

## Hatch Act

### Who Is Covered

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.

Hatch Act provisions also apply to employees of private, nonprofit organizations that plan, develop and coordinate federal Head Start or Community Service Block Grant programs. State, D.C., or local employees subject to the Hatch Act continue to be covered while on annual leave, sick leave, leave without pay, administrative leave or furlough.

### Hatch Act- Examples of Permitted Activities and Prohibited Activities

#### Political Activities and Examples of Prohibited Activities

Covered state, District of Columbia 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; or
- directly or indirectly coerce, attempt to coerce, command, or advise a state, D.C., or local officer or employee to pay, lend, or contribute anything of value to a party, committee, organization, agency, or person for political purposes.

State, District of Columbia or local employees subject to the Hatch Act should note that an election is partisan if any candidate is to be nominated or elected as representing a political party, for example, the Democratic or Republican Party.

A note of 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, D.C., or local laws.

\*On December 19, 2012, Congress passed the Hatch Act Modernization Act of 2012 (the Act). The Act became effective on January 27, 2013. Now, only state, D.C., or local government employees whose salaries are paid for entirely by federal funds are prohibited from running for partisan office. All other state, D.C., and local employees, even if they are otherwise covered by Hatch Act restrictions are free under the Hatch Act to run for partisan office.

#### Examples of Permitted Activities

Employees may\*\*, for example:

- register and vote as they choose
- assist in voter registration drives
- express opinions about candidates and issues
- contribute money to political organizations

- attend political fundraising functions
- attend and be active at political rallies and meetings
- join and be active members of a political party or club
- sign and circulate nominating petitions
- campaign for or against referendum questions, constitutional amendments and/or municipal ordinances
- campaign for or against candidates in partisan elections
- make campaign speeches for candidates in partisan elections
- distribute campaign literature in partisan elections
- campaign for and hold office in political clubs or parties
- volunteer to work on a partisan political campaign
- participate in any activity not specifically prohibited by law or regulation

\*\*While engaging in these activities employees must be acting in their personal capacity, not their official capacity. For example, they should not identify their official title when engaging in any of these activities.

A note of 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, D.C., or local laws.



U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 218

Washington, D.C. 20036-4505

202-254-3600

March 18, 2008

Xx Xxxxx Xxxxx

Xxxxx Xxxxx xxxx

Xxxxxx, XX xxxxx

Re: OSC File No. AD-08-xxxx

Dear Xx Xxxxx:

This letter is in response to your request for an advisory opinion concerning the Hatch Act. The Office of Special Counsel (OSC) is authorized pursuant to 5 U.S.C. § 1212(f) to issue opinions under the Act. Specifically, you ask whether the sending of an e-mail entitled "Who is Barack Obama" by a federal employee violates the Hatch Act. We have reviewed this e-mail, and under the circumstances outlined below, we believe that sending this e-mail would violate the Act.

The Hatch Act, 5 U.S.C. §§ 7321-7326, governs the political activity of federal civilian executive branch employees. The Hatch Act generally permits most federal employees to actively participate in partisan political management and partisan political campaigns. Covered employees, however, are prohibited from, among other things, engaging in political activity while on duty, in a government office or building, while wearing an official uniform, or using a government vehicle. 5 U.S.C. § 7324. Political activity has been defined as activity directed toward the success or failure of a political party, candidate for a partisan political office or partisan political group. 5 C.F.R. § 734.101.

The e-mail at issue begins by stating, "[s]cary stuff that everyone needs to know before it is too late." It asks, "[w]ho is Barack Obama?" and says, "[v]ery interesting and something that should be considered in your choice." The e-mail then provides information about Senator Barack Obama's family history and religious background. Examples of statements in the e-mail include: "Obama takes great care to conceal the fact that he is a Muslim;" "Obama's political handlers are attempting to make it appear that he is not a radical;" "[s]ince it is politically expedient to be a Christian when seeking major public office . . . Barack Hussein Obama has joined the United Church of Christ in an attempt to downplay his Muslim background;" and "[l]et us all remain alert concerning Obama's expected presidential candidacy." The e-mail ends by stating, "[t]he Muslims have said they plan on destroying the U.S. from the inside out, what better way to start than at the highest level – through the President of the United States, one of their own!!!!" Please forward to everyone you know. Would you want this man leading our country? . . . NOT ME." (emphasis in original).

The e-mail described above contains very negative statements about Senator Barack Obama, specifically warns recipients to "remain alert" about his candidacy, and states that it has information recipients should consider in their "choice." It also implies that, if elected President, Senator Obama would be part of a plan to destroy the United States. The e-mail ends with a

**U.S. Office of Special Counsel**

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declaration that the sender does not want Senator Obama leading this country and a plea for recipients to forward the e-mail to everyone they know. Accordingly, the content of this e-mail clearly is directed against Senator Obama's candidacy for President of the United States.

We understand that this e-mail was not created by a federal employee. Rather, a federal employee received it and then forwarded it to others without adding any content. Even under these circumstances, if a federal civilian employee<sup>1</sup> sent this e-mail while on duty and/or in a federal office or building, OSC would conclude that the employee had violated the Hatch Act's prohibition against engaging in political activity while on duty and/or in a federal building. If you would like to refer a complaint to our office concerning such activity, you can download a Hatch Act complaint form at: <http://osc.gov/documents/forms/osc13.pdf>.

Please contact me at (202) 254-3673 if you have any questions regarding this matter.

Sincerely,

/s/

Erica S. Hamrick  
Attorney  
Hatch Act Unit

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<sup>1</sup> Members of the uniformed services are not covered by the provisions of the Hatch Act. 5 U.S.C. § 7322(1)(c). In addition, independent contractors are not covered by the Act. 5 C.F.R. § 734.205, Example 5.



U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 218

Washington, D.C. 20036-4505

202-254-3600

May 2, 2008

Xx Xxxxx Xxxxx  
Xxxxx Xxxxxx  
XXXXXXXX, XX xxxxx

Re: OSC File No. AD-08-xxxx

Dear Xx Xxxxxxx:

This letter is in response to your request for an advisory opinion concerning the Hatch Act. The Office of Special Counsel (OSC) is authorized pursuant to 5 U.S.C. § 1212(f) to issue opinions interpreting the Act. After attending a presentation by an attorney from our office, you ask for confirmation and clarification of several Hatch Act issues. We will address each of these issues in turn.

1. *A biography or biographical sketch may not be attached to or included with an invitation to a political event at which an employee is speaking or is a special guest if it includes the employee's title or references to an affiliation with the Federal agency.*

This statement is correct. The Hatch Act prohibits federal employees from using their official authority or influence for the purpose of interfering with or affecting the result of an election. 5 U.S.C. § 7323(a)(1). Thus, while a federal employee may speak on behalf of a candidate at a political event, he must do so in his personal capacity. If the biography of a federal employee who is speaking at a political event is circulated in advance of the event, the concern is that his position with the agency may become the draw to the event, or that it may appear he is speaking in his official capacity. Because an invitation, by definition, is sent prior to an event, it would be inappropriate for the invitation, or any accompanying attachments or enclosures, to include a federal employee's official title or affiliation with a federal agency. However, his official title may appear on a biography to be passed out during the event, provided his title or description of his federal position is given no more prominence than other biographical details.

2. *Because a federal official may not knowingly speak before anyone that has actual matters pending before the agency at a political fundraiser, the agency has a duty to request a list of attendees prior to the event in order to determine whether any attendee has a matter pending before the employee's agency. Does this require the agency to learn the employment and affiliation of all attendees? Does OSC have a formal advisory opinion on the fundraiser attendee list requirements that can provide more precise guidance on this provision?*

This statement is correct in part, but we would clarify it in two respects. First, section 7323(a)(4) of the Hatch Act prohibits an employee from knowingly soliciting or discouraging the

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political activity of any person who has business pending before the employee's employing office. Thus, this prohibition is broader than your characterization in that it applies to situations other than those in which an employee speaks at a political event.

Second, compliance with the Hatch Act is an individual employee's responsibility, and it is the employee's duty to consider all of the Act's restrictions before participating in political activity. The Hatch Act does not impose a legal duty on your agency to give legal advice about the Act. However, if an agency chooses to provide Hatch Act guidance to an employee, it should give careful consideration and exercise due diligence in its review of the activity. It would be negligent to advise an employee that it is permissible to engage in political activity without having carefully considered all the applicable Hatch Act prohibitions and the facts surrounding the matter under legal review.

OSC has not issued a formal advisory opinion on this issue because no agency has submitted for our review the application of section 7323(a)(4) to an employee's participation at a political event.

- 3. Government documents, including a clip service that distributes articles, may not include political messages, such as by including quotes relating to elections or political events or articles about political events that an employee attends. The same restriction applies to Government websites. Does this include all articles about an official's attendance at a political event, or only those quoting the official with regard to a campaign or candidate?*

The Hatch Act prohibits all federal employees, including those nominated to their positions by the President and confirmed by the Senate, from using their official authority or influence to interfere with or affect the result of an election. 5 U.S.C. § 7323(a)(1). Thus, if a federal employee attends or speaks at a political event, he necessarily does so in his personal capacity. Because an employee's personal activities are not official agency "news," press articles concerning the employee's political activities should not be distributed to staff through an agency clip service or other means or be posted on an agency's website, regardless of whether the articles contain the employee's election-related quotes or merely report the employee's attendance at a political event.

- 4. Photographs of candidates in Government offices may only be displayed if both the candidate and the employee are pictured together, the employee has a personal relationship with the candidate, and the photograph was displayed in advance of any partisan political election season. It would not be appropriate to display in a Government office a picture of a candidate presenting an award to an employee, if they had no prior personal relationship (no matter when the picture was displayed).*

Because section 7324 of the Hatch Act prohibits federal employees from engaging in political activity while on duty or in a federal building, the Act generally would prohibit employees from displaying pictures of candidates for partisan public office in the federal

workplace. See 5 C.F.R. § 734.306, Example 16. However, we advise that an employee would not be prohibited from having a photograph of a candidate in his office if the photograph was on display in advance of the election season, the employee is in the photograph with the candidate and the photograph is a personal one (i.e., the employee has a personal relationship with the candidate and the photograph is taken at some kind of personal event or function, for example, a wedding, and not at a campaign event or some other type of partisan political event). Of course, an employee must not have a political purpose for displaying the photograph, namely, promoting or opposing a political party or a candidate for partisan political office.

Notwithstanding the above advice, we have considered your example in which an employee wants to display a photograph of him receiving an award from an individual who is now a candidate for partisan public office. Provided the award is not related to any partisan political event or activity (e.g. a “Top Fundraiser” award) and the photograph was on display in advance of the election season, we do not believe the Hatch Act would prohibit an employee from having such a photograph in his office.

5. *An employee may display only one standard-sized political bumper sticker on a personal vehicle parked in a Government parking lot. Should we interpret this to mean one sticker only or one sticker per candidate (assuming the employee has two different stickers supporting candidates for different offices, e.g., President and Congress)?*

While section 7324 of the Hatch Act prohibits federal employees from engaging in political activity in a federal workplace, the Hatch Act regulations specifically state that an employee may place a partisan political bumper sticker on his personal vehicle and park that vehicle in a federal parking lot or garage. 5 C.F.R. § 734.306, Example 7. Thus, OSC generally advises that an employee may place a partisan bumper sticker on his car and park it in a federal parking lot. We do not believe, however, that an employee would violate the Hatch Act if he has one bumper sticker for candidate A and another for candidate B on his car and parks that car in a federal parking lot. Employees must be cautioned, though, against displaying other partisan political materials, or even bumper stickers, in such a way that makes the vehicle appear to be a campaign mobile.

6. *An employee may serve as a treasurer of a political organization only if state law does not require the treasurer’s name to be included on all campaign correspondence, including fundraising letters.*

This statement is correct. While the Hatch Act generally permits federal employees to take an active part in political management or in political campaigns, employees are prohibited from knowingly soliciting, accepting or receiving political contributions from any person. 5 U.S.C. § 7323(a)(2). Thus, the Hatch Act would not prohibit an employee from serving as the treasurer of a partisan political organization, provided the employee does not solicit, accept or receive political contributions. In addition, he may not allow his name to appear anywhere on a letter soliciting political contributions for the party or a candidate, including in the letterhead of such a letter. Thus, if an employee lives in a state that requires the treasurer’s name to appear on all

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campaign materials, including solicitation materials, then the employee would not be able to be a treasurer for the campaign because, as noted above, his name cannot appear on any solicitation for political contributions.<sup>1</sup> He could hold, however, another position within the organization the duties of which would not entail activities prohibited by the Hatch Act.

7. *Social networking websites, such as Facebook, may not include political commentary on the same page as biographical information that includes an employee's title or Federal agency affiliation. Such comments may appear on a page linked to the original page.*

We are unclear as to your use of the term “political commentary,” as it is not defined or used in the Hatch Act. Thus, we assume for purposes of this question that the comments at issue, if made, would constitute political activity, i.e., “activity directed toward the success or failure of a political party, candidate for partisan public office, or partisan political group.” 5 C.F.R. § 734.101.<sup>2</sup> Statements constituting political activity are subject to the limitations described in your request, namely, they may be accessible through a link on a web page containing an employee's employment information, as long as the page on which the statements appear does not reveal the employee's title or affiliation with a federal agency.

Please contact me at (202) 254-3674 if you have any additional questions.

Sincerely,

/s/

Ana Galindo-Marrone  
Chief, Hatch Act Unit

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<sup>1</sup> If an employee wishes to serve as treasurer of a political organization or campaign in such a state, and that organization does not solicit contributions in a way that implicates a state law requiring the treasurer's name to be provided, we would encourage the employee to contact our office for an opinion specifically tailored to his circumstances.

<sup>2</sup> We note that the Hatch Act does not prohibit all political commentary by federal employees. For example, expressing position statements about the war or abortion that do not refer to a candidate or political party do not constitute political activity for purposes of the Hatch Act.



Horowitz: President Bloomberg; Stranger Things Have Happened—Horowitz: President Bloomberg; Stranger Things Have Happened



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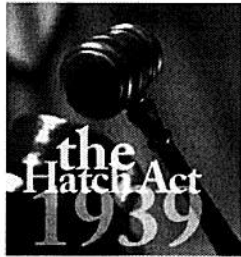
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# NEW: Providence Housing Attorney Violated Hatch Act While Running for State Rep.

Thursday, December 06, 2012  
Dan McGowan, GoLocalProv News Editor

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A staff attorney for the Providence Housing Authority violated the Hatch Act when she ran for a seat in the Rhode Island legislature earlier this year, according to a letter released by the U.S. Office of Special Counsel.



But Michelle Bergin, who lost her bid to unseat District 16 Representative Peter Palumbo by 68 votes in September's Democratic primary, will not face any disciplinary action because the Office of Special Counsel previously gave her the go-ahead to run for office.

The Hatch Act prohibits those who are paid with, or have control over, federal funds from running for office.

"After investigating the allegations set forth in your complaint, we have determined that Ms. Bergin's candidacy in the 2012 election for state representative was in violation of the Hatch Act," the letter states. "However, because we had previously advised Ms. Bergin that her candidacy was not prohibited by the Act we have decided not to pursue disciplinary action on this matter and are closing the above-referenced file without further action."

The complaint was lodged by Sean Pope, a Providence Housing Authority employee who earlier this year claimed the agency's former executive director Stephen O'Rourke sexually harassed his wife while she worked at the Authority. O'Rourke would later resign, but maintains that he never harassed any of his female employees.

Bergin, a former Cranston City Councilor, did not respond to multiple requests for comment on this story.

Earlier this year, the Office of Special Counsel also found that failed State Senate candidate David Gorman violated the Hatch Act, but decided no further action was necessary. In Woonsocket, outgoing State Rep. Jon Brien filed a similar complaint after he lost his Democratic primary to Stephen Casey, but the Office of Special Counsel ruled that he was allowed to run and serve in the General Assembly.



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## Public housing doesn't prohibit campaigning

Complaint filed after candidate's workers handed out literature

Dec. 19, 2006

A A

Written by  
**LEE WILLIAMS and  
ADAM TAYLOR**  
The News Journal

A state House candidate's campaign work at two WHA buildings last week did not violate federal law, according to a spokeswoman for the U.S. Department of Housing and Urban Development.

FILED UNDER

Local

Workers for House Democratic candidate Robert Bovell were active at Compton Towers and Herlihy Apartments, both located on East Fifth Street near the headquarters of the federally funded housing authority, during last Tuesday's primary. They were wearing Bovell T-shirts and had literature for the candidate, Delaware Democratic Party Communications Director Alexander Snyder-Mackler said.

Maria Bynum, HUD's regional spokeswoman based in Philadelphia, said in an e-mail there are no guidelines regarding campaigning on public housing property.

"However, the Hatch Act prohibits public housing authority officers and employees from engaging in political activity on the project premises," she said.

The Hatch Act limits the political activities of certain federal employees, both at work and off duty. Violations of the act are punishable by dismissal.

Housing authority Executive Director Frederick Purnell Sr. received a complaint about political activity on Tuesday. Purnell said he was told the political activity was taking place at a privately operated high-rise near his buildings, so he took no action.

Bovell, a Wilmington bail bondsman, lost his primary race to incumbent Helene M. Keeley. Keeley said she saw the activity, but didn't file a complaint with the state Attorney General's Office, which investigates irregularities at polling places, or with the housing authority.

Bynum pointed out that if a public housing authority "allows one candidate to make presentations, or to allow tenant volunteers to campaign on site for a candidate, it must be consistent in allowing all candidates or tenant volunteers the same treatment. What they do for one they must do for all."

HUD, Bynum said, encourages but does not require public housing agencies to establish policies on political campaigning.

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Purnell did not return calls seeking information about WHA policies on political activity.

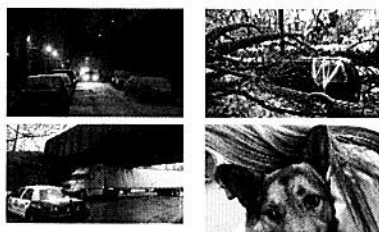
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## GANNETT

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## **POLICY ON POLITICAL CAMPAIGNING IN HI-RISES**

The PHA will make reasonable efforts to grant access to PHA hi-rises to political candidates, in order to comply with Minnesota law and to enable hi-rise residents to participate in the democratic process.

When a candidate who has filed for election to public office, or a campaign worker on the candidate's behalf, asks to gain access to the PHA's hi-rise apartment buildings, the PHA will send the candidate a current list of hi-rise Resident Council presidents, a list of the hi-rise addresses and management office phone numbers, and a copy of this policy.

Candidates are asked to contact the Hi-Rise Resident Council president or another resident designated by the Resident Council to make arrangements for visiting the building.

If the candidate is unable to gain access to a PHA hi-rise building by contacting the Resident Council representatives, then the candidate may contact the PHA's housing management staff for that building.

On request, PHA staff will arrange a time when a staff member or a resident can admit the candidate to the building, subject to the following limitations:

- Candidates may arrange visits to fit their schedules, but visits which require PHA staff assistance should be scheduled during PHA management staff's regular hours in the building. Staff should not make a special trip to the building on a different day or stay after normal work hours. (Most PHA hi-rises do not have a full-time management office; one Housing Manager may cover two or three hi-rises.)
- Staff (or a resident) will meet the candidate at the door and let him or her in, alone or accompanied by campaign workers. Campaign workers must be accompanied by the candidate to be admitted to the building.

PHA staff will not arrange meetings with residents for candidates, distribute their campaign literature, introduce them or speak to residents on their behalf.