

Threats to Academic Freedom from Illinois' New Ethics Law

By John K. Wilson

The State Officials and Employees Ethics Act is being applied to academic settings in dubious ways, and the misinterpretations of these rules pose a threat to academic freedom.

The clear intent of the new state ethics law was to address the activities of political appointees in non-academic offices, who might misuse public resources for purely political purposes. It was not intended to restrict independent expressions of political opinions by individuals, particularly in the academic context. Such restrictions of political views on college campuses would not pass constitutional scrutiny.

Because the law was intended to address abuses in other state offices, not state colleges, and because the "work time" restrictions on faculty are exacerbated since there is no clear "work time" for faculty, interpretation of these rules for college campuses need to be radically changed.

In a May 11, 2004 memo to state university and community college general counsels, the new ethics rules were given a troubling interpretation by the Inspector General. Although this memo proclaims it is not a formal legal opinion, many colleges may be following this opinion in enforcing the new law and in ethics training for faculty. Many of the interpretations in the memo violate constitutional rights of freedom of speech and academic freedom, and are also contrary to the language of the ethics law.

For example, state law prohibits use of state work facilities to "prepare for, organize, or participate in any political meeting, political rally, political demonstration, or other political event." The May 11, 2004 memo interprets this to mean, "This includes, for example, sending an e-mail about a political rally to friends and colleagues during work hours or from a work computer..." This is an extreme misinterpretation of the law. An email informing people about a political rally in no way constitutes organizing a political rally using state resources. It is perfectly appropriate for faculty, students, and staff at an institution of higher learning to inform people about any meetings, rallies, or demonstration. Any attempt to restrict this right is a clear violation of freedom of speech and academic freedom.

To most state employees, political rallies are inappropriate for their work context. But in the academic context, political rallies are often part of the larger educational mission. Far from being silent, faculty often feel an obligation to inform students and colleagues about political rallies and meetings because of the educational value in serving the goals of getting students more actively involved.

The same is true for other provisions in the memo. A ban on conducting public opinion polls would normally be reasonable for state employees. But in a class on public opinion polls, a faculty member surely is allowed to engage in polling "on an issue" despite what the memo says. (According to the memo, the ban also restricts faculty from participating in a public opinion survey "at work" even though the law itself only prohibits it during "work time," which for faculty is not the same thing.)

Other provisions in the memo must be clarified to protect freedom of speech and academic freedom. For example, a professor who encourages students to go and vote should never be thought to be violating the rule against helping "get voters to the polls."

The ethics law provisions requiring detailed descriptions of work activity are already reasonably being interpreted as inappropriate when applied to college faculty. The provisions restricting political activity are also largely inappropriate in the academic context and are not intended to restrict expression protected by freedom of speech and academic freedom under the state and US constitutions.

There is evidence that this ethics law is being interpreted in restrictive ways. A student at the University of Illinois at Urbana-Champaign who is also a third party candidate for state representative was given a disciplinary ticket and warned because he used his uiuc.edu email address to send out an email about his campaign. (This is also a case of retaliation, since this student was apparently targeted because he had complained about state employees under House speaker Michael Madigan violating the ethics law by challenging his petitions while working for the state.)

The Inspector General should withdraw the May 11, 2004 memo, and inform state college general counsels that some of its recommendations in that memo may violate the constitutional rights of state employees on college campuses. Instead, a new memo of interpretation should be adopted which does the following:

- 1) informs colleges that the new ethics law cannot supersede constitutional protections for freedom of speech and academic freedom;
- 2) describes some of the cases of political expression which cannot be restricted by the new law (instead of the current memo, which restricts freedom beyond what the law demands);
- 3) clarifies that because faculty have flexible hours, all of their political activities will be assumed to be conducted outside of “work time”;
- 4) clarifies that restrictions of use of work facilities does not impede the normal academic use of computers, telephones, email, etc. for expression of ideas;
- 5) clarifies that the law does not apply to any activities done for legitimate educational or research purposes;
- 6) urges colleges to inform employees of these facts and explicitly note that academic employees retain academic freedom and free speech rights.