



Michigan Department of
Career Development

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Official

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Date: March 1, 2000

To: Michigan Works! Agency (MWA) Directors

Subject: Michigan Department of Career Development (MDCD) Policy on the Hatch Act.

Programs Affected: All programs administered by the Workforce Development Boards (WDBs)

Purpose: To transmit MDCD policies in complying to the Federal Hatch Act concerning political activities.

Rescissions: None

Background: The Federal Hatch Act (5 U.S.C. Sections 1501 - 1508) establishes guidelines for political activity for governmental employees, and recipients of federal funding, including employees of local agencies receiving workforce Training funds administered by MDCD/OWD.

“The Hatch Act restricts the political activity of an individual principally employed by a state or local executive agency in connection with a program financed in whole or in part by federal loans or grants.”

Policy: The following are allowable and unallowable activities for individuals principally employed by a state or local executive agency in connection with a program financed in whole or in part by federal loans or grants:

Allowable Activities:

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 fund-raising functions; and

May participate in any activity not specifically prohibited by law or regulation.

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

Unallowable Activities:

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; and

May not directly or indirectly coerce contributions from subordinates in support of a political party or candidate.

Exception:

The law exempts the governor or lieutenant governor of a state, or an individual authorized by law to act as governor; the mayor of a city; 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 an individual holding public elective office. This applies only when the elective office is the position which would otherwise subject the employee to the restrictions of the Hatch Act.

Employment with a state or local agency constitutes the principal employment of the employee concerned. 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 (PNP) organizations that receive federal funds if the authorizing legislation for the funds received designate private nonprofit agency employees as a governmental employees for the purpose of the Hatch Act, such as the Head Start Program and the Community Services Block Grant.

For further information, please refer to the attached Federal Publication: Political Activity and the State and Local Employee. Title 5 of the United States Code (Hatch Act) contained in Attachment I. Further information may be found at the website: http://www.osc.gov/hatch_b.htm

Action: WDB officials shall determine the status of any employee seeking public office and abide by the requirements of the Hatch Act, contained in the attachment.

In accordance with the Americans With Disabilities Act, the information contained in this policy issuance will be made available in alternative format (large type, audio tape, etc.) upon special request received by this office.

Inquiries: Questions regarding this policy should be made to your state coordinator.

Expiration

Date: None



Vicki S. Enright, Director
Office of Workforce Development

VSE:CMR:jl

Attachment

cc: Robert T. Pendleton

Political Activity and the State and Local Employee

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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.

U.S. Office of Special Counsel

1730 M Street, N.W., Suite 300
Washington, D.C. 20036-4505
202 / 653-7143
E-mail: Hatchact@osc.gov

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.

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 their 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. 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.

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. Subpenas 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 office 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—

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.