U.S. OFFICE OF SPECIAL COUNSEL
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August 10, 2006

Hatch Act for State and Local Employees

The Hatch Act applies to executive branch state and local employees who are principally employed in connection with programs financed in whole or in part by loans or grants made by the United States or a federal agency. Employees who work for educational or research institutions or agencies which are supported in whole or in part by a State or political subdivision of the State are not covered by the provisions of the Hatch Act.

Employees of private nonprofit organizations are covered by the Hatch Act only if the statute through which the organization receives its federal funds contains language which states that the organization shall be considered to be a state or local agency for purposes of the Hatch Act, e.g., Headstart and Community Service Block Grant statutes.

An employee's conduct is also subject to the laws of the state and the regulations of the employing agency. Additionally, employees should be aware that the prohibitions of the Hatch Act are not affected by state or local laws.

- Permitted Activities
- Prohibited Activities
- Penalties for Violating the Hatch Act
- Advisories for State and Local Employees

Permitted Activities

Covered state and local 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

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Prohibited Activities

Covered state and local 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 in support of a political party or candidate

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Penalties for Violating the Hatch Act

If the Merit Systems Protection Board finds that the violation warrants dismissal from employment, the employing agency must either remove the employee or 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 removal, no penalty is imposed.

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Advisories for State and Local Employees

Date	Title	Format
3/7/03	Limited Candidacy Exemption for Elected Officials	
1/16/02	Non-Partisan Election Transformed to Partisan Election	
3/10/98	Elected official who becomes a state employee	
11/20/97	Educational exemption	
9/27/96	Duties in connection with a federally funded program	
9/20/96	Candidacy in a nonpartisan election	
8/9/96	Application to employees of private nonprofits	
7/11/96	Legislative branch employees	
6/5/96	Principal employment	
3/14/95	Candidacy in a partisan election	

Last Updated: 4/23/04

U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 300
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August 9, 1996

This letter responds to your request for clarification of your status under the Hatch Act. Specifically, you ask whether your position as a substance abuse counselor with Inc., a private nonprofit organization, causes you to be covered by the provisions of the Hatch Act. We understand that you have recently filed with the Rhode Island Secretary of State's Office as a candidate for the U.S. Senate.

The Hatch Act (5 U.S.C. §§ 1501 - 1508) restricts the political activity of individuals principally employed by state, county, or municipal executive agencies in connection with programs financed in whole or in part by loans or grants made by the United States or a federal agency. An employee covered by the Act may not be a candidate for public office in a partisan election, i.e., an election in which any candidate represents, for example, the Republican or Democratic party. The Act applies to employees of private, nonprofit organizations only if the statute through which the organization derives its federal funding contains a provision which states that employees of recipient corporations are deemed to be state or local government employees for purposes of the Hatch Act.

According to information that you forwarded, receives federal funds from the U.S. Department of Health and Human Services. The statutes through which receives its funding do not contain any provisions that state that employees of recipient nonprofit organizations are to be considered state or local employees for purposes of the Hatch Act. Accordingly, you are not covered by the provisions of the Hatch Act and the Act would not prohibit you from running for U.S. Senate. For your information, I am enclosing our publication which explains the application of the Hatch Act to state and local employees. Please call Karen Dalheim at (202) 653-8944 or 800-854-2824 if you have any questions.

Sincerely,

Ralph B. Eddy
Senior Trial Attorney

Westlaw.

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Effective: [See Text Amendments]

United States Code Annotated Currentness
Title 5. Government Organization and Employees (Refs & Annos)
Part II. Civil Service Functions and Responsibilities (Refs & Annos)
→ Chapter 15. Political Activity of Certain State and Local Employees (Refs & Annos)

§ 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 organization.

Effective: [See Text Amendments]

§ 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.

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(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.

Effective: [See Text Amendments]

§ 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.

Effective: [See Text Amendments]

§ 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.

Effective: [See Text Amendments]

§ 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;

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(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.

Effective: [See Text Amendments]

§ 1506. Orders; withholding loans or grants; limitations

(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 has 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.

Effective: [See Text Amendments]

§ 1507. Subpenas and depositions

(a) The Merit Systems Protection Board may require by subpena 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 subpenas, and members of 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 subpena, 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 subpena 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.

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(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 subpena 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 subpena issued by it. A person so testifying is not exempt from prosecution and punishment for perjury committed in so testifying.

Effective: [See Text Amendments]

§ 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.

Effective: January 01, 1997

§§ 1509 to 2100. Reserved for future legislation

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Effective: January 01, 1997

§§ 1509 to 2100. Reserved for future legislation

Current through P.L. 109-263 (excluding P.L. 109-248, 109-250, 109-251) approved 08-02-06
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Westlaw.

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Code of Federal Regulations Currentness
Title 5. Administrative Personnel
Chapter I. Office of Personnel Management
Subchapter B. Civil Service Regulations
→ Part 151. Political Activity of State or Local Officers or Employees (Refs & Annos)
General Provisions

§ 151.101 Definitions.

In this part:

(a) State means a State or territory or possession of the United States.

(b) 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.

(c) 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;

(d) 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--

(1) An individual who exercises no functions in connection with that activity.

(2) 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 organization.

(e) Political party means a National political party, a State political party, and an affiliated organization.

(f) Election includes a primary, special, and general election.

(g) Nonpartisan election means an election at which none of the candidates is to be nominated or elected as representing a political party any of whose candidates for Presidential elector receives votes in the last preceding election at which Presidential electors were selected.

(h) Partisan when used as an adjective refers to a political party.

(i) Elective office means any office which is voted upon at an election as defined at § 151.101(f), above, but does not include political party office.

Permissible Activities

§ 151.111 Permissible activities.

(a) All State or local officers or employees are free to engage in political activity to the widest extent consistent with the restrictions imposed by law and this part. A State or local officer or employee may participate in all political activity not specifically restricted by law and this part, including candidacy for office in a nonpartisan election and candidacy for political party office.

Prohibited Activities

§ 151.121 Use of official authority; coercion; candidacy; prohibitions.

A State or local officer or employee may not--

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

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(b) 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 political party, committee, organization, agency, or person for a political purpose.

(c) Be a candidate for elective public office in a partisan election.

§ 151.122 Candidacy; exceptions.

Section 151.121(c) does not apply to--

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

(b) The Mayor of a city;

(c) 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;

(d) An individual holding elective office;

(e) Activity in connection with a nonpartisan election; or

(f) Candidacy for a position of officer of a political party, delegate to a political party convention, member of a National, State, or local committee of a political party, or any similar position.

Current through August 2, 2006; 71 FR 43953
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