

IOWA ETHICS AND CAMPAIGN DISLCOSURE BOARD

IN THE MATTER OF:

JOEL MILLER, Linn County Auditor

CASE No. 2012 IECDB 06

DISMISSAL

On this 31st day of May, 2012, a complaint filed against Linn County Auditor Joel Miller came before the Iowa Ethics and Campaign Disclosure Board ("Board"). For the reasons that follow, the Board finds the complaint is not legally sufficient and dismisses the complaint.

BACKGROUND

The Board received a complaint against Mr. Miller on May 2, 2012 alleging Mr. Miller used government resources for political purposes in violation of Iowa Code section 68A.505. The complaint made three separate allegations. First, it alleged Mr. Miller sent an email using his county email address to the members of the Linn County Board of Supervisors asking them to place an item on their agenda for political reasons. Second, the complaint alleged Mr. Miller "tweeted" political information using the Auditor's official Twitter account (lcauditor) which can be accessed using a link on the Auditor's website. Third, the complaint alleged Mr. Miller sent a political automated call to a county telephone number.

ANALYSIS

The Board must first determine whether the complaint is legally sufficient. A legally sufficient complaint must allege all of the following:

- a. Facts that would establish a violation of a provision of chapter 68A, chapter 68B, section 8.7, or rules adopted by the board.
- b. Facts that would establish that the conduct providing the basis for the complaint occurred within three years of the complaint.
- c. Facts that would establish that the subject of the complaint is a party subject to the jurisdiction of the board.

Iowa Code § 68B.32B(4). If the Board determines the complaint is legally sufficient, it shall order an investigation. *Id.* § 68B.32B(6). If the Board

determines that none of the allegations contained in the complaint are legally sufficient, the complaint shall be dismissed. *Id.*

The complaint against Mr. Miller alleged conduct that occurred this year. Mr. Miller is subject to the jurisdiction of the board as a candidate for public office. *See id.* §§ 68B.32(1), 68B.32B(1). The only remaining question is whether the complaint alleges facts that would establish a violation of Iowa Code chapter 68A.

The relevant section of chapter 68A—section 68A.505—prohibits the use of public resources for political purposes. “Public resources” is broadly defined to mean “the moneys, time, property, facilities, equipment, and supplies of the executive branch of state government, a county, city, public school, or other political subdivision.” Iowa Admin. Code r. 351—5.3. “Political purposes” means “the express advocacy of a candidate or ballot issue.” Iowa Code § 68A.102(19). “Express advocacy” means a campaign contribution or a communication that contains “explicit words that unambiguously indicate the communication is recommending or supporting a particular outcome in the election with regard to any clearly identified candidate or ballot issue.” *Id.* § 68A.102(14).

The Board finds the complaint does not allege facts that would establish a violation of section 68A.505. In the email in question, Mr. Miller referenced his primary challengers and conceded he was requesting an item be placed on the Board of Supervisors’ agenda in response to a challenger’s criticism. Mr. Miller did not violate section 68A.505 when he sent the email because the email did not expressly advocate for his candidacy nor did it expressly advocate against the candidacy of any of his challengers.

Mr. Miller sent “tweets” using the Auditor’s official Twitter account that referenced his opponents, responded to criticism that has been levied against him during the primary race, and accused members of the Board of Supervisors of recruiting candidates to run against him. These “tweets” do not violate section 68B.505 because none of them contain express advocacy.

Finally, the complaint alleged an automated call in support of Mr. Miller’s candidacy was made to a county telephone number. Iowa Code section 68A.505 prohibits the “state and the governing body of a county, city, or other political subdivision of the state” from using public resources for political purposes. The Board has previously opined that 68A.505 is not violated if an email containing express advocacy is sent from a private email address to a

government email address. IECDB AO 2009-10. In its advisory opinion, the Board reasoned:

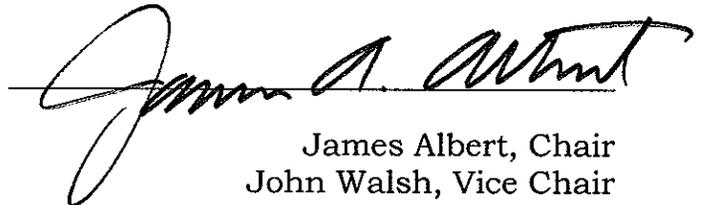
This determination is based on the fact that it is not the government that is using its own resources for a political purpose. In addition, public officials and employees cannot control what emails are received. This analysis does not change when it is a government official using the private email address.

Id. By analogy, we find section 68A.505 would not be violated if an automated phone call originating from a private telephone number were made to a government telephone number. We nevertheless discourage such calls or emails from private sources to government entities due to the potential for the message to be forwarded by a government official or employee in violation of the law. *See id.*

SUMMARY

The Board finds the May 2, 2012 complaint filed against Mr. Miller is not legally sufficient. The complaint is dismissed.

By direction of the Board

A handwritten signature in black ink, appearing to read "James A. Albert", written over a horizontal line.

James Albert, Chair
John Walsh, Vice Chair
Saima Zafar
Carole Tillotson
Jonathan Roos
Mary Rueter