

**ETHICS ORDINANCE
FOR THE COUNTY OF McHENRY, ILLINOIS**

BE IT ORDAINED by the County Board of the County of McHenry, Illinois:

SECTION 1: PURPOSE

The Illinois General Assembly has enacted the State Officials and Employees Ethics Act (Public Act 93-615, effective November 19, 2003, as amended by Public Act 93-617, effective December 9, 2003), which is a comprehensive revision of State statutes regulating ethical conduct, political activities and the solicitation and acceptance of gifts by State officials and employees.

The Act requires all units of local government to adopt ordinances or resolutions regulating the political activities of, and the solicitation and acceptance of gifts by, the officers and employees of such units "in a manner no less restrictive" than the provisions of the Act.

The clear intention of the Act to require units of local government to implement regulations that are at least as restrictive as those contained in the Act, and to impose penalties for violations of those regulations that are equivalent to those imposed by the Act, notwithstanding that such penalties may exceed the general authority granted to units of local government to penalize ordinance violations.

The clear intention of the Act to provide units of local government with all authority necessary to implement its requirements on the local level regardless of any general limitations on the power to define and punish ordinance violations that might otherwise be applicable.

SECTION 2: DEFINITIONS

(a) For purposes of this ordinance, the following words and terms shall be given the meaning as defined in Article 2 of this ordinance.

(b) "Campaign for elective office" means any activity in furtherance of an effort to influence the selection, nomination, election, or appointment of any individual to any federal, state, or local public office or office in a political organization, or the selection, nomination, or election of Presidential or Vice-Presidential electors, but "campaign for elective office" does not include activities relating to the support or opposition of any executive, legislative, or administrative action, relating to collective bargaining, or that are otherwise in furtherance of the person's official duties.

(c) "Candidate" means a person who has filed nominating papers or petitions for nomination or election to an elected office, or who has been appointed to fill a vacancy in nomination, and who remains eligible for placement on the ballot at a regular election, as defined in section 1-3 of the Election Code (10 ILL. COMP. STAT. 5/1-3).

(d) "Collective bargaining" has the same meaning as that term is defined in Section 3 of the Illinois Public Labor Relations Act (5 ILL. COMP. STAT. 315/3).

(e) "Commission" means an Ethics Commission created by this ordinance.

(f) "Compensated time" means, with respect to an employee, any time worked by or credited to the employee that counts toward any minimum work time requirement imposed as a condition of his or her employment, but for purposes of this Ordinance, does not include any designated holidays, vacation periods, personal time, compensatory time off or any period when the employee is on a leave of absence. With respect to officers or employees whose hours are not fixed, "compensated time" includes any period of time when the officer is on premises under the control of the employer and any other time when the officer or employee is executing his or her official duties, regardless of location.

(g) "Compensatory time off" means authorized time off earned by or awarded to an employee to compensate in whole or in part for time worked in excess of the minimum work time required of that employee as a condition of his or her employment.

"Contribution" has the same meaning as that term is defined in section 9-1.4 of the Election Code (10 ILL. COMP. STAT. 5/9-1.4).

(h) "Employee" means a person employed by the County of McHenry, but does not include an independent contractor. This does not include the staffs of the State's Attorney or the Circuit Clerk, as these staffs are employed by a State officer.

(i) "Employer" means the County of McHenry.

(j) "Gift" means any gratuity, discount, entertainment, hospitality, loan, forbearance, or other tangible or intangible item having monetary value including, but not limited to, cash, food and drink, and honoraria for speaking engagements related to or attributable to a government employment or the official position of an officer or employee.

(k) "Leave of absence" means any period during which an employee does not receive (i) compensation for employment, (ii) service credit towards pension benefits, and (iii) health insurance benefits paid for by the employer.

(l) "Officer" means a person who holds, by election or appointment, an office created by statute or ordinance, regardless of whether the officer is compensated for service in his or her official capacity. The State's Attorney and the Circuit Clerk are not subject to this ordinance as they are State, not County, officers.

(m) "Political activity" means any activity in support of or in connection with any campaign for elective office or any political organization, but does not include activities (i) relating to the support or opposition of any executive, legislative, or administrative action, (ii) relating to collective bargaining, or (iii) that are otherwise in furtherance of the person's official duties.

(n) "Political organization" means a party, committee, association, fund, or other organization (whether or not incorporated) that is required to file a statement of organization with the State Board of Elections or a county clerk under Section 9-3 of the Election Code (10 ILL. COMP. STAT. 5/9-3), but only with regard to those activities that require filing with the State Board of Elections or a county clerk.

(o) "Prohibited political activity" means:

(1) Preparing for, organizing, or participating in any political meeting, political rally, political demonstration, or other political event.

(2) Soliciting contributions, including but not limited to the purchase of, selling, distributing, or receiving payment for tickets for any political fundraiser, political meeting, or other political event.

(3) Soliciting, planning the solicitation of, or preparing any document or report regarding anything of value intended as a campaign contribution.

(4) Planning, conducting, or participating in a public opinion poll in connection with a campaign for elective office or on behalf of a political organization for political purposes or for or against any referendum question.

(5) Surveying or gathering information from potential or actual voters in an election to determine probable vote outcome in connection with a campaign for elective office or on behalf of a political organization for political purposes or for or against any referendum question.

(6) Assisting at the polls on Election Day on behalf of any political organization or candidate for elective office or for or against any referendum question.

(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.

(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.

(9) Making contributions on behalf of any candidate for elective office in that capacity or in connection with a campaign for elective office.

(10) Preparing or reviewing responses to candidate questionnaires in connection with a campaign for elective office or on behalf of a political organization for political purposes.

(11) Distributing, preparing for distribution, or mailing campaign literature, campaign signs, or other campaign material on behalf of any candidate for elective office or for or against any referendum question.

(12) Campaigning for any elective office or for or against any referendum question.

(13) Managing or working on a campaign for elective office or for or against any referendum question.

(14) Serving as a delegate, alternate, or proxy to a political party convention.

(15) Participating in any recount or challenge to the outcome of any election.

(p) "Prohibited source" means any person or entity who:

(1) is seeking official action (i) by an officer or (ii) by an employee, or by the officer or another employee directing that employee;

(2) does business or seeks to do business (i) with the officer or (ii) with an employee, or with the officer or another employee directing that employee;

(3) conducts activities regulated (i) by the officer or (ii) by an employee, or by the officer or another employee directing that employee; or;

(4) has interests that may be substantially affected by the performance or non-performance of the official duties of the officer or employee.

SECTION 3: PROHIBITED POLITICAL ACTIVITIES

(a) No officer or employee shall intentionally perform any prohibited political activity during any compensated time, as defined herein. No officer or employee shall intentionally use any property or resources of the County of McHenry in connection with any prohibited political activity.

(b) At no time shall any officer or employee intentionally require any other officer or employee to perform any prohibited political activity (i) as part of that officer or employee's duties, (ii) as a condition of employment, or (iii) during any compensated time off (such as holidays, vacation or personal time off)

(c) No officer or employee shall be required at any time to participate in any prohibited political activity in consideration for that officer or employee being awarded additional compensation or any benefit, whether in the form of a salary adjustment, bonus, compensatory time off, continued employment or otherwise, nor shall any officer or employee be awarded additional compensation or any benefit in consideration for his or her participation in any prohibited political activity.

(d) Nothing in this Section prohibits activities that are permissible for an officer or employee to engage in as part of his or her official duties, or activities that are undertaken by an officer or employee on a voluntary basis that are not prohibited by this Ordinance.

(e) No person either (i) in a position that is subject to recognized merit principles of public employment or (ii) in a position the salary for which is paid in whole or in part by federal funds

and that is subject to the Federal Standards for a Merit System of Personnel Administration applicable to grant-in-aid programs, shall be denied or deprived of employment or tenure solely because he or she is a member or an officer of a political committee, of a political party, or of a political organization or club.

SECTION 4: GIFT BAN

(a) Except as permitted by this Section, no officer or employee, and no spouse of or immediate family member living with any officer or employee (collectively referred to herein as "recipients"), shall intentionally solicit or accept any gift from any prohibited source, as defined herein, or which is otherwise prohibited by law or ordinance. No prohibited source shall intentionally offer or make a gift that violates this Section.

(b) Exceptions:

(1) Opportunities, benefits, and services available on the same conditions as for the general public.

(2) Anything for which the officer or employee, or his or her spouse or immediate family member, pays the fair market value.

(3) Any contribution that is lawfully made under the Election Code or activities associated with a fundraising event in support of a political organization or candidate.

(4) Educational materials and missions.

(5) Travel expenses for a meeting to discuss business.

(6) A gift from a relative, meaning those people related to the individual as father, mother, son, daughter, brother, sister, uncle, aunt, great aunt, great uncle, first cousin, nephew, niece, husband, wife, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister, and including the father, mother, grandfather, or grandmother of the individual's spouse and the individual's fiancé or fiancée

(7) Anything provided by an individual on the basis of a personal friendship unless the recipient has reason to believe that, under the circumstances, the gift was provided because of the official position or employment of the recipient or his or her spouse or immediate family member and not because of the personal friendship. In determining whether a gift is provided on the basis of personal friendship, the recipient shall consider the circumstances under which the gift was offered, such as: (i) the history of the relationship between the individual giving the gift and the recipient of the gift, including any previous exchange of gifts between those individuals; (ii) whether to the actual knowledge of the recipient the individual who gave the gift personally paid for the gift or sought a tax deduction or business reimbursement for the gift; and (iii) whether to the actual knowledge of the recipient the individual who gave the gift also at the same time gave

the same or similar gifts to other officers or employees, or their spouses or immediate family members.

(8) Food or refreshments not exceeding \$75 per person in value on a single calendar day; provided that the food or refreshments are (i) consumed on the premises from which they were purchased or prepared or (ii) catered. For the purposes of this Section, "catered" means food or refreshments that are purchased ready to consume which are delivered by any means.

(9) Food, refreshments, lodging, transportation, and other benefits resulting from outside business or employment activities (or outside activities that are not connected to the official duties of an officer or employee), if the benefits have not been offered or enhanced because of the official position or employment of the officer or employee, and are customarily provided to others in similar circumstances.

(10) Intra-governmental and inter-governmental gifts. For the purpose of this Act, "intra-governmental gift" means any gift given to an officer or employee from another officer or employee, and "inter-governmental gift" means any gift given to an officer or employee by an officer or employee of another governmental entity.

(11) Bequests, inheritances, and other transfers at death.

(12) Any item or items from any one prohibited source during any calendar year having a cumulative total value of less than \$100.

(c) Each of the exceptions listed in this Section is mutually exclusive and independent of every other.

(d) An officer or employee, his or her spouse or an immediate family member living with the officer or employee, does not violate this Ordinance if the recipient promptly takes reasonable action to return a gift from a prohibited source to its source or gives the gift or an amount equal to its value to an appropriate charity that is exempt from income taxation under Section 501 (c)(3) of the Internal Revenue Code of 1986, as now or hereafter amended, renumbered, or succeeded.

SECTION 5: ETHICS ADVISOR

(a) The McHenry County State's Attorney shall serve as the Ethics Advisor for the County. The duties of the Ethics Advisor may be delegated by the State's Attorney to an Assistant State's Attorney in the McHenry County State's Attorney's Office.

(b) The Ethics Advisor shall provide guidance to the officers and employees of the County of McHenry concerning the interpretation of and compliance with the provisions of this Ordinance and State ethics laws.

SECTION 6: ETHICS COMMISSION

Composition and Meetings of the Commission. There is hereby created a commission to be known as the Ethics Commission of McHenry County.

The Commission shall be comprised of five (5) members appointed by the Chair of the McHenry County Board with the advice and consent of the County Board. No person shall be appointed as a member of the Commission who is related, either by blood or by marriage up to the degree of first cousin, to any elected officer of McHenry County.

At the first meeting of the Commission, the initial appointees shall draw lots to determine their initial terms. Three commissioners shall serve two-year terms, and two commissioners shall serve one-year terms. Thereafter, all commissioners shall be appointed to 2-year terms. Commissioners may be reappointed to serve subsequent terms.

At the first meeting of the Commission, the commissioners shall choose a chair from their number. Meetings shall be held at the call of the chair or any three (3) commissioners. A quorum shall consist of three (3) commissioners, and official action by the commission shall require the affirmative vote of three (3) members.

The County Board Chair, with the advice and consent of the County Board, may remove a commissioner in case of incompetence, neglect of duty, or malfeasance in office after service on the commissioner by certified mail, return receipt requested, of a copy of the written charges against the commissioner and after providing an opportunity to be heard in person or by counsel upon not less than ten (10) days' notice. Vacancies shall be filled in the same manner as original appointments.

Powers and Duties of the Commission. The Commission shall have the following powers and duties:

To promulgate procedures and rules governing the performance of its duties and the exercise of its powers.

Upon receipt of a signed, notarized, written complaint, to investigate, conduct hearings and deliberations, impose fines in accordance with Section 7(c) of this Ordinance, and refer violations of Section 3 and Section 4 of this Ordinance to the McHenry County State's Attorney for prosecution. The Commission shall, however, act only upon the receipt of a written complaint alleging a violation of this Ordinance and not upon its own prerogative.

To receive information from the public pertaining to its investigations and to require additional information and documents from persons who may have violated the provisions of this Ordinance.

To compel the attendance of witnesses and to compel the production of books and papers pertinent to an investigation. It is the obligation of all officers and employees of the County of McHenry to cooperate with the Commission during the course of its investigations. **Failure or**

refusal to cooperate with requests by the Commission shall constitute grounds for discipline or discharge.

The powers and duties of the Commission are limited to matters clearly within the purview of this Ordinance.

Complaint Procedure. Complaints alleging a violation of this Ordinance shall be filed with the Ethics Commission.

Within five (5) business days after the receipt of a complaint, the Commission shall send by certified mail, return receipt requested, a notice to the respondent that a complaint has been filed against him or her and a copy of the complaint. The Commission shall send by certified mail, return receipt requested, a confirmation of the receipt of the complaint to the complainant within five (5) business days after receipt by the commission. The notices to the respondent and the complainant shall also advise them of the date, time, and place of the meeting to determine the sufficiency of the complaint and to establish whether probable cause exists to proceed.

Upon not less than 48 hours public notice, the Commission shall meet to review the sufficiency of the complaint and, if the complaint is deemed sufficient to allege a violation of this Ordinance, to determine whether there is probable cause, based on evidence presented by the complainant, to proceed. The meeting may be closed to the public to the extent authorized by the Open Meetings Act. The Commission shall issue notice to the complainant and the respondent of the Commission's ruling on the sufficiency of the complaint and, if necessary, on probable cause to proceed within thirty days after receiving the complaint.

If a complaint is filed during the sixty (60) days preceding the date of any election at which the respondent is a candidate, the Commission shall render its decision as required under subsection (1) within seven (7) days after the complaint is filed, and during the seven (7) days preceding that election, the Commission shall render such decision before the date of that election.

A complaint alleging the violation of this Act must be filed within one year after the alleged violation.

Section 3 Violations. If the complaint is deemed sufficient to allege a violation of Article 3 of this Ordinance, then the Commission shall refer the complaint to the McHenry County State's Attorney and transmit to the State's Attorney the complaint and all additional documents in the custody of the Commission concerning the alleged violation.

Section 4 Violations. If the complaint is deemed sufficient to allege a violation of Article 4 of this Ordinance and there is a determination of probable cause, then the Commission's notice to the parties shall include a hearing date scheduled within ~~four (4)~~ six weeks after receipt of the complaint. Alternatively, the Commission may elect to notify in writing the McHenry County State's Attorney and request that the complaint be adjudicated judicially. If the complaint is deemed not sufficient to allege a violation or if there is no determination of probable cause, then the Commission shall send by certified mail, return receipt requested, a notice to the parties of the decision to dismiss the complaint, and that notice shall be made public.

On the scheduled date and upon at least 48 hours' public notice of the meeting, the Commission shall conduct a hearing on the complaint and shall allow both parties the opportunity to present testimony and evidence. The hearing may be closed to the public only if authorized by the Open Meetings Act.

Within thirty (30) days after the date the hearing or any recessed hearing is concluded, the Commission shall either: dismiss the complaint, or issue a recommendation for a fine. The particular findings in the case and any fine imposed shall be a matter of public information.

If the hearing was closed to the public, the respondent may file a written demand for a public hearing on the complaint within seven (7) business days after the imposition of a fine. The filing of the demand shall stay the enforcement of the recommendation or fine. Within fourteen (14) days after receiving the demand, the Commission shall conduct a public hearing on the complaint upon at least forty-eight (48) hours public notice of the hearing and allow both parties the opportunity to present testimony and evidence. Within seven (7) days thereafter, the Commission shall publicly issue a decision to impose a fine upon the violator.

The Commission may fine any person who intentionally violates any provision of Article 4 of this Ordinance in an amount of not less than \$1,001 and not more than \$5,000. The Commission may fine any person who knowingly files a frivolous complaint alleging a violation of this Ordinance in an amount not less than \$1,001 and not more than \$5,000.

SECTION 7: PENALTIES

(a) A person who intentionally violates any provision of Section 3 of this Ordinance may be punished by a term of incarceration in a penal institution other than a penitentiary for a period of not more than 364 days, and may be fined in an amount not to exceed \$2,500.

(b) A person who intentionally violates any provision of Section 4 of this Ordinance is subject to a fine in an amount of not less than \$1,001 and not more than \$5,000.

(c) Any person who intentionally makes a false report alleging a violation of any provision of this Ordinance to the local enforcement authorities, the State's Attorney or any other law enforcement official may be punished by a term of incarceration in a penal institution other than a penitentiary for a period of not more than 364 days, and may be fined in an amount not to exceed \$2,500.

(d) A violation of Section 3 of this Ordinance shall be prosecuted as a criminal offense by the McHenry County State's Attorney by filing in the circuit court an information, or sworn complaint, charging such offense. The prosecution shall be under and conform to the rules of criminal procedure. Conviction shall require the establishment of the guilt of the defendant beyond a reasonable doubt. A violation of Section 4 of this Ordinance may be prosecuted as a quasi-criminal offense by the McHenry County State's Attorney.

(e) In addition to any other penalty that may be applicable, whether criminal or civil, an officer or employee who intentionally violates any provision of Section 3 or Section 4 of this Ordinance is subject to discipline or discharge.

SECTION 8: SEVERABILITY CLAUSE

If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions hereof.

SECTION 9: REPEAL OF PRIOR ORDINANCES

All ordinances or parts thereof in conflict with the provision of this Ordinance are hereby repealed.

BE IT FURTHER ORDAINED that this Ordinance and its provisions take effect upon its passage and approval.

DATED Woodstock, McHenry County, Illinois this first day of February, A.D. 2005.

KENNETH D. KOEHLER, Chairman
McHenry County Board

ATTEST:

KATHERINE C. SCHULTZ, County Clerk