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TENNESSEE DEPARTMENT OF SAFETY vs. LUIS SWEENEY, Grievant.

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**BEFORE THE CIVIL SERVICE COMMISSION OF THE
STATE OF TENNESSEE**

IN THE MATTER OF:

**TENNESSEE DEPARTMENT OF
SAFETY,**

v.

**LUIS SWEENEY,
*Grievant.***

DOCKET NO: 26.19-107463J

INITIAL ORDER

This matter was heard on November 4, 2010, in Nashville, Tennessee, before Administrative Judge Mary M. Collier, assigned by the Secretary of State, Administrative Procedures Division, to sit for the Civil Service Commission of the State of Tennessee. Staff Attorney Deborah Martin represented the Tennessee Department of Safety and the Grievant, Trooper Luis Sweeney represented himself, waiving the right to legal counsel.

The issue is whether the Department of Safety properly suspended Trooper Sweeney's employment for ten (10) days. After consideration of all of the evidence and arguments of the parties, it is determined that the ten (10) day suspension of Trooper Sweeney's employment by the Department of Safety was proven to be appropriate by a preponderance of the evidence and should therefore be **UPHELD**. This decision is based upon the following.

PROCEDURAL HISTORY

The Department of Safety suspended Trooper Sweeney for ten (10) days without pay based upon his conduct of engaging in political activity while on duty for the Tennessee Highway Patrol. On February 5, 2010, Trooper Sweeney was afforded a due process hearing,

during which his ten (10) day suspension was upheld. Thereafter, on March 17, 2010, the Department of Safety held a Level IV Grievance hearing. On March 19, 2010, the Department of Safety notified Trooper Sweeney that the outcome of the Level IV Hearing was to uphold his ten (10) day suspension. Again, on April 5, 2010, the Department of Safety notified Trooper Sweeney that the outcome of the Level IV Hearing was to uphold his ten (10) day suspension.

Trooper Sweeney filed his Level V Grievance hearing request with the Civil Service Commission on May 5, 2010. Thereafter, on May 11, 2010, the matter was referred to the Administrative Procedures Division in the Secretary of State's Office for a contested case hearing. On June 3, 2010, the Department of Safety filed the March 19, 2010, memorandum. And, on June 7, 2010, Trooper Sweeney filed the April 5, 2010, memorandum. By ORDER entered on July 1, 2010, the hearing in this matter was continued past the 120th day after filing,¹ at the request of the parties. The contested case was heard on November 4, 2010. The transcript was filed on December 22, 2010. On February 2, 2011, the Department of Safety filed proposed findings of fact and conclusions of law. On February 15, 2011, Trooper Sweeney filed proposed findings of fact and conclusions of law.

FINDINGS OF FACT

1. The Grievant, Trooper Luis Sweeney, is employed as a highway patrolman for the Tennessee Highway Patrol (THP), which is part of the Department of Safety.

2. On April 3, 2006, Colonel Mike Walker informed Trooper Sweeney in writing that his campaign for election to the Maury County Commission was permitted under the Federal Hatch Act provided that it was a non-partisan election. In this letter, Trooper Sweeney was also reminded that "the Little Hatch Act prohibits any political activity while on duty."

¹ See TENN. CODE ANN. § 8-30-328(c).

3. In May 2006, the Department of Safety implemented a practice of temporarily assigning troopers running for political office to a temporary duty assignment in an adjoining county. Pursuant to this Department of Safety practice, in 2009 during Trooper Sweeney's political campaign for the non-partisan election for Sheriff of Maury County, Trooper Sweeney was temporarily assigned to a duty assignment in Marshall County. On August 9, 2010, after the election, Trooper Sweeney's temporary assignment ended and he was reassigned to his regular duty station in Maury County.

4. On January 6, 2009, Trooper Sweeney announced his candidacy for election as Sheriff of Maury County.

5. During his campaign for Sheriff of Maury County, Trooper Sweeney went to the Wentzel's Body and Sign Shop to inquire about purchasing campaign signs. Trooper Sweeney did this while he was on patrol wearing his THP uniform and driving his assigned THP patrol car. Wentzel's Body and Sign Shop is located in Lewisburg, which is in Marshall County, Tennessee.

6. In June 2009, Trooper Sweeney, while wearing his THP uniform and driving his THP patrol car, went to the Wentzel's Body and Sign Shop and placed an order for six (6) magnetic signs for use in his campaign for sheriff of Maury County.

7. On August 6, 2009, Trooper Sweeney, while wearing his THP uniform and driving his THP patrol car, went to the Wentzel's Body and Sign Shop and picked up two (2) of the magnetic campaign signs he had ordered. Trooper Sweeney explained that he would pick up the remaining four (4) signs when he had more campaign money.

8. In or around September 2009, Trooper Sweeney, while wearing his THP uniform and driving his assigned THP patrol car, went to the Wentzel's Body and Sign Shop and

informed Ms. Sherry Wentzel and her husband that he would pick up the remaining four (4) magnetic signs.

9. In or around October 2009, Ms. Wentzel spoke to Trooper Sweeney's supervisor, THP Sergeant Logan, to inquire about either garnishing Trooper Sweeney's wages or assisting her with getting in touch with Trooper Sweeney.

10. In 2009, Sgt. John Officer, was an officer assigned to the Department of Safety Office of Professional Responsibility. Sgt. Officer was assigned to investigate the Wentzel complaint involving Trooper Sweeney.

11. On November 2, 2009, Sgt. Officer traveled to the Wentzel's Body and Sign Shop where he observed Trooper Sweeney, who was on duty and wearing his THP uniform, arrive at the shop in his THP patrol car. Sgt. Officer observed Trooper Sweeney enter the shop. Sgt. Officer observed Trooper Sweeney come out of the shop with two campaign banners in his possession, which Trooper Sweeney then placed in his THP patrol car. Trooper Sweeney then drove away with the campaign material in his THP patrol car.

12. On at least one occasion, Trooper Sweeney paid for and picked up the campaign signs from the Wentzel's Body and Sign Shop while he was on duty.

13. When Trooper Sweeney bought the campaign signs, he was temporarily assigned to Marshall County where the Wentzel's Body and Sign Shop is located.

14. Buying campaign signs while on duty is political activity because it is part of running one's political campaign.

15. Transporting campaign signs in one's THP patrol car is political activity because it is part of running one's political campaign.

16. Captain Stephen Blake Hazard personally notified Trooper Sweeney of the laws, rules and Department of Safety General Orders that apply to THP Officers running for public office.

17. Captain Hazard, upon reviewing the Department's disciplinary matrix, determined that a ten (10) day suspension without pay was appropriate.

18. Since May 2006, the Department of Safety has rigorously enforced the General Orders concerning political activity.

19. State Troopers are paid a salary to enforce all traffic and criminal laws and to assist the public in any way necessary for eight hours a day or for however long one's shift lasts.

20. Participating in political activity while on duty is not approved of by the Department of Safety and is a violation of Departmental General Orders and State law.

21. Trooper Sweeney has been suspended in the past from one day to five days suspension.

ANALYSIS and CONCLUSIONS OF LAW

Civil service appeals are heard *de novo* before an Administrative Judge. The Department of Safety, as the party seeking to "change the present state of affairs," has the burden of proof, under RULE 1360-4-1-.02(7) of the Uniform Rules of Procedure for Hearing Contested Cases before State Administrative Agencies, TENN. COMP. R. & REGS. ch. 1360-4-1 (June 2004 (Revised)), to prove by a preponderance of the evidence that the discipline imposed on the Grievant complies with State law and the DHR/DOP RULES.² The Department of Safety has met this burden of proof by proving by the preponderance of the evidence that Trooper Sweeney was

² The applicable rules are entitled "Rules of the Tennessee Department of Personnel;" however, this department is now named the Tennessee Department of Human Resources. See TENN. CODE ANN. §§ 4-3-101(3) & 4-3-1701. Herein, the Rules of the Tennessee Department of Human Resources, TENN. COMP. R. & REGS. ch. 1120-10 (Disciplinary Action) (May 1999 (Revised)), will be referred to as "DHR/DOP RULES."

appropriately suspended for ten (10) days without pay pursuant to the Department of Safety General Orders and the DHR/DOP RULES. It is determined that the Department of Safety properly suspended Trooper Sweeney's employment for ten (10) days without pay.

The Tennessee Department of Safety, General Order 264 — Political Activity, Section IV — Guidelines, subsection A.1.a.(7) clarifies that The Little Hatch Act, Tenn. Code. Ann. 2-19-201 - 208, prohibits public officers and employees of the State from “[p]articipating in any political activity while on duty.” Similarly, DHR/DOP Rule 1120-10-.06(23) provides that political activity is prohibited by Tenn. Code Ann. Title 2. Chapter 19 (The Little Hatch Act), and is subject to disciplinary action.

DHR/DOP RULE 1120-10-.06(8) provides that “conduct unbecoming an employee in the State service” is also grounds for discipline. Similarly, the TENNESSEE DEPARTMENT OF SAFETY, GENERAL ORDER 216-1 — ETHICS, COMPLIMENTS, COMPLAINTS AND DISCIPLINARY REGULATIONS, Section IX— CAUSES FOR DISCIPLINARY ACTION, subsection B. 3. UNBECOMING CONDUCT provides:

- a. Employees shall conduct themselves at all times, on and off duty, in a manner as to reflect most favorably upon themselves and/or the Department.
 - (1) Unbecoming conduct shall include any conduct which tends to bring the Department into disrepute; or which reflects discredit upon the Department or any employee(s) of the Department: or which tends to impair the operation and efficiency of the Department or an employee; or which violates Departmental policy.

The TENNESSEE DEPARTMENT OF SAFETY, GENERAL ORDER 216-1 — ETHICS, COMPLIMENTS, COMPLAINTS AND DISCIPLINARY REGULATIONS, Section IX— CAUSES FOR DISCIPLINARY ACTION, subsection B. 1. CONFORMANCE TO LAWS provides:

- a. Each employee shall obey the laws of the United States, the State of Tennessee, and of local jurisdictions.

(1) If facts revealed by a thorough investigation indicate there is evidence an employee has committed acts, which constitute a violation of a civil or criminal law ordinance, or infraction other than a parking ordinance, then the member may be deemed to have violated this subsection, even if the member is not prosecuted or is found not guilty in court.

Clearly, participating in political activity while on duty is not approved of by the Department of Safety and is a violation of the Departmental General Orders, State law, and the DHR/DOP Rules. Buying campaign signs while on duty is political activity because it is part of running one's political campaign. Transporting campaign signs in one's THP patrol car is political activity because it is part of running one's political campaign. By engaging in this conduct, Trooper Sweeney participated in political activity while on duty in violation of the Departmental General Orders, State law, and the DHR/DOP Rules.

Based upon the forgoing, the Department of Safety has met its burden of proof by proving by the preponderance of the evidence that Trooper Sweeney was appropriately suspended for ten (10) days without pay for his violation of the Department of Safety General Orders, State law, and the DHR/DOP RULES. It is determined that the Department of Safety properly suspended Trooper Sweeney's employment for ten (10) days without pay. It is further determined that the Department of Safety was lenient in its discipline of Trooper Sweeney for his conduct.

Accordingly it is hereby **ORDERED** that Trooper Sweeney's appeal is **DENIED** and the ten (10) day suspension without pay of Trooper Sweeney's employment is **UPHELD**.

It is so **ORDERED**.

This INITIAL ORDER entered and effective this the _____ day of _____ 2011.

MARY M. COLLIER
ADMINISTRATIVE JUDGE
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE

Filed in the Administrative Procedures Division, Office of the Secretary of State, this the
_____ day of _____ 2011.



THOMAS G. STOVALL, DIRECTOR
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE