

September 26, 2018

Dear McLean County Ethics Commission,

We are requesting your investigation into unlawful use of public property in a political campaign, specifically the use of a laptop computer and a desktop computer, both owned by McLean County, in the campaign to reelect Kathy Michael as McLean County Clerk. Additionally, within 72 hours of a 7/12/18 FOIA request for Michael's laptop browser history, the device sustained massive water damage. This raises the question of whether an attempt was made to destroy evidence of prohibited political activity on a county-owned laptop.

We attach materials produced in response to two FOIA requests for browsing history on Kathy Michael's publicly owned devices which document her use of these devices for campaign activities. These activities are discussed more fully below.

Michael first became County Clerk in 2010 and is currently running for a third term against a Democratic opponent. The browser history from Michael's county-owned laptop, recovered one month after the device was water-damaged, revealed that she used it to engage in extensive political activity between 5/15/18 and 7/12/18. This activity includes opposition research, purchase of campaign materials, updates to her campaign re-election Facebook page, and communication pertaining to political events and fundraisers in McLean County. Additionally, the browser history show that Michael used the device almost exclusively for prohibited political activity and personal use. Over a two-month time period, only 11% of the browser history on the device--namely, visits to her mcleancountyil.gov email and her official County Clerk Facebook page-- pertained to Michael's duties as a McLean County elected official. Michael's county-owned desktop computer shows evidence of similar activity, including donations to charitable organizations made in her capacity as a candidate.

According to section 37-2A of the McLean County Ethics Code, "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 McLean County in connection with any prohibited political activity."

The following are defined as prohibited political activity in section 37-1 of the McLean County Ethics Code:

- Preparing for, organizing, or participating in any political meeting, political rally, political demonstration, or other political event.

- Soliciting contributions, including but not limited to the purchase of, selling, distributing, or receiving payment for tickets for any political fund-raiser, political meeting, or other political event.
- Soliciting, planning the solicitation of, or preparing any document or report regarding anything of value intended as a campaign contribution.
- Making contributions on behalf of any candidate for elective office in that capacity or in connection with a campaign for elective office.
- Distributing, preparing for distribution, or mailing campaign literature, campaign signs, or other campaign material on behalf of any candidate for elective office or for/against any referendum question.
- Campaigning for any elective office or for/against any referendum question.
- Managing or working on a campaign for elective office or for/against any referendum question.

In a departure from her past practices, on 7/13/18 and 7/14/18, the two days following the FOIA request for the laptop browser history, Michael did not engage in any prohibited political activity while on the device, suggesting that she may have been aware that a FOIA had been submitted for the device's browser history and, as a result, was attempting to comply with the Ethics Code. Michael appears to have understood that political activity using State property or resources was unlawful, since she prefaced a 6/28/18 post on her campaign re-election Facebook page with the following: "Disclaimer: I am out of the office today, not posting on government time or property."

Significant water damage occurred to Michael's county-owned laptop between 8:55 a.m. on 7/14/18, when a browser on the device was last accessed, and 7/15/18, when Michael approached Best Buy with the device to see if the data was "recoverable." Best Buy noted that the "computer got extremely wet" and had "notable corrosion particularly around battery terminals." Best Buy was not able to recover data from the device. On 8/15/18, the data-recovery company Ontrack was able to recover data from the "structurally damaged" laptop at the request of McLean County Information Technology. The data was subsequently emailed to us on 9/6/18 in fulfillment of our 7/12/18 FOIA request.

Illinois State law (720 ILCS 5/21-1.01, Sec. 21-1.01) makes clear that criminal damage to government-supported property is a felony. We believe that in addition to potentially violating the McLean County Ethics Code, Michael has also breached the Illinois State law against official misconduct (20 ILCS 5/33-3, Sec. 33-3), wherein a government official "[k]nowingly performs an act which he knows he is forbidden by law to perform; or [w]ith intent to obtain a personal advantage for himself or another, he performs an act in excess of his lawful authority." Michael

may have also violated Article VIII of the Illinois Constitution, which states, “Public funds, property or credit shall be used only for public purposes.”

We respectfully ask the commission for an investigation, a finding that the Ethics Code has been violated, and that the commission refer the matter to the McLean County State’s Attorney for appointment of a Special Prosecutor. We have attached the following supporting documentation:

**Document 1a–1b:** A Word document summary and an Excel file of Kathy Michael’s browsing history from a county-owned laptop between 5/15/18 and 7/14/18.

**Document 2a–2b:** A Word document summary and an Excel file of Kathy Michael’s browsing history from a county-owned desktop computer between 6/19/18 and 7/12/18.

**Document 3:** A screenshot of a 6/28/18 post on Kathy Michael’s campaign re-election Facebook page, “Kathy Michael County Clerk,” in which Michael writes: “Disclaimer: I am out of the office today, not posting on government time or property.”

(<https://www.facebook.com/KathyMichaelForCountyClerk/posts/808292896030908>)

**Document 4:** A screenshot of the expenditures of the Friends of Kathy Michael campaign committee from Illinois Sunshine, showing purchase of lawn signs and advertising that was researched on Michael’s county-owned laptop.

**Document 5:** An Excel file of the expenditures of the Friends of Kathy Michael campaign committee from Illinois Sunshine.

**Document 6:** A 7/12/18 FOIA request for information including Kathy Michael’s browsing history from a county-owned laptop, submitted by attorney Josh Rohrscheib.

**Document 7:** A Best Buy service order receipt dated 7/15/18. [Note: The product was incorrectly identified as a 2014 Dell desktop computer. The computer examined by Best Buy on 7/15/18 was a laptop (“notable corrosion particularly around battery terminals”), and this document was produced in response to a FOIA concerning repairs to the laptop.]

**Document 8:** August 2018 correspondence between Craig Nelson and Derek Barker of McLean County Information Technologies and Kroll Ontrack, Inc. regarding data-recovery services on Kathy Michael’s county-owned laptop.