

POLITICAL ACTIVITY AND THE STATE AND LOCAL EMPLOYEE

BY
THE U.S. OFFICE OF SPECIAL COUNSEL

The Hatch Act restricts the political activity of individuals principally employed by state, county or municipal executive agencies who work in connection with programs financed in whole or in part by federal loans or grants. An officer or employee of a state or local agency is covered by the Hatch Act, if he or she has duties in connection with an activity financed in whole or in part by federal funds. These state and local employees:

may be candidates for public office in nonpartisan elections, *i.e.*, an election where no candidates are running with party affiliation.

EXAMPLE: An employee may run for the school board in Washington D.C., as long as the school board elections in Washington D.C. remain nonpartisan.

may hold elective office in political parties, clubs and organizations.

EXAMPLE: An employee may serve as the vice president of the local Democratic or Republican party.

may be appointed to fill a vacancy for an elective office.

EXAMPLE: An employee may be appointed to finish the unexpired term of an elected officeholder. The employee may not run for reelection if the election is partisan.

may actively campaign for candidates for public office in partisan and nonpartisan elections.

EXAMPLE: An employee may campaign for candidates by making speeches, writing letters, working at the polls on election day and organizing political rallies and meetings.

may contribute money to political organizations.

EXAMPLE: An employee may make a monetary contribution to any candidate, political party, club or organization.

may attend and give a speech at a political fundraiser, rally or meeting.

EXAMPLE: An employee may attend and give a speech or keynote address at a political fundraiser.

There continue to be important restrictions on employees' political activity. State and local employees:

may not be candidates for public office in partisan elections.

EXAMPLE: An employee may not run for office in an election where any of the candidates are running as representatives of a political party, e.g., the Democratic or Republican party.

may not use official authority or influence for the purpose of interfering with or affecting the result of an election or nomination for office.

EXAMPLE: A supervisor should not ask a subordinate employee to volunteer for a political party.

may not directly or indirectly coerce contributions from other state or local employees.

EXAMPLE: A supervisor should not advise employees that they may purchase tickets to a fundraising event.

may not orchestrate a "write-in" candidacy during a partisan election.

EXAMPLE: An employee may not solicit voters to write his name on the ballot on election day.

CAUTION: An employee's conduct is also subject to the laws of the state and regulations of the employing agency. State or local laws do not affect the prohibitions of the Hatch Act.

State and Local Employees Who Are Not Covered By The Hatch Act:

Individuals who have no duties in connection with federally funded activities and individuals employed by publicly financed educational or research institutions, including state university systems and local public school systems are not covered by the Hatch Act.

Application of the Hatch Act to employees of private nonprofit organizations:

The Hatch Act applies to employees of private non-profit organizations only if the statute through which the organization derives its federal funding contains a provision, which states that recipient organizations shall be deemed to be state or local government agencies for purposes of the Hatch Act.

The U.S. Office of Special Counsel and the Hatch Act:

The U.S. Office of Special Counsel (OSC) is authorized by law to provide Hatch Act advisory opinions. Employees and members of the public are encouraged to write to OSC with specific questions that address permitted and prohibited activities under the Hatch Act.

OSC is also responsible for enforcing the Hatch Act. OSC receives complaints alleging Hatch Act violations, investigates the complaints and where warranted, prosecutes cases before the Merit Systems Protection Board.

Penalties:

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.

How to file a Hatch Act Complaint:

Individuals may report suspected violations of the Hatch Act to OSC. Complaints should be submitted in writing to:



HATCH ACT UNIT
U.S. Office of Special Counsel
1730 M Street, NW (Suite 218)
Washington, DC 20036-4505
Tel: (800) 85-HATCH (800-854-2824)
(202) 254-3650
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Web site: <http://www.osc.gov>



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**The Hatch Act Modernization Act of 2012 – OSC’s Guidance Regarding
the Use of Official Title by State and Local Employees Who Are
Now Permitted to Be Candidates in Partisan Elections**

Due to recent amendments to the Hatch Act, many state and local government employees are now permitted to be candidates in partisan elections, but remain subject to the Act’s other restrictions. This advisory provides guidance regarding the Hatch Act’s restrictions on employees who are now permitted to run for office, and also explains the extent to which these individuals may use their official titles to bolster their candidacies without violating the Hatch Act.

On December 19, 2012, Congress passed the Hatch Act Modernization Act of 2012. The Act allows state and local government employees to run for partisan political office unless the employee’s salary is paid for entirely by federal loans or grants. Prior to this change, state and local government employees were prohibited from running for partisan office if they worked in connection with programs financed in whole or in part by federal loans or grants.

- A. The Hatch Act continues to prohibit covered state or local government employees from engaging in coercive political conduct or misusing their official authority for partisan purposes.

A state or local government employee who is permitted to run for office is still covered by other Hatch Act prohibitions if the employee works in connection with a program financed in whole or in part by federal loans or grants. Specifically, any covered state or local government employee – including an employee who is a candidate for partisan office – is prohibited by the Hatch Act from: (1) using her official authority or influence to affect the result of an election, and (2) coercing or attempting to coerce other employees into making political contributions.

Under these provisions, a covered employee who is a candidate for partisan political office **may not**:

- wear her uniform while campaigning for office, including at campaign events or in campaign advertisements, web pages, signs, or literature;¹

¹ Please note that this advisory does not change OSC’s previous guidance to elected officials who are covered by the Hatch Act, which can be found at

- use agency resources to advance her candidacy; or
- request, encourage, suggest, or imply that subordinate employees assist her campaign efforts.

B. The Hatch Act does not restrict candidates from limited use of their official title in connection with their own campaign.

While covered employees remain subject to Hatch Act restrictions cited above, OSC has concluded that a covered state or local government employee may refer to her official title as part of her biography, resume, or qualifications in connection with her own campaign. The extent of such use must be limited, as explained below.

A covered employee may refer to her official title, position, and/or accomplishments during her own campaign when promoting her qualifications for the elective office she is seeking. This rule takes into account one of Congress's reasons for loosening the restriction on candidacy, namely, so that qualified candidates would no longer be precluded from running for partisan elective office. See S. Rep. No. 112-211, at 4 (2012). In light of Congress's intent, it would be unreasonable to prohibit candidates from advertising their complete resumes. Thus, a covered employee running for partisan public office may inform voters of her current job title and her achievements while holding that position.

An employee may not, however, use her official title and/or position when, for example, signing campaign communications and solicitations or identifying herself on campaign signs (e.g. "Vote for Chief Deputy Joan Smith"). Doing so would create the impression that she is running in her official capacity with the authority of the agency behind her, and as such, would violate the Hatch Act. Moreover, she may not use her title and/or position when endorsing other candidates or political parties.

Please contact the Hatch Act Unit at (202) 254-3650 with any questions.

<http://www.osc.gov/documents/hatchact/state/redacted%20AO%20re%20sheriff%20political%20activities.pdf>. OSC has advised that elected officials who are covered by the Hatch Act may use their official titles and uniforms when engaged in any kind of political activity because their principal employment is an elected partisan political office, and Congress has evidenced its intent to give these individuals greater latitude with respect to their political activities. The same latitude is not afforded to candidates who have not been elected to a partisan political office and are covered by the guidance in this advisory opinion.