

OVERVIEW

LAWS GOVERNING POLITICAL ACTIVITY BY STATE EMPLOYEES

Questions about whether political activity by State employees involve issues of: (1) Maryland personnel laws; (2) Maryland ethics laws; and (3) federal law. Consideration of whether political activity is permissible or prohibited requires looking at these three sets of laws, along with applicable election laws, the State constitution, and agency policy. Although answers usually depend on the particular facts of each situation, this Overview provides some guidelines.

Maryland personnel laws

Generally, State personnel law provides that employees may freely participate in any political activity and express any political opinion, except they may not:

- § engage in political activity on the job;
- § advocate the overthrow of government by unconstitutional means or violence; or
- § require any State employee to make any political contribution

State employees may not use political influence to gain an advantage in any personnel decision.

Requests for guidance on personnel laws (or election laws) should be referred to the Office of the Attorney General.

Maryland ethics laws

State ethics laws generally provide that State employees are prohibited from using their State positions to benefit themselves or others. State employees are prohibited from using State time, materials, equipment, or facilities for political purposes. Even though certain activities may be permissible under Maryland's personnel laws, the ethics laws may indicate a conflict of interest between a State employee's political activity and his or her duties in State employment. In other words, the State personnel laws protecting employees' rights to engage in political activity does not preclude an ethics violation.

The Ethics Commission, not the Office of the Attorney General, decides whether a State employee would be violating ethics laws by engaging in political activity. The Ethics Commission's decisions are very fact-specific. Some boundaries:

- § State employees may provide volunteer campaign services for campaigns, so long as there is no use of State resources. Supervisors cannot suggest, urge, or require subordinates to engage in campaign activity. Uniformed personnel cannot use State uniforms or equipment in political advertising. State employees cannot use confidential information for any political activity.

- § State employees may engage in paid campaign activity, subject to the same limits that apply to volunteer campaign activity. Additionally, *paid* campaign activity is *employment*, so this raises issues of complying with PCTC's secondary employment policy, not taking secondary employment that impairs or influences your ability to do your State job, and maintaining a clear separation between paid political activity and

State employment. A formal leave of absence may be a way to resolve these issues.

- § State employees may run for office while remaining State employee, provided they do not use State resources or otherwise misuse their State position. Additionally, State employees running for office must comply with campaign finance rules, and must be careful not to solicit contributions from people or entities they have contact with during the course of their State employment.
- § Whether State employees may keep their State jobs after winning an election depends on the facts of each case. Questions about potential ethics violations should be directed to the Ethics Commission, and questions about potential constitutional issues (*e.g.*, State constitutional requirements for certain elected positions) should be directed to the Office of the Attorney General.

Federal law - AHatch Act@

Regardless of what State law permits, federal law prohibits political activity by certain kinds of State employees. State employees in the executive branch (*e.g.*, PCTC) who are principally employed in connection with programs financed in whole or in part by loans or grants made by the U.S. government or a federal agency are considered *Acovered employees@* or *AHatched.@* If you exercise no job function in connection with any federally-funded activity, you are not Hatched.

An employee is Hatched if his or her principal employment is in connection with an activity which is financed in whole or in part by loans or grants made by the U.S. or a federal agency. Generally, this determination must be made on a case-by-case basis by looking at the employee=s job description and specific duties, and the specific activities which are federally funded. If the employee exercises any function in connection with the federally funded activities, the Hatch Act applies to him. In the case of supervisory personnel, if employees he directly supervises have such a connection with a federally funded activity, the Hatch Act may cover the supervisor as well. Placing a Hatched employee on leave during period(s) of political activity will not resolve the Hatch problem.

Hatched employees *may*:

- § run for public office in nonpartisan elections
- § campaign for and hold office in political clubs and organizations
- § actively campaign for candidates for public office in partisan and nonpartisan elections
- § contribute money to political organizations and attend political fundraising functions

Hatched employees *may not*:

- § be candidates for public office in a partisan election
- § use official authority or influence to interfere with or affect the results of an election or nomination
- § directly or indirectly coerce contributions from subordinates to support a party or candidate

LEGAL REFERENCES

Maryland personnel laws

Md. Code Ann., State Pers. & Pens. (ASPP@) ' 2-304 (political activities); ' 2-307 (prohibiting use of political influence)

Maryland ethics laws

Md. Code Ann., State Gov=t ' 15-101, *et seq.* (Public Ethics)

Maryland election laws

Md. Code Ann., Elec. Law ' 13-101, *et seq.* (campaign finance)

Federal law

5 U.S.C. ' 1501, *et seq.* (Hatch Act)

RESOURCES

PCTC=s Personnel, Policy and Procedures Manual, ' I.F (secondary employment)

Office of the Maryland Attorney General, www.oag.state.md.us

Maryland Ethics Commission, www.ethics.gov.state.md.us

U.S. Office of Special Counsel - Hatch guidance and information, www.osc.gov/ha_state.htm

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