

Political Activity **and the State and Local Employee**



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The Hatch Act	
Its Importance to State and Local Employees	2
Who Is Covered.....	3
Who Is Not Covered.....	3
Permitted and Prohibited Activities for State and Local Employees	4
Questions and Answers	5
General Provisions	5
Prohibited Activities.....	5
Permitted Activities	6
Penalties for Violation.....	7
Special Considerations for Employee-of-Private, Nonprofit	
Agencies Receiving Federal Assistance.....	7
The Office of Special Counsel	8
Title 5, United States Code Sections 1501 - 1508.....	9

Important Note

This booklet summarizes the laws, regulations and policies governing the political activities of certain employees of state and local governments. Its intent is to provide a basic overview of permissible and prohibited political activities. Employees should not rely on the opinions of friends or co-workers when they have questions with regard to a specific political activity. Ignorance of the law does not excuse an employee's violation of the Hatch Act. Reliance on incorrect or unofficial information also does not excuse a violation. Employees with additional questions may obtain an advisory opinion by telephoning the Office of Special Counsel or by submitting their questions, in writing, to the address listed below.

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The Hatch Act

Its Importance to State and Local Government Employees

The political activity of government employees has been a concern of elected officials since the earliest days of the Republic. Thomas Jefferson, the nation's third President, was among the first to express concern about this issue.

In response to Jefferson's concern, the heads of the executive departments issued an order which stated that while it is “the right of any officer (federal employee) to give his vote at elections as a qualified citizen... it is expected that he will not attempt to influence the votes of others nor take any part in the business of electioneering, that being deemed inconsistent with the spirit of the Constitution....”

However, despite the concerns of Jefferson and other American statesmen, almost a century and a half elapsed before Congress enacted a comprehensive law regarding the political activities of government employees.

In 1939, Congress approved landmark legislation known as the Hatch Act which limits the political

activities of federal employees, employees of the District of Columbia government and certain employees of state and local governments.

In passing the Hatch Act, Congress determined that partisan political activity by federal employees, employees of the District of Columbia government and certain employees of state and local governments must be limited for public institutions to function fairly and effectively.

Before 1979, the U. S. Civil Service Commission had primary responsibility for enforcing the Hatch Act. However, the Civil Service Reform Act of 1978 transferred the Commission's investigative and prosecutorial authority to the Office of the Special Counsel of the U. S. Merit Systems Protection Board (MSPB). Passage of the Whistleblower Protection Act in 1989, established the Office of Special Counsel as an independent agency within the executive branch of the federal government.

Who Is Covered?

The Hatch Act restricts the political activity of individuals principally employed by state or local executive agencies who work in connection with programs financed in whole or in part by federal loans or grants.

The following list offers examples of the types of programs which frequently receive financial assistance from the federal government: public health, public welfare, housing, urban renewal and area redevelopment, employment security, labor and industry training, public works, conservation, agricultural, civil defense, transportation, anti-poverty, and law enforcement programs.

Usually, employment with a state or local agency constitutes the principal employment of the employee in question. When an employee holds two or more jobs, principal employment is generally deemed to be that job which accounts for the most work time and the most earned income.

Hatch Act provisions also apply to employees of private, nonprofit organizations which plan, develop and coordinate federal Head Start or Economic Opportunity programs.

State and local employees subject to political activity laws continue to be covered while on annual leave, sick leave, leave without pay, administrative leave or furlough.

Who Is Not Covered?

Hatch Act provisions do not apply to:

- 1) individuals who exercise no functions in connection with federally financed activities; or
- 2) individuals employed by educational or research institutions, establishments, or agencies which are supported in whole or in part by state or political subdivisions thereof, or by recognized religious, philanthropic or cultural organizations.

The law also exempts certain specified employees from the prohibition on candidacy for elective office. These exemptions include:

- 1) the governor or lieutenant governor of a state, or an individual authorized by law to act as governor;
- 2) the mayor of a city;
- 3) a duly elected head of an executive department of a state or municipality who is not classified under a state or municipal merit or civil service system; and
- 4) an individual holding public elective office. The latter exemption applies only when the elective office is the position which would otherwise subject the employee to the restriction of the Hatch Act.

Permitted and Prohibited Activities For State and Local Employees

- **May** be a candidate for public office in a nonpartisan election
- **May** campaign for and hold elective office in political clubs and organizations
- **May** actively campaign for candidates for public office in partisan and nonpartisan elections
- **May** contribute money to political organizations or attend political fundraising functions
- **May** participate in any activity not specifically prohibited by law or regulation
- **May not** be a candidate for public office in a partisan election
- **May not** use official authority or influence for the purpose of interfering with or affecting the results of an election or a nomination for office
- **May not** directly or indirectly coerce contributions from subordinates in support of a political party or candidate

An election is partisan if any of the candidates in the election are running as a representative of a political party whose presidential candidate received votes in the preceding election at which Presidential electors were selected.

CAUTION: An employee's conduct is also subject to the laws of the state and the regulations of the employing agency. Prohibitions of the Hatch Act are not affected by state or local laws.

Questions and Answers

General Provisions

Q. Which state and local employees are restricted in their political activity?

A. Executive branch employees in any agency of a state or local government whose principal employment is in connection with an activity financed in whole or in part by federal loans or grants are covered by the law.

Q. What does “principal employment” mean?

A. If an employee has only one position or job, that is his principal employment. When an employee holds two or more jobs, principal employment is usually deemed to be the job at which the employee spends the majority of his time and from which he earns the majority of his income.

Q. Which officers or employees of a state, territorial or municipal government are not prohibited from running for office in a partisan election?

A. The governor, the lieutenant governor, the mayor of a city or other elected officials of a state or local government are exempt if the elective office is the principal employment.

Q. Are there any employees exempted by the statute?

A. Yes. Officers and employees of educational and research institutions, establishments, agencies or systems supported in whole or in part by state or local governments or by recognized religious, philanthropic or cultural organizations are not covered by the statute.

Q. Do the political activity restrictions apply equally for a full-time or part-time employee?

A. Yes, provided the employee's position with the federally financed agency is his or her principal employment.

Prohibited Activities

Q. What does federal law provide concerning the political activity of certain state or local employees?

A. State or local employees subject to the provisions of the Hatch Act may not:

- (1) use their official authority or influence for the purpose of interfering with or affecting the result of an election or nomination for office;
- (2) directly or indirectly coerce, attempt to coerce, command or advise a state or local officer or employee to pay, lend or contribute anything of value to a party, committee, organization, agency or person for political purposes; or
- (3) be candidates for elective office.

Q. Does the law cover employees in the executive branch of the territorial governments of Puerto Rico, the Virgin Islands, Guam and American Samoa?

A. Yes. For purposes of the law the term “state” includes states, territories and possessions of the United States.

Q. What type of activity is prohibited by the restrictions against misuse of official authority and coercion?

A. These prohibitions are aimed at activities such as threatening to deny promotion to any employee who does not vote for certain candidates, requiring employees to contribute a percentage of their pay to a political fund, influencing subordinate employees to buy tickets to political fund raising dinners and similar events, and advising employees to take part in political activity. These prohibitions principally affect supervisors but are applicable to any covered employee. For instance, employees still may not coerce command or advise other covered employees to make political contributions or to contribute their time or anything of value for partisan political purposes.

Q. What is meant by the prohibition against candidacy “for elective office”?

A. State or local employees subject to the Hatch Act may not be candidates for public office in partisan elections. Primary and run-off elections to nominate candidates of partisan political parties are partisan elections for purposes of the law even though no party designation appears on the ballot.

Q. Does this mean that covered state or local employees cannot be candidates for public office in any election?

A. No. The law permits officers and employees to be candidates in nonpartisan elections. These are elections in which none of the candidates are nominated or elected as representatives of political parties whose presidential candidates received votes in the preceding presidential election.

Q. Who enforces the law for covered state and local employees?

A. The Special Counsel is responsible for enforcing the Hatch Act. The MSPB has authority to adjudicate disciplinary actions brought by the Special Counsel against covered state and local employees who are alleged to have violated the law.

Permitted Activities

Q. What types of political activity are permitted under the Hatch Act?

A. State or local employees subject to the provisions of the Hatch Act may take an active part in political management and political campaigns.

Q. What types of permitted activities are included in the term "political management"?

A. Employees may be members of and may hold office in political parties, organizations or clubs. Employees may attend meetings, endorse candidates and take an active part in the management of clubs, organization or parties. Also, employees may be candidates for political party office.

Attendance at political conventions and participation in the deliberations or proceedings are permitted activities. Employees may be candidates for, or serve as delegates, alternates or proxies at such conventions.

Volunteer work for partisan candidates, campaign committees, political parties or nominating conventions of political parties is permitted.

Q. What types of permitted activities does the term “political campaigns” include?

A. Employees may campaign for candidates in partisan elections by making speeches, writing letters, drafting speeches for candidates or soliciting voters to support or oppose candidates.

Employees may attend political meetings or rallies including committee meetings of political organizations, and may serve on committees that organize or direct activities at partisan campaign meetings or rallies.

Q. May employees make financial contributions to political parties or organizations?

A. Yes. Employees may make financial contributions to political parties or organizations. The employees may solicit and collect voluntary political contributions. However, they may not solicit, coerce, command or advise other covered employees to make such contributions.

Q. Does the law prohibit employees from holding public elective office?

A. No. The law that prohibits candidacy for elective office does not prohibit holding office. Therefore, if an employee holds elective office when appointed to a covered state or local position, the employee may continue to serve. However, such an employee may not be a candidate for reelection in a partisan election. Likewise, an employee may accept appointment to fill a vacancy in an elective public office while concurrently serving in a covered position. Such an employee should ascertain from his or her employing agency if acceptance of such an appointment constitutes a conflict of interest.

Q. May employees work at the polls on election day?

A. Covered state or local employees may serve at the polls as election officials, clerks, checkers, watchers or as challengers for political parties and candidates in partisan elections.

Penalties for Violation

Q. What is the penalty for violating the Hatch Act?

A. If the Merit Systems Protection Board finds that the offense warrants dismissal from employment, the employing agency must either:

- (1) dismiss the employee or
- (2) forfeit a portion of the federal assistance equal to two years salary of the employee.

If the Board finds the violation does not warrant the employee's discharge, no penalty is imposed.

Q. Where is the law found which restricts political activity of state, territory, possession and local agency employees?

A. Title 5 of the United States Code, Sections 1501-1508 and Title 5 of the Code of Federal Regulations part 151.

Special Considerations for Employee of Private, Nonprofit Agencies Receiving Federal Assistance

Q. Are any political restrictions applicable to employees of private, nonprofit organizations?

A. Yes. Employees of private, nonprofit organizations which plan, develop and coordinate federal Head Start programs are subject to the same political activity restrictions that apply to covered state and local employees.

The Office of Special Counsel

Procedures

The Office of Special Counsel is responsible for investigating reports or complaints of Hatch Act violations by covered employees of local governments.

If an investigation uncovers evidence of a violation of the law warranting prosecution, a written complaint for disciplinary action may be filed with the U. S. Merit Systems Protection Board (MSPB). A copy of the complaint is served on the charged employee. Full opportunity is provided to contest the charges, including a right to a hearing before the MSPB. The employee may be represented by counsel at all stages of the proceedings.

After consideration of the entire record, the MSPB will notify the employee and the employing agency of its decision.

If the MSPB finds the offense warrants dismissal from employment, the employing agency must either: (1) dismiss the employee or (2) forfeit a portion of the federal assistance equal to two years' salary of the employee. If the MSPB finds the violation does not warrant the employee's discharge, no penalty is imposed.

Briefings

In order to better acquaint state and local government employees with the provisions regarding political activity, attorneys from the Office of Special Counsel are available for briefings.

Additionally, employees may obtain answers to specific questions regarding political activity by calling OSC at 800-85-HATCH (854-2824) or 202-254-3650. Requests for written advisories may be made to the:

U. S. Office of Special Counsel
1730 M Street, NW
Suite 218
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Title 5. United States Code

Chapter 15 - Political Activity of Certain State and Local Employees

Sec.

- 1501. Definitions.
- 1502. Influencing elections, taking part in political campaigns; prohibitions; exceptions.
- 1503. Nonpartisan candidacies permitted.
- 1504. Investigations; notice of hearing.
- 1505. Hearings; adjudications; notice of determinations.
- 1506. Orders; withholding loans or grants; limitations.
- 1507. Subpoenas and depositions.
- 1508. Judicial review.

§ 1501. Definitions

For the purpose of this chapter

(1) "State" means a State or territory or possession of the United States;

(2) "State or local agency" means the executive branch of a State, municipality, or other political subdivision of a State, or an agency or department thereof;

(3) "Federal agency" means an Executive agency or other agency of the United States, but does not include a member bank of the Federal Reserve System; and

(4) "State or local officer or employee" means an individual employed by a State or local agency whose principal employment is in connection with an activity which is financed in whole or in part by loans or grants made by the United States or a Federal agency, but does not include --

(A) an individual who exercises no functions in connection with that activity; or

(B) an individual employed by an educational or research institution, establishment agency, or system which is supported in whole or in part by a State or political subdivision thereof, or by a recognized religious, philanthropic, or cultural

§ 1502. Influencing elections; taking part in political campaigns; prohibitions; exceptions

(a) A State or local officer or employee may not --

(1) use his official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for office;

(2) directly or indirectly coerce, attempt to coerce, command, or advise a State or local officer or employee to pay, lend, or contribute anything of value to a party, committee, organization, agency, or person for political purposes; or

(3) be a candidate for elective office.

(b) A State or local officer or employee retains the right to vote as he chooses and to express his opinions on political subjects and candidates.

(c) Subsection (a)(3) of this section does not apply to --

(1) the Governor or Lieutenant Governor of a State or an individual authorized by law to act as Governor;

(2) the mayor of a city;

(3) a duly elected head of an executive department of a State or municipality who is not classified under a State or municipal merit or civil service system; or

(4) an individual holding elective office.

§ 1503. Nonpartisan candidacies permitted

Section 1502(a)(3) of this title does not prohibit any State or local officer or employee from being a candidate in any election if none of the candidates is to be nominated or elected at such election as representing a party any of whose candidates for Presidential elector received votes in the last preceding election at which Presidential electors were selected.

§ 1504. Investigations; notice of hearing

When a Federal agency charged with the duty of making a loan or grant of funds of the United States for use in an activity by a State or local officer or employee has reason to believe that the officer or employee has violated section 1502 of this title, it shall report the matter to the Special Counsel. On receipt of the report or on receipt of other information which seems to the Special Counsel to warrant an investigation, the Special Counsel shall investigate the report and such other information and present his findings and any charges based on such findings to the Merit Systems Protection Board, which shall --

(1) fix a time and place for a hearing; and

(2) send, by registered or certified mail, to the officer or employee charged with the violation and to the State or local agency employing him a notice setting forth a summary of the alleged violation and giving the time and place of the hearing.

The hearing may not be held earlier than 10 days after the mailing of the notice.

§ 1505. Hearings; adjudications; notice of determinations

Either the State or local officer or employee or the State or local agency employing him or both, are entitled to appear with counsel at the hearing under section 1504 of this title, and be heard. After this hearing, the Merit Systems Protection Board shall --

- (1) determine whether a violation of section 1502 of this title has occurred;
- (2) determine whether the violation warrants the removal of the officer or employee from his office or employment; and
- (3) notify the officer or employee and the agency of the determination by registered or certified mail.

§ 1506 Orders; withholding loans or grants;

(a) When the Merit Systems Protection Board finds

(1) that a State or local officer or employee has not been removed from his office or employment within 30 days after notice of a determination by the Board that he violated section 1502 of this title and that the violation warrants removal; or

(2) that the State or local officer or employee has been removed and has been appointed within 18 months after his removal to an office or employment in the same State in a State or local agency which does not receive loans or grants from a Federal agency; the Board shall make and certify to the appropriate Federal agency an order requiring that agency to withhold from its loans or grants to the State or local agency to which notice was given an amount equal to 2 years' pay at the rate the officer or employee was receiving at the time of the violation. When the State or local agency to which appointment within 18 months after removal has been made is one that receives loans or grants from a Federal agency, the Board order shall direct that the withholding be made from that State or local agency.

(b) Notice of the order shall be sent by registered or certified mail to the State or local agency from which the amount is ordered to be withheld. After the order becomes final, the Federal agency to which the order is certified shall withhold the amount in accordance with the terms of the order. Except as provided by section 1508 of this title, a determination or order of the Board becomes final at the end of 30 days after mailing the notice of the determination or order.

(c) The Board may not require an amount to be withheld from a loan or grant pledged by a State or local agency as security for its bonds or notes if the withholding of that amount would jeopardize the payment of the principal or interest on the bonds or notes.

§ 1507. Subpoenas and depositions

(a) The Merit Systems Protection Board may require by subpoena the attendance and testimony of witnesses and the production of documentary evidence relating to any matter before it as a result of this chapter. Any member of the Board may sign subpoenas, and members if the Board and its examiners when authorized by the Board may administer oaths examine witnesses, and receive evidence. The attendance of witnesses and the

production of documentary evidence may be required from any place in the United States at the designated place of hearing. In case of disobedience to a subpoena, the Board may invoke the aid of a court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence. In case of contumacy or refusal to obey a subpoena issued to a person, the United States District Court within whose jurisdiction the inquiry is carried on may issue an order requiring him to appear before the Board, or to produce documentary evidence if so ordered, or to give evidence concerning the matter in question; and any failure to obey the order of the court may be punished by the court as a contempt thereof.

(b) The Board may order testimony to be taken by deposition at any stage of a proceeding or investigation before it as a result of this chapter. Depositions may be taken before an individual designated by the Board and having the power to administer oaths. Testimony shall be reduced to writing by the individual taking the deposition, or under his direction, and shall be subscribed by the deponent. Any person may be compelled to appear and depose and to produce documentary evidence before the Board as provided by this section.

(c) A person may not be excused from attending and testifying or from producing documentary evidence or in obedience to a subpoena on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled to testify, or produce evidence, documentary or otherwise, before the Board in obedience to a subpoena issued by it. A person so testifying is not exempt from prosecution and punishment for perjury committed in so testifying.

§ 1508. Judicial review

A party aggrieved by a determination or order of the Merit Systems Protection Board under section 1504, 1505, or 1506 of this title may within 30 days after the mailing of notice of the determination or order institute proceedings for review thereof by filing a petition in the United States District Court for the district in which the State or local officer or employee resides. The institution of the proceedings does not operate as a stay of the determination or order unless --

- (1) the court specifically orders a stay; and
- (2) the officer or employee is suspended from his office or employment while the proceedings are pending.

A copy of the petition shall immediately be served on the Board, and thereupon the Board shall certify and file in the court a transcript of the record on which the determination or order was made. The court shall review the entire record including questions of fact and questions of law. If

application is made to the court for leave to adduce additional evidence, and it is shown to the satisfaction of the court that the additional evidence may materially affect the result of the proceedings and that there were reasonable grounds for failure to adduce this evidence in the hearing before the Board, the court may direct that the additional evidence be taken before the Board in the manner and on the terms and conditions fixed by the court. The Board may modify its findings of fact or its determination or order in view of the additional evidence and shall file with the court the modified findings, determination, or order; and the modified findings of fact, if supported by substantial evidence, are conclusive. The court shall affirm the determination or order, or the modified determination or order, if the court determines that it is in accordance with law. If the court determines that the determination or order,

or the modified determination or order, is not in accordance with law, the court shall remand the proceeding to the Board with directions either to make a determination or order determined by the court to be lawful or to take such further proceedings as, in the opinion of the court, the law requires. The judgment and decree of the court are final, subject to review by the appropriate United States Court of Appeals as in other cases, and the judgment and decree of the court of appeals are final subject to review by the Supreme Court of the United States on certiorari or certification as provided by section 1254 of title 28. If a provision of this section is held to be invalid as applied to a party by a determination or order of the Board, the determination or order becomes final and effective as to that party as if the provision had not been enacted.