 20-4. A complaint shall contain the complainant's home address, business telephone number and personal telephone number.

Section 20-5. Upon receipt of a written complaint hereunder, the Ethics Advisor shall review the complaint and conduct a preliminary, confidential investigation to determine the facts regarding the allegation of the complaint. If, upon review of the complaint, the Ethics Advisor determines he or she has a conflict of interest and should not investigate the complaint, the Ethics Advisor shall immediately forward the complaint to the Kane County State's Attorney for investigation.

ARTICLE 25 COMPLAINT REVIEW PROCEDURE

Section 25-1. The Ethics Advisor, or the Kane County State's Attorney or his or her designee, as the case may be, shall, within three (3) business days of receiving a complaint under this Ordinance, send by certified mail, return receipt requested, a

notice to the person alleged to have committed a violation (the “respondent”) that a complaint has been filed against him or her, which notice shall include a copy of the complaint with the name and personal information of the complainant redacted. The Ethics Advisor and the Kane County State’s Attorney shall endeavor to keep the complainant’s identity and personal information confidential, unless and until public legal proceedings have been initiated concerning the complaint, the complainant consents to disclosure, the interests of fairness or due process require disclosure, or disclosure is otherwise required by law or court order. The notice may request a written response or other information from the respondent and shall designate the date the Ethics Advisor or the State’s Attorney desires to receive testimony and other evidence concerning the complaint. Any party may represent himself or herself or be represented by legal counsel of his or her own choice and own expense, unless otherwise required by applicable law or ordinance.

Section 25-2. Upon receipt of a written complaint filed under this Ordinance, except in cases of conflict of interest, the Ethics Advisor shall conduct a preliminary investigation concerning the allegations, and, within 30 days after the complaint was filed, unless good cause exists to extend the time period, shall determine whether sufficient evidence exists to support the complaint. If the Ethics Advisor finds there is sufficient evidence to support the complaint, he or she shall notify the complainant and the respondent in writing of the determination and shall refer the complaint to the Kane County State’s Attorney for further investigation and shall provide the State’s Attorney with a report summarizing the preliminary investigation. If the Ethics Advisor finds there is not sufficient evidence to support the complaint, he or she shall so inform the complainant and the respondent in writing of the determination.

Section 25-3. Upon referral to the Kane County State’s Attorney, the Kane County State’s Attorney or his or her designee shall review the sufficiency of the complaint and any evidence submitted by the complainant or the respondent, as well as any report prepared by the Ethics Advisor and any additional evidence received by him or her during a preliminary investigation. The Kane County State’s Attorney or his or her designee may then conduct his or her own investigation of the complaint and inquire and take testimony under oath from witnesses and/or request the production of any records relevant or material to the investigation.

Section 25-4. Upon conclusion of an investigation, the Kane County State’s Attorney or his or her designee shall issue a summary report of the investigation to the Kane County Board. At its next meeting following the issuance of the summary report, the Kane County Board shall discuss the complaint and decide its disposition, which may include disciplinary action up to and including discharge of an employee, and the filing of a complaint in circuit court. Such discussion may be had in closed session in accordance with the Open Meetings Act, as applicable. If the Kane County Board determines to file a complaint in circuit court against a respondent to address a violation of this Ordinance, it shall direct the Kane County State’s Attorney, or his or her designee, to do so only after discussing and taking a formal vote in open session.

ARTICLE 30 EMPLOYEE COOPERATION

Each employee shall be obligated to cooperate during the course of an

investigation and to comply with requests for information pursuant to this Ordinance. Failure or refusal to comply with requests for information shall constitute a violation of this Ordinance and may be considered grounds for discipline or discharge.

ARTICLE 35 COLLECTIVE BARGAINING AGREEMENTS

Any investigation and any recommendation for discipline of an employee pursuant to this Ordinance is subject to the provisions of any collective bargaining agreement that may apply to the employee.

ARTICLE 40 PENALTIES AND ENFORCEMENT

Section 40-1. Penalties. (a) A person who intentionally violates any provision of Article 5 of this Ordinance may be fined in an amount not to exceed \$2,500.

(b) A person who intentionally violates any provision of Article 10 of this Ordinance is subject to a fine in an amount of not less than \$1,001 and not more than \$5,000.

(c) Any person who intentionally makes a false report alleging a violation of any provision of this Ordinance to the Ethics Advisor, local enforcement authorities, the State's Attorney or any other law enforcement official may be fined in an amount not to exceed \$2,500.

(d) A violation of this Ordinance may be prosecuted as a quasi-criminal ordinance violation by the State's Attorney for the County of Kane, by filing a complaint in the circuit court. The prosecution shall be under and conform to the rules of civil procedure. The standard of proof for establishing a violation shall be proof by a preponderance of the evidence.

(e) In addition to any other penalty that may be applicable, an employee who intentionally violates any provision of Article 5 or Article 10 of this Ordinance may be subject to discipline up to and including termination.

ARTICLE 45 FUTURE DECLARATION OF UNCONSTITUTIONALITY

Section 45-1. If the Illinois Supreme Court declares the State Officials and Employees Ethics Act (the "Act") unconstitutional in its entirety; then this Ordinance shall be deemed repealed without further action by the Kane County Board as of the date that the Illinois Supreme Court's decision becomes final and not subject to any further appeals or rehearings. This Ordinance shall be deemed repealed without further action by the Kane County Board if the Act is found unconstitutional by the Illinois Supreme Court.

Section 45-2. If the Illinois Supreme Court declares part of the Act unconstitutional but upholds the constitutionality of the remainder of the Act or does not address the remainder of the Act, then the remainder of the Act as adopted by this

Ordinance shall remain in full force and effect; however, that part of this Ordinance relating to the part of the Act found unconstitutional shall be deemed repealed without further action by the Kane County Board.

SECTION 2: This Ordinance shall be in effect upon its passage and approval as provided by law.