



BOARD OF ETHICS
CITY OF CHICAGO

ADVISORY OPINION

Case No. 12051.Q

Restrictions on applying and serving as an election judge

August 15, 2012

The Board of Ethics has been asked to issue an advisory opinion addressing whether the City's Governmental Ethics Ordinance:

- 1) permits aldermen to have and make available applications for Judge of Elections in their City Ward Offices (offices paid in whole or in part with City-appropriated funds); and
- 2) permits City employees and officials to serve as election judges appointed by the Chicago Board of Election Commissioners (CBEC), as with other outside employment.

Our opinion is that:

1) the Ordinance permits the distribution of applications for election judge at aldermanic offices (and at other City property or buildings), but we strongly recommend that: (i) City employees or officials not pick up these applications at an aldermanic office or on City property during their compensated time; and (ii) City employees or officials who are also party chairmen or Ward Committeemen not sign or approve these applications at an aldermanic office (paid in whole or in part with City-appropriated funds) or on City property; and

2) City employees and officials may apply to be and serve as election judges, but applying and serving constitutes "prohibited political activity," and thus: (i) they may not apply or obtain the approval or signature of a party chairman or Ward Committeeman while on City compensated time, or at an aldermanic office, or on City property; and (ii) if they do end up serving as election judges, they must do it on their own non-compensated time, subject to the City's Personnel Rules as applied to outside employment.

Our reasoning follows:

1. Any person who meets the criteria set out by state law may submit an application with the CBEC to serve as an election judge. Applications themselves are facially neutral as to party preference: the application asks the applicant to indicate which party he/she wishes to serve as a judge (or to indicate no preference, *i.e.* check "either party"). The application form is available from the CBEC's website at this address: http://www.chicagoelections.com/dm/general/document_454.PDF

2. For an application to be complete, however, it must bear the signature of the Party Chairman and the Ward Committeeman. The Democratic or Republican committeeperson in each ward has the ability to assign qualified judges for their respective parties for each precinct in that ward. Applications without the signature of a committeeperson will be considered: (i) if there are vacancies not filled by the local committeeperson; (ii) if the prospective election judge is willing to work in another precinct if all of the judge positions are filled in his or her home precinct. Completed application forms must then be mailed to the CBEC. The CBEC appoints a minimum of 5 judges of election to serve in each election precinct.

3. Among the duties of election judges is to provide voter assistance, specifically to voters unable to physically mark a ballot or read, speak or write English, or who are disabled or have difficulty or are unable to enter the polling place. Voters who receive such assistance from election judges must sign an affidavit to that effect (one judge from each party assists, and each judge signs the affidavit as well).

4. §2-156-410(b)* of the Ordinance prohibits City officials or employees from intentionally using City property in a way that would violate the State of Illinois's Officials and Employees Ethics Act (see 5 ILCS 430/5-15) if they were directly subject to that Act. The Act prohibits State employees (and thus, by -410(b), City employees) from intentionally performing "prohibited political activity" during compensated time, and from intentionally misappropriating State (thus, by analogy, City) resources by engaging in prohibited political activity for the benefit of any political organization or campaign for elective office. "Prohibited political activity" includes "assisting at the polls on election day on behalf of any political organization or candidate ..." 5 ILCS 430/1-5.

5. Serving as an election judge is thus, in our opinion, "prohibited political activity" (see 5 ILCS 430/1-5), and "political activity" (see §2-156-010(s)), and will soon be "prohibited political activity" (see §2-156-010(v-1), to take effect on November 1, 2012). However, many (if not most) people who apply to serve as election judges are not City employees or officials, and even for those applicants who are City employees and officials, the mere picking up of the application--as opposed to the act of completing and submitting it, and then serving as an election judge--is purely ministerial. For these reasons, we conclude that the Ordinance does not prohibit a person from picking up or obtaining, on City property, like an aldermanic office (paid in whole or in part with City-appropriated funds), an application to serve as an election judge. However, we strongly recommend that, to avoid even the appearance that City property is being used for political purposes, City employees and officials wishing to apply to be election judges pick up their applications either from the CBEC's website (see the link above) or at physical sites that are not City property.

6. In order for an applicant to complete the application, he or she *does* need to obtain the signature of the respective party chairman and Ward Committeeman. Signing off on a prospective election judge's application is a function of both of these offices--which are party offices. Moreover, ward committeemen have the ability to assign qualified judges for their respective parties for each precinct in their wards. Hence, we caution that, to avoid even the appearance that City property is being used for any political purpose: (i) no City employee or official who is also a party chairman or Ward Committeeman should sign or approve such an application at an aldermanic office (paid in whole or in part with City-appropriated funds) or on City property; and (ii) no City employee or official who is applying to be an election judge seek or obtain the approval or signature of a party chairman or Ward Committeeman at an aldermanic office or on City property.

7. As noted in #5 above, it is our opinion that serving as an election judge is encompassed within the definition of "prohibited political activity." Neither State law nor City ordinance prohibit City personnel from engaging in it--but they do prohibit City personnel from engaging in it while on "compensated time." "Compensated time" means in effect any time worked by or credited to a City employee that counts toward any minimum work time requirement--but does not include time when the employee is on an approved vacation or other appropriate leave of absence. In other words, City personnel may serve as election judges, but will need to use a personal day or vacation time to do so, and, as they are paid, must adhere to the City's Personnel Rules, which require them to receive the advance permission of their department head or alderman or their designees.

8. Our opinion is unaffected by the recently-passed amendments to the Ordinance that take effect on November 1, 2012.

*This provision will be repealed on November 1, 2012, and effectively replaced by new §2-156-135.