



OFFICE OF THE LEGISLATIVE AUDITOR  
STATE OF MINNESOTA • James Nobles, Legislative Auditor

July 8, 2011

James A. Monroe, Executive Director  
Minnesota Association of Professional Employees  
3460 Lexington Ave. N, Suite 300  
Shoreview, Minnesota 55126

Dear Mr. Monroe:

You recently filed a complaint with the Office of the Legislative Auditor (OLA) about a June 27, 2011, e-mail sent to state employees by Representative Kurt Zellers, Speaker of the Minnesota House of Representatives, and Senator Amy Koch, Minnesota Senate Majority Leader. The e-mail offered state employees Speaker Zellers' and Majority Leader Koch's perspective on budget negotiations with Governor Dayton.

You suggested that the e-mail from Speaker Zellers and Majority Leader Koch may have violated the state's *Appropriate Use of Electronic Communications and Technology Policy*, which says it is inappropriate to use the state's e-mail system to promote a political position. You acknowledged that the policy applies to Executive Branch employees, not legislators, but suggested that legislators should be bound by the policy when they send an e-mail to Executive Branch employees. In addition, you said:

As leaders of their legislative bodies, and as their leading authorities, I would hope that Majority Leader Koch and Speaker Zellers would hold themselves to a higher standard than their employees by refraining from appearing in any type of communication, print or electronic, [to be]...using their offices to advocate a partisan point of view.

OLA does not normally address complaints related to legislators or legislative staff because we would not be considered adequately independent. Our primary oversight jurisdiction and focus is on the Executive Branch of state government. However, I have recently gathered information about state policies on e-mail use and want to provide you with what I hope will be helpful information.

The law, *Minnesota Statutes* 2010, 43A.38, subdivision 4(c), that mandated the creation of the Executive Branch *Appropriate Use of Electronic Communications and Technology Policy*, also mandated that the Legislative and Judicial Branches establish e-mail use policies for their employees. In response, the House and Senate established policies several years ago to govern e-mail use by members and staff.

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Both the House and Senate policies make general declarations that their e-mail systems should be used for state business and matters of concern to the House and Senate (although, like the Executive Branch policy, they also allow limited personal use). The policies call on members and staff to exercise good judgment and common courtesy in sending e-mails. They prohibit using the House and Senate e-mail systems for private commercial activities or campaign purposes.

However, unlike the Executive Branch policy, the House and Senate e-mail use policies do not prohibit messages that promote a political position. The lack of such a prohibition may reflect the fact that the Legislature is a political institution and, in their role as lawmakers, members must often articulate statements of support and opposition on political issues.

Nevertheless, you suggested that legislators should be bound by the Executive Branch policy when they send e-mails to Executive Branch employees. I do not find a basis for that expectation in either the Legislative Branch or Executive Branch policies. In addition, to expect e-mail senders to be aware of and follow the e-mail policies of their e-mail recipients would present significant practical challenges.

In closing, I want to share with you the insights I gained in considering a complaint about an e-mail the Commissioner of Public Safety, Ramona Dohman, sent employees of her department about state budget negotiations between Governor Dayton and legislative leaders. Similar to your complaint about Speaker Zellers' and Majority Leader Koch's e-mail, a state employee alleged that Commissioner Dohman's e-mail violated the *Appropriate Use of Electronic Communications and Technology Policy* because it promoted a political position.

Primarily, I learned that it can be difficult to determine when an e-mail violates the Executive Branch policy by crossing the line from appropriate expression about public policy issues and becomes an inappropriate promotion of a political position. The Executive Branch appropriate e-mail use policy does not define "political position." The best it offers as guidance is that state employees should use "good judgment" and that appropriateness (or inappropriateness) of an e-mail should be judged by both content and tone.

I concluded that Commissioner Dohman's e-mail "could be interpreted as promoting a political position" because it was "one-sided." The e-mail characterized the Governor's position as "reasonable," while asserting that the "negative impacts" of the Legislature's position "are just too great" and would result in "unnecessary" cuts to certain programs. However, my letter to Commissioner Dohman about the e-mail acknowledged that she had addressed an important issue in terms of content, and one clearly within her purview as a commissioner in state government. I also acknowledged that, as an appointee of the Governor, she was expected to advocate for his positions and policies.

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Indeed, Executive Branch officials often make strong statements to support or oppose policy and political positions in legislative committee hearings, press releases, and letters. The only apparent limitation occurs when officials and employees in the Executive Branch of state government use the state's e-mail system (or other methods of electronic communication) to distribute those statements. However, as discussed above, determining the extent of that limitation can be difficult.

In addition to the copies of letters you provided me, I have also received several dozen e-mails state employees sent legislators and legislative staff in response to Speaker Zellers' and Majority Leader Koch's e-mail. Similar to the letters, the e-mails express strong opposition to the legislative leaders' e-mail and allege it violated the Executive Branch policy prohibition against using the state e-mail system to promote a political position. Ironically, some of the e-mails that were sent using the state's e-mail system articulate what could be considered political positions on the budget negotiations. However, rather than making judgments about individual e-mails, I intend to work on ensuring that all interested parties are aware of the various state policies that govern the use of state e-mail systems.

Please let me know if you have further questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Nobles", written in a cursive style.

James Nobles  
Legislative Auditor