



OFFICE OF THE LEGISLATIVE INSPECTOR GENERAL

THOMAS J. HOMER
420 Stratton Building, Springfield, IL 62706
217/558-1560 Phone • 217/558-1566 Fax
E-Mail: tomh@ilga.gov

SUMMARY REPORT (REDACTED VERSION)

February 19, 2012

Hon. Tom Cross
House Republican Leader
316 State Capitol
Springfield, IL 62706

Re: LIG Case No. 11-028

Dear Leader Cross:

This is a summary report of investigation issued pursuant to Section 25-50(a) of the State Officials and Employees Ethics Act ("the Ethics Act") 5 ILCS 430/1-1 et seq.

Summary Report of Investigation
5 ILCS 430/25-50(a)

Nature of Case

This matter involves a complaint brought by House candidate David McSweeney of various allegations of misconduct by three members of the House Republican staff, namely *Staff Member A*, *Staff Member B*, and *Staff Member C*.¹ Following my investigation into the matter, I find that reasonable cause exists to believe that Nicholas McNeely (*Staff Member A*) committed acts of political prohibited activity. I further find that reasonable cause does not exist to believe that violations were committed by *Staff Member B* or *Staff Member C*.

Background

On December 15, 2011, I received a phone call from the House Republican ethics officer, Andrew Freiheit, informing me of a proceeding then pending before the State Board of

¹ Because the complaints against Staff Members B and C were determined by the Inspector General to be unfounded, House Republican Leadership has requested that the public version of the report be redacted to delete the names of these two individuals. The Commission finds that no public purpose would be served in this instance by publicizing the names of those individuals and therefore issues this redacted version of the report.

Elections (SBE) involving allegations against three staff members. David McSweeney (McSweeney), a Republican candidate for State Representative in the 52nd Legislative District, had filed objections to the nominating petitions of his primary opponent, Representative Kent Gaffney, alleging that (1) Republican staff members, Nicholas McNeely (McNeely) and *Staff Member B* had circulated Gaffney's nominating petitions during compensated time, (2) *Staff Member B's* father, *Mr. B*, perjuringly signed as circulator on sheets actually circulated by McNeely and *Staff Member B* and (3) *Staff Member B's* mother, *Staff Member C*, also a State employee at the time, must have known that *Mr. B's* circulator's oaths were false when she notarized them.

Mr. Freiheit informed me that your office wished to fully cooperate with me with regard to any investigation into the matter. He further expressed his belief that the allegations were unfounded. I was further informed that McSweeney was being represented in the SBE proceedings by Attorney Richard Means of Oak Park.

I was subsequently provided by Mr. Freiheit with time cards for all three employees covering the period from the period 9/1/11 through 11/30/11. I was also provided with travel vouchers and in-state travel memoranda of *Staff Member B*. It should be noted that *Staff Member C* has since retired from State employment and that McNeely is currently on leave of absence while he is working full time on the Gaffney campaign.

Rep. Gaffney is himself a former long-time staff member for the House Republicans. He was appointed to fill the unexpired term of Rep. Mark Beaubien, who passed away on June 5, 2011. September 6, 2011 was the first legal day to collect nominating petition signatures for the March primary for the two-year term commencing in 2013. Both Gaffney and McSweeney filed their nominating petitions on November 28, 2011.

I subsequently spoke by phone to and exchanged email messages with Attorney Means. In addition, I met with Mr. Means in my Naperville office on February 8, 2012. In furtherance of my investigation into the matter, I obtained and reviewed the following documents (in addition to the time cards and travel records already mentioned):

1. FOIA request filed by Mr. Means and directed to Leader Cross for personnel policies, time sheets and travel vouchers.
2. Letter from Mr. Means dated February 8, 2012, addressed to the undersigned and containing supporting documentation for his complaint.
3. Decision of the SBE dated 1/24/12 denying Objectors' Petition.
4. Transcripts of witnesses testifying at the SBE hearing.
5. Copies of affidavits submitted by the Objector in the SBE proceedings.
6. Dated excerpts purportedly from the McHenry County Republican Blog (<http://mchenrycountyblog.com/category/mchenry-county-republicans/>).
7. Various news reports surrounding the controversy.

On February 9, 2012, I met with McNeely in my Springfield office. On February 10, 2012, I met with *Staff Member B* and his attorney, Christopher Harmon, in my Naperville office. Also

present during both interviews was Andrew Freiheit. In each instance, before commencing my interviews I explained their administrative rights to McNeely and *Staff Member B*, and each voluntarily signed an Administrative Rights Form.

Governing Statutes and Rules

The jurisdiction of the Legislative Inspector General is to investigate allegations of violations of the State Officials and Employees Ethics Act or violations of other related laws and rules. 5 ILCS 430/25-10(c).

State employees shall not intentionally perform any prohibited political activity during any compensated time (other than vacation, personal, or compensatory time off). State employees shall not intentionally misappropriate any State property or resources by engaging in any prohibited political activity for the benefit of any campaign for elective office or any political organization. 5 ILCS 430/5-15.

"Prohibited political activity" includes "(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 [or] (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 [or] (13) Managing or working on a campaign for elective office or for or against any referendum question. 5 ILCS 430/1-5.

On January 12, 2012, the Commission approved my investigation into the matter pursuant to Commission Rule 17-25.

Summary of Interviews

Nicholas McNeely

McNeely resides in Springfield. A navy veteran, he has worked on House Republican staff since 2005. His supervisor is Colleen Atterbury, who is the research director. McNeely took a leave of absence from House staff on November 16, 2011, in order to work full time on Rep. Gaffney's primary campaign. He has known Rep. Gaffney since 2002 when they worked together on the Tom Burns campaign. McNeely circulated a total of two petitions (a total of twenty signatures) on behalf of Rep. Gaffney, both on the Monday following his leave of absence at the Barrington train station. He was with *Mr. B* (*Member B's* father) and Elizabeth Gaffney (Rep. Gaffney's wife). McNeely said he is not good at circulating petitions and does not enjoy gathering signatures. At various campaign events and Turkey raffles, McNeely would introduce Rep. Gaffney to various local officials and dignitaries and leave the petition circulation to *Staff Member B* and *Mr. B*.

McNeely denied participating in any political activity during compensated time. He acknowledged sending former Representative Cal Skinner an email announcing that he had become Rep Gaffney's campaign manager two weeks before he went on leave of absence. However, the email was sent on November 3, 2011, which was a Saturday. He insisted that any campaign activities that occurred before his leave of absence took place after hours or on weekends, and not during compensated time.

In advance of the interview, Mr. Means provided me with excerpts from the McHenry County Republican Blog. McNeely admitted that he communicated on the blog using the pseudonym "Swing Vote". Relevant entries from the blog are as follows:

CommonSense (*Staff Member B*) says:

09/13/11 at 12:56 pm

Gaffney has been fighting Democrats for over a decade while McSweeney has been losing to them and Rowe ran as one in Wauconda. My apologies to all the misinformed, Gaffney is our man.

Swing Vote (McNeely) says:

09/14/11 at 1:45 pm

Yeah guys, that's what we need another investment banker working to line his pockets with corporate bail out and tax breaks while we pay more taxes. McSweeney is the problem, just a rich guy trying to buy the election. Don't fall for his junk, it's fools gold.

CommonSense (*Staff Member B*) says:

10/21/2011 at 5:11 pm

Finally someone out there is talking about JOBS. It is as if all other politicians are clueless. This is music to my ears compared to McSweeney's airbrushed mail pieces.

PoliticalTips52 (McSweeney campaign aide, Drew Veeneman) says:

10/21/2011 at 10:47 pm

[*Staff Member B* aka Common Sense], it's nice to see your cheerleading comments regularly on the McHenry County Blog.

I hope your not posting any of these comments on state time ... and speaking of campaigning with taxpayer dollars, those airbrushed townhall mailers with Kent Gaffney's name all over them ... they look really nice.

The huge "Gaffney" type resembles a campaign mailer ... or same type font on your billboards covering Rte 14.

Swing Vote (McNeely) says:

10/22/11 at 1:45 pm

Political tips52, get ready your about to get schooled.

PoliticalTips52 (Veeneman) says:

10/22/11 at 5:30 pm

You have five months to tell us why our state representative should be imported from Springfield.

School away my friend, just don't do it on the tax payers dime.

McNeely's Time Records:

A review of McNeely's time records shows that he was on the State payroll when he posted on the McHenry County Republican Blog at 1:45 pm on 9/14/11, as above noted:

<u>Day</u>	<u>Date</u>	<u>In</u>	<u>Out</u>	<u>In</u>	<u>Out</u>
Wednesday	9/14/11	8:30	12:30	1:30	4:30

The other date on which McNeely posted on the blog, 10/22/11, was a Saturday, so no violation occurred on that occasion. However, there is additional evidence that McNeely signed up as a volunteer on the McSweeney campaign during compensated time. When asked about this, McNeely initially denied volunteering for McSweeney, pointing out that he was a Gaffney supporter. However, when shown the evidence from the McSweeney campaign website, www.DavidMcSweeney.com, McNeely admitted that he had volunteered in order to gather political intelligence on the opposition. He explained that this is a common tactic in political campaigns. He was unable, however, to justify or explain what he was doing on McSweeney's campaign website during working hours. McNeely's affirmative act of volunteering occurred on 10/19/11 at 1:41 pm.

A review of McNeely's time records shows that he was on the State payroll when he volunteered for the McSweeney campaign:

<u>Day</u>	<u>Date</u>	<u>In</u>	<u>Out</u>	<u>In</u>	<u>Out</u>
Wednesday	10/19/11	8:30	11:00	12:00	4:30

I also asked McNeely about the frequent number of compensated sick days that he took during this period of time:

<u>Day</u>	<u>Date</u>	<u>In</u>	<u>Out</u>	<u>In</u>	<u>Out</u>
Friday	9/23/11	8:30	12:30	1/2 sick day	
Thursday	9/29/11	1/2 sick day		12:30	4:30
Friday	9/30/11	Full sick day			
Tuesday	10/4/11	Full sick day			
Thursday	10/6/11	Full sick day			
Tuesday	11/1/11	Full sick day			

McNeely explained that he used his sick days to play golf. While it is not within the purview of this investigation to determine whether McNeely committed a violation of the personnel policy manuals applicable to House Republican Staff members with respect to sick days, it must be noted that in the opinion of this office, it would be inappropriate for an employee to use his or her sick days to play golf. Moreover, while there is no evidence that McNeely performed political duties while using sick days, to do so would constitute prohibited political activity since employee sick days do not constitute "vacation, personal, or compensatory time off" within the meaning of Section 5-15(a) of the State Officials and Employees Ethics Act (5 ILCS 430/5-15).

Staff Member B

Staff Member B, 26, is a graduate of Western Illinois University. He has served on Republican House staff for four years. He lives with his parents, *Mr. B* and *Staff Member C*, in [City in the 52nd District]. He is variously assigned to work in the district offices of nearby Republican State Representatives. He currently works out of Rep. Sullivan's district office in Mundelein. From July - December, 2011, he worked out of Rep. Gaffney's district office in Wauconda. [City in the 52nd District] is 15 to 20 miles from Wauconda. During rush hour, it is 45 minute commute. During the time that he worked for Rep. Gaffney, his duties included transition, issue tracking, email responses, set up town hall meetings, attend meetings and events on behalf of the Representative, and develop target letters. *Staff Member B's* supervisor is Vickie Crawford, the House Republicans Communications Director.

Staff Member B gathered a total of 240 signatures (24 pages) for Rep. Gaffney's nominating petitions after hours and on weekends. Most of the signatures were gathered at turkey raffles in Cary and Fox River Grove. These events were crowded and he found it easier to gather signatures when alcohol was being served and people were in a good mood. He also recalled circulating at a restaurant, a Thursday evening fundraiser for McHenry County Auditor Pam Palmer in Union, Illinois and by walking door-to-door on weekends. Whenever he circulated, he always had someone else with him, usually his father and/or mother. On some occasions, Rep. Gaffney and McNeely were present, particularly at the turkey raffles. He never circulated at the train stations.

I asked *Staff Member B* to account for the variation in testimony with his father during the SBE hearings. The SBE hearing officer, Barbara Goodman, in rendering her written decision overruling McSweeney's objections to the Gaffney petitions, struck 20 of the 33 petitions purportedly circulated by *Mr. B* finding that the evidence established that *Mr. B* did not circulate some of the sheets or parts of some of the sheets even though he signed as circulator. Even so, she found that Gaffney had 660 good signatures, 160 more than the required minimum of 500. In striking approximately 200 signatures from the *Mr. B* circulated petitions, the hearing officer took note of the apparent inconsistent testimony of *Mr. B* and *Staff Member B*. *Mr. B* testified that he sometimes would hand a petition sheet to *Staff Member B* and that *Staff Member B* would then hand the sheet to a signer. However, *Staff Member B* testified that never happened. A number of affiants, who had signed the Gaffney petitions in question, averred that they were handed the petition by *Staff Member B* even though *Mr. B* signed as circulator. Even though it would have been permissible for both *Staff Member B* and *Mr. B* to handle the sheets, even though they were signed as circulator by *Mr. B*, the hearing officer determined that *Staff Member B's* and *Mr. B's* testimony could not be reconciled in such a way, since *Staff Member B* was adamant that he never handled *Mr. B's* petitions. On the basis of this difference in testimony, the hearing officer disqualified a number of signatures on the *Mr. B* petitions where

the affidavits indicated that they were handed the petitions by *Staff Member B* rather than by *Mr. B* even though *Mr. B* may have been present at the time.

Staff Member B explained that the petitions in question were signed during the turkey raffles and that those events were very crowded and rowdy. He said he honestly can't remember whether he may have handled some of the petitions being circulated at those events and that he made a mistake by overstating his recollection of those events when he testified during the SBE hearing that his father never handed a petition to him so that he could obtain a signature. It should be noted that the witnesses at the SBE proceedings were sequestered and were not permitted to hear each other's testimony.

With respect to the allegations that *Staff Member B* may have circulated petitions or participated in other political activities during compensated time, I found no credible evidence of this. The events that he attended to obtain signatures were after hours and there is no evidence that he obtained signatures by going door-to-door other than on weekends as he insists. While there was a political blog posted by *Staff Member B* on 09/13/11 at 12:56 pm and again on 10/21/11 at 5:11pm, as noted above, neither of these posts were made during compensated time. According to *Staff Member B's* time cards, on 9/13/11, a Tuesday, he was signed out on lunch break from 12 noon to 1:00 pm. On 10/21/11, a Friday, he signed out at 4:30 pm. While he told me that the commute from [*his home*] to Woodstock was 45 minutes in traffic, it is certainly possible that on this date that he made it home in slightly less time. Certainly, there is insufficient evidence that *Staff Member B* engaged in prohibited political activities during compensated time or using State resources. I also examined *Staff Member B's* travel vouchers and found no irregularities.

Staff Member C

McSweeney correctly notes that (1) the preponderance of *Mr. B's* claimed petitions were notarized by his wife, *Staff Member C*, and (2) the SBE hearing officer determined that the evidence established that *Mr. B* had not circulated some of the sheets or parts of some of the sheets even though he signed as circulator on those sheets.

McSweeney argues that *Staff Member C* must therefore have known that *Mr. B's* circulator's oaths were false when she notarized them. However, that is a leap in logic that I am not willing to embrace. Notaries are authorized in Illinois to certify a declaration by a person that he or she has executed an instrument for the purposes there in stated. See 5 ILCS 312/6-101. The notary need not investigate the truthfulness of the declaration. In the absence of evidence that *Staff Member C* did anything more than notarize her husband's signature to nominating petitions purportedly circulated by him, I cannot find that there is a reasonable belief that she violated her oath or engaged in any wrongdoing. I am informed that *Staff Member C* has recently retired from House staff. I did not seek to interview her in connection with this investigation.

Findings and Recommendations

1. Nicholas McNeely

Founded - Nicholas McNeely engaged in prohibited political activity at 1:45 pm on 9/14/11 when he posted a political comment on the McHenry County political blog.

Founded - Nicholas McNeely engaged in prohibited political activity at 1:41 pm on 10/19/11 when he volunteered for the McSweeney campaign.

Recommendation - The Legislative Inspector General recommends that Nicholas McNeely be subject to discipline for engaging in prohibited political activity during compensated time.

2. *Staff Member B*

Unfounded

3. *Staff Member C*

Unfounded

4. As noted above, the Complainant has also raised the possibilities of perjury and subornation of perjury with respect to the signatures of *Mr. B* on Gaffney nominating petitions that he allegedly did not circulate. In support of these allegations, the Complainant points to (1) the affidavits he presented in the SBE proceedings of individuals appearing on the petitions purportedly circulated by *Mr. B*, and (2) the rulings of the hearing officer disqualifying some of the *Mr. B* circulated petitions. However, this office was unable to find sufficient credible evidence that *Mr. B* engaged in forgery or that he was encouraged to do so by *Staff Member B*, Nicholas McNeely, or any other person. Moreover, this office has no jurisdiction over *Mr. B*, in that he is not a legislative employee. It is also to be noted that the Complainant has forwarded his allegations in this regard to the Illinois Attorney General, U.S. Attorney, and the State's Attorneys in the four counties that comprise the 52nd Legislative District. It is my view that those law enforcement agencies are better suited to investigate those allegations which would constitute violations of the Illinois Criminal Code. As a result, I make no findings with respect thereto.

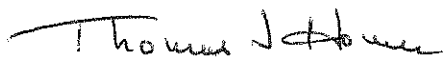
Duty to Respond

Section 25-50 of the Ethics Act (5 ILCS 430/25-50) provides in relevant part as follows:

"The appropriate ultimate jurisdictional authority or agency head shall respond to the summary report within 20 days, in writing, to the Legislative Inspector General. The response shall include a description of any corrective or disciplinary action to be imposed."

Thank you for your attention to this matter.

Respectfully submitted,


Thomas J. Homer
Legislative Inspector General