



BOARD OF ETHICS
CITY OF CHICAGO

CONFIDENTIAL

DATE

Name
Address
Chicago, IL 60602

Re: Case No. 20029.A / City-owned Property

Dear [Name],

In [month] of this year, the Board was made aware that [your Office] had promoted a prayer session, hosted by you, on its official City business Facebook page,¹ and on its _____ Twitter handle, and on its _____ Instagram account. A video of the actual prayer session is posted on the _____ Facebook page², which is, as noted in fn.1, [your Office's] official City business Facebook account. We further learned that invitations to join the prayer session were sent to recipients from your official [City] mail address.

As explained in this advisory opinion, the Board has determined that using City resources and property in this manner constitutes an unauthorized use of City-owned property, and is prohibited by §2-156-060 of the Governmental Ethics Ordinance ("Ethics Ordinance"), as would be directing [your Office] staff to assist in these efforts while they are on City compensated time.³ This opinion summarizes the relevant facts and explains our determination.

I. Facts.

¹ The page, which will henceforth be referred to as the "[Office] Facebook page," carries a "Government Official" designation.

² This page is distinct from the "[personal]" Facebook page that is discussed in the "Facts" section of this advisory opinion.

³ As defined in §2-156-010(e-3) of the Ethics Ordinance, "compensated time" means "any time worked by or credited to an employee that counts toward any minimum work time requirement imposed as a condition of employment with the City, but does not include any designated City holidays or any period when the employee is on an approved vacation or leave of absence."

The Office _____ “is [description of Office duties and responsibilities]” See [link to Office website].

In _____ of this year, you personally set up a non-governmental, public Facebook group entitled “[name of public page].”⁴ This is distinct from [your Office’s] Facebook page. This _____ group now has approximately _____ members; the page is public and anyone can see the posted content. Using the Facebook Live platform, you host a prayer session with various local clergy members, every [time frame].

On [date], as part of these nightly prayer sessions, you hosted a “[title of prayer session].” In promoting this prayer session, your Office posted information not only on the dedicated “Name of public] page” Facebook page, but *also* on its *official* [Office] Facebook page, Twitter, and Instagram accounts. Screen shots of these postings are attached. Further, on [date], your Office sent emails from its official City business email address, inviting individuals to join you in prayer on [date]. One such email is attached.

A video of the actual prayer session that took place that evening, _____ is posted on both the official city-owned [Office] Facebook page and the personal “[name of public page]” Facebook page.

II. Relevant Governmental Ethics Ordinance Provision.

In this opinion, we will discuss and interpret the following Ordinance section:

§2-156-060. City-owned property. No official or employee shall engage in or permit the unauthorized use of any real or personal property owned or leased by the City for City business.

III. Legal Analysis.

We are mindful that the Establishment Clause of the First Amendment of the Constitution⁵ is implicated whenever there is a question of government-sponsored prayer, as is the impression in the case here. But, we limit our analysis to the Ethics Ordinance, and in this opinion address *solely* whether, by promoting and posting a video of personal content, here a prayer session, on your Office’s official _____ social media platforms, there has been an unauthorized use of City-owned property, per §2-156-060 of the Ethics Ordinance.

⁴ For purposes of this opinion, *this* Facebook page constitutes a personal page. The page does not include indicia of official City|business.

⁵ The Establishment Clause provides: “Congress shall make no law respecting an establishment of religion.” In Thomas Jefferson’s words, it erects a “wall of separation” between religion and government.

In Case No. 18038.A.1⁶, we addressed the use of social media by elected City officials. In part, our advisory opinion addressed what types of *political or electioneering/campaign* content can be posted to the three (3) types of social media accounts: (i) official; (ii) political/campaign, and (iii) personal. Our opinion covered political/electioneering content, “personal” content, governmental information content and “official city business” content specific to an elected official’s job responsibilities.

In that opinion, we made clear that an elected official’s “official” social media platforms may **not** include electioneering/campaign content, but rather, may include only content that is limited to official City business. We based our reasoning on the fact that government resources may not be used to help incumbents gain reelection nor to give the impression non-City business is being sponsored or endorsed by the City. We further determined that electioneering/campaign content could, of course, be posted on an elected official’s **political** or **personal** social media platforms.

Analogously, [your Office’s] promotion of the prayer session and inclusion of a video of that session on its three (3) official City business social media platforms *also* constitutes an unauthorized, impermissible use of City-owned property and sends the unmistakable, and impermissible, signal that the City is advancing and sponsoring personal content that here happens to be religious in nature and that is unrelated to the [Office’s] official responsibilities and business. This impression is especially pronounced as you, in your capacity as a City elected official, are the individual hosting the prayer session. The Board notes that, given [your Office’s] mission and responsibilities, there is no “official City business” justification for the promotion and inclusion of a “[name of session]” prayer session on its official City business social media platforms. Accordingly, we determine that posting such content and announcements on your Office’s **official** [Office] social media platforms, and its inclusion on these platforms, constitute unauthorized uses of City-owned property. For these same reasons, using the [Office’s] official City email address to invite others to join you in prayer also constitutes an unauthorized use of City-owned property, as would be directing [Office] employees to assist in these efforts while they are on compensated time.

IV. Board’s Direction to Bring Your Office into Compliance.

In light of our determination that in promoting and rebroadcasting the prayer session using City-owned property, there has been an unauthorized use of that property, we advise that, by the close of business Tuesday, January 5, [your Office] take down its [date] [Office] Facebook posts and delete its Twitter and Instagram communications of that same day, and that, in the future, you and your Office not permit the use of any of the [Office’s] official social media platforms, email address, or employees (on compensated time) to promote and broadcast such content.⁷ If that has not occurred by the close of business on January 5, the Board will consider commencing enforcement proceedings, which could subject you to penalties, as described in the next section of this opinion. This deadline will be held in abeyance should you request a reconsideration of this opinion as explained below. Should you not make such a request, the deadline will stand.

V. Penalties for Violating the Ordinance’s Use of City-owned property provision.

⁶ <https://www.chicago.gov/content/dam/city/depts/ethics/general/AO-City%20Owned%20Property/18038.A.1.pdf>

⁷ Posting such personal, private, or religious content on the “[Name of personal page]” Facebook page is neither addressed nor prohibited by the Ethics Ordinance.

We advise you that there are severe penalties for violating this provision. Any person found to have violated the Ordinance's City-owned property provision shall be subject to a fine of not less than \$1000 and not more than \$5000 for *each* offense, pursuant to Ordinance §2-156-465 (b)(7). Moreover, the Board shall make public any determination that there have been Ordinance violations, along with any penalties assessed.

VI. Reliance and Reconsideration.

Our determinations and advice are based solely on the application of the Governmental Ethics Ordinance to the facts summarized in this opinion. If these facts are incorrect or incomplete – or if they change in the future – please notify our office immediately, as any change may alter our determinations or advice. Please note, as well, that this opinion is addressed to the facts presented and may be relied upon only by any person involved in the specific transaction or activity with respect to which this opinion is rendered.

If there are additional material facts and circumstances that were not available to the Board when it considered this case, you may request reconsideration of the opinion. As provided in Section 3-8 of the Board's Rules and Regulations, a request for reconsideration must: 1) be in writing; 2) explain the material facts and circumstances that are the basis for the request; and 3) be received by the Board within fourteen (14) City business days of the date of this opinion, that is, Tuesday, January 5. If there are additional facts you wish the Board to consider, as noted above, please contact Steve Berlin, Executive Director, or Lisa Eilers, Deputy Director of the Board.

Thank you in advance for your compliance with this advisory opinion. If you have questions about this or any other matter, please contact us.

Sincerely,

WFC

William F. Conlon, Chair

SSC

[There are no attachments to this redacted version of the advisory opinion.]