

BERNALILLO COUNTY CODE OF CONDUCT REVIEW BOARD

Don Bruckner, Member
Sarita Nair, Member
Alan Packman, Chair



Michael Flynn, Member
Edmund Perea, Vice-Chair

FINAL DECISION AND ORDER

This matter came before the Bernalillo County Code of Conduct review Board (the "Board"), during a duly recorded special meeting on January 29, 2014, for a final decision and order.

PROCEDURAL HISTORY

On November 7, 2013, the Complainant filed a notarized Sworn Complaint ("Complaint") with the Bernalillo County Compliance Office. After a Preliminary Hearing on December 4, 2013, the Board unanimously determined that the Complaint stated a facial claim and scheduled to case for an Evidentiary Hearing based on the Bernalillo County Code of Conduct Section 2-132 (a)(5)(d). On January 13, 2014, the Board adopted Temporary Rules of Procedure. On January 29, 2014, the Board heard and denied Complainant's Motion for a Continuance and Respondent's Motion to Dismiss, Motion in Limine to Exclude Hearsay Testimony, and Objection to Evidence. After hearing and deciding on the Motions, the Board held an Evidentiary Hearing. Complainant and Respondent appeared. Respondent was represented by counsel, Mr. Jerry Walz, Esq.

ISSUE

Whether the Respondent engaged in conduct in violation of Bernalillo County Code of Conduct Sections 2-130(a)(4), 2-130(e), 2-130(h)(5), 2-130, and 2-130(h)(6).

FINDINGS OF FACT

Based upon a review of the full record, the Board finds as fact that:

1. Respondent is a public servant, subject to the Bernalillo County Code of Conduct (the "Code").
2. Respondent testified that he did not request, receive or offer any money, thing of value or promise thereof that was conditioned upon or given in exchange for promised performance of an official act.
3. Respondent uses a County-owned phone.
4. Respondent testified that he never used the County phone for political activity or in violation of County policies.
5. Respondent and Bernalillo County Manager Tom Zdunek testified, and Respondent furnished documentary evidence, that Respondent made monthly payments to the County to compensate for any non-political personal use of the County phone that exceeded the County's reasonable use policy.
6. Logs of phone usage did not provide evidence as to the content or nature of Respondent's phone conversations.

7. Respondent uses a County-owned computer.
8. Respondent testified that he never used the County computer for political activity or in violation of County policies.
9. Logs of computer usage and website visits were unreliable and even if taken as true, did not provide evidence as to the activity undertaken on specific websites.
10. Respondent uses a County-owned office.
11. Respondent testified that he did not use his office as a campaign headquarters, or for political activity, or in violation of County policies.
12. Logs of visitation to Respondent's office did not provide evidence as to the content or nature of conversations that Respondent had with visitors in his office.
13. Respondent testified that he did not perform any political activity while at his office or while performing official County business.
14. No testimony or other evidence that was produced demonstrated that Respondent performed political activity while at his office or while performing official County business.
15. Mr. Andy Segura, an employee of the County's information technology department, testified that he had never performed or been asked to perform any political activity on behalf of Respondent while an employee of the County.
16. Mr. Jim Dixon, a photographer and County employee, testified that he had never performed or been asked to perform any political activity on behalf of Respondent while an employee of the County.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the Board concludes as a matter of law that:

- A. Respondent did not violate Bernalillo County Code of Conduct Sections 2-130(a)(4), 2-130(e), 2-130(h)(5), 2-130, or 2-130(h)(6).
- B. The Board does not have jurisdiction or authority to consider violations of state statutes.

ORDER

Sworn Complaint 2013-003 is DISMISSED.

Chairman, Alan Packman, is designated by the Board to sign the Final Board Decision and Order.

**FOR THE BERNALILLO COUNTY
CODE OF CONDUCT REVIEW BOARD**

Done and signed: 2/24, 2014



ALAN PACKMAN, Chairman