

**DEPARTMENT OF ADMINISTRATIVE & FINANCIAL SERVICES
BUREAU OF HUMAN RESOURCES**

October 2, 2014

CIVIL SERVICE BULLETIN 13.1M

TO: AGENCY HEADS, HUMAN RESOURCE DIRECTORS

**SUBJECT: RE-ISSUE OF POLITICAL ACTIVITY GUIDELINES FOR EXECUTIVE BRANCH
EMPLOYEES (SUPERSEDES CIVIL SERVICE BULLETIN 13.1L)**

GENERAL INFORMATION

Political activity of state employees in the Executive Branch is regulated by state and federal law. The purpose of Civil Service Bulletin 13.1M is to guide state employees in the Executive Branch with their political activity decisions by referencing key political activity laws, by defining which state employees are covered by these laws, and by identifying certain activities that are prohibited and allowed. Civil Service Bulletin 13.1M provides a quick reference for political activity concerns and issues. It is not all-inclusive and is not intended to replace the federal and state laws that govern political activity. State employees in the Executive Branch who have questions after reading these guidelines should read the full text of the state and federal laws and seek legal assistance if necessary.

Generally, the state and federal political activity laws are enacted to:

- Prohibit covered state employees in the Executive Branch from becoming candidates for elective office in a partisan public election¹ while employed by the state; and
- Allow covered state employees in the Executive Branch the freedom to express and practice their individual political opinions and ideas, subject to limitations based on the possible misuse of the covered state employee's position or authority or the possible misuse of state property and facilities.

¹ Any election in which candidates are nominated or elected as representing a political party whose candidates for presidential electors received votes in the last preceding Presidential election at which presidential electors were selected, such as the Democrats or Republicans.

STATE AND FEDERAL LAWS

The key laws that regulate the political activity of state employees in the Executive Branch are:

- State employees in the classified and unclassified service of the Executive Branch are regulated by state law, Title 5 M.R.S. § 7056-A. This state law applies to all classified employees and all unclassified employees of the Executive Branch except the Governor or any other elective officer in the Executive Branch, the constitutional officers (Attorney General, State Auditor, State Treasurer, and Secretary of State) and those employees who are directly appointed by them.
- State employees in the classified service and all state employees in the unclassified service of the Executive Branch whose principal employment is in connection with an activity financed in whole or in part by federal loans or grants are also regulated by federal law. [United States Code, Title 5, Chapter 15 - Political Activity of Certain State and Local Employees (“Hatch Act”).] Effective December 28, 2012, Congress passed the Hatch Act Modernization Act which limits the prohibition from running in a partisan public election to those employees whose salary is completely funded by federal loans or grants.

NOTE: Classified and unclassified employees who are on an authorized leave from their position remain state employees and continue to be covered by these state and federal laws. For example, a state employee may not take an unpaid leave of absence and compete in a partisan public election.

ACTIVITIES PROHIBITED BY STATE LAW

State employees covered by Title 5 M.R.S. § 7056-A may not:

- Use their official authority, influence or supervisory position for the purpose of interfering with or affecting the result of a partisan election or nomination for elective office;
- Use their official authority, influence or supervisory position for the purpose of attempting to intimidate, threaten, coerce, command or influence a person to give or withhold a political contribution or to engage or not to engage in any form of political activity addressed by Title 5 M.R.S. § 7056-A;
- Give or offer to give a political contribution to an individual to vote or refrain from voting or to vote for or against any candidate or measure in any partisan election;
- Solicit, accept or receive a political contribution to vote or refrain from voting or to vote for or against any candidate or measure in any partisan election;
- Knowingly give or hand over a political contribution to a superior;

- Knowingly solicit, accept or receive or be in any manner concerned with soliciting, accepting or receiving a political contribution from another employee or a member of another employee's immediate family who is a subordinate of the employee;
- Knowingly solicit, accept or receive a political contribution from or give a political contribution to any person who has or is seeking to obtain contractual or other business or financial relations with the agency in which the employee is employed;
- Knowingly solicit, accept or receive a political contribution from or give a political contribution to any person who conducts operations or activities that are regulated by the agency in which the employee is employed;
- Knowingly solicit, accept or receive a political contribution from or give a political contribution to any person who has interests that may be substantially affected by the performance or nonperformance of the employee's official duties;
- Engage in political activity when on duty;
- Engage in political activity in state-owned or leased work space occupied in the discharge of official duties or by using the facilities or services of the state;
- Engage in political activity when wearing a uniform or official insignia identifying the office or position of the employee or while using a vehicle owned or leased by the state or its agencies;
- Be a candidate for elective office in a partisan public election other than for a local office. (this prohibition does not apply to an officer or enlisted person in the Maine National Guard).

Note 1: By definition in Title 5 M.R.S. § 7056-A, "use of official authority or influence" includes promising to confer or conferring a benefit such as compensation, a grant, contract, license or ruling; effecting or threatening to effect a reprisal, such as deprivation of compensation, a grant, contract, license or ruling; or taking, directing others to take, recommending, processing or approving any personnel action.

Note 2: By definition in Title 5 M.R.S. § 7056-A, "political activity" means to advocate expressly for the election or defeat of any candidate for a federal office, a constitutional office or any candidate for partisan elective municipal, county or state office, including leadership positions in the Senate and the House of Representatives or to solicit contributions reportable under Title 21-A M.R.S. chapter 13.

Note 3: Employees of the executive branch who are allowed to solicit funds for political purposes because they are not covered by Title 5 M.R.S. § 7056-A and who are covered by the federal law are prohibited by this federal law from soliciting funds for political purpose from any other state or local government employee who is covered by this same federal law.

Note 4: Title 5 M.R.S. § 7506-A may not be construed to apply to actions taken by an employee to carry out the duties and responsibilities of the employee's position, including but not limited to advocacy on policy issues or legislation.

ADDITIONAL POLITICAL ACTIVITIES PROHIBITED BY STATE LAW

- Under State Law, Title 21-A M.R.S. § 32(1)(B), a person commits a Class E crime if that person knowingly displays or distributes political advertisements in or on state-owned or state-leased property. This restriction on political activity does not pertain to acts on state highways or to displays on motor vehicles not owned by the state while temporarily parked in parking areas on land maintained by the state, and it does not pertain to acts in or on a state-owned or state-leased building for a period beginning 48 hours before and ending 48 hours after that building is used by a political party to conduct a political activity within the building.

This does not prohibit informal, consensual discussions of political issues by state employees during their break or lunch time. Further, since Title 21-A M.R.S. § 32 (1)(B) does not by its terms apply to speech, it would therefore not preclude the discussion of referenda and other ballot issues in union meetings that are permitted to take place on state property.

- Under State Law, Title 21-A M.R.S. § 1063, the Secretary of State, the Treasurer of State, the Attorney General, the State Auditor, or any individual running for these offices, may not form a political action committee or be involved in the decision making for or solicit contributions to a political action committee.
- It is very important to emphasize that the prohibition against the use of state property or facilities for political purposes includes the use of the state's e-mail and telephone systems, either during or outside of regular work hours. Title 21-A M.R.S. § 32(3) 3 makes the misuse of a state government computer system for political purposes a Class C crime. With respect to political activity, a violation occurs if a person knowingly uses a state computer system: "A. To prepare materials with the intent to expressly advocate, to those eligible to vote, for the election or defeat of any candidate for a federal office, a constitutional office or elective municipal, county or state office, including leadership positions in the State Senate and the State House of Representatives; or B. With the intent to solicit contributions reportable under [Title 21-A] chapter 13."

In addition to being a Class C crime, such misuse may subject a state employee to discipline up to and including dismissal.

The statutory prohibition against the use of the state's electronic communications systems for political purposes supersedes any agency policy that may allow limited or incidental use of these facilities for non-work related purposes.

NOTE 1: A “computer system” has the same meaning as that in Title 17-A M.R.S. §431. That is, any combination of a computer or computers with the documentation, computer software or physical facilities supporting the computer.

ACTIVITIES PROHIBITED BY FEDERAL LAW

Employees covered by the Hatch Act may not:

- Use their official authority or influence for the purpose of interfering with or affecting the result of an election or nomination for office.
- Directly or indirectly coerce, attempt to coerce, command or advise any other state or local government employee who is covered by this same federal law to pay, lend or contribute anything of value to a party, committee, organization, agency or person for political purposes.
- Be a candidate for elective office if the employee’s salary is paid completely by federal loans or grants. This prohibition against candidacy does not apply to the Governor.

EXAMPLES OF ACTIVITIES PERMITTED BY STATE AND FEDERAL LAW

Executive Branch employees are permitted to solicit funds for a political purpose as long as the employee does not use the property or facilities of the state for that purpose or misuse their position of authority with the state, and as long as other stated conflicts of interest and acts of coercion are avoided.

In addition, as long as employees do not use the property or facilities of the state for these purposes, misuse their position of authority with the state, and only engage in these activities on their own personal time, all state employees:

- Retain the right to vote as they choose to vote and to express opinions on political subjects and candidates;
- May campaign for and hold an elective office in political clubs and organizations;
- May contribute money to political organizations or attend political fundraising functions;
- May donate personal time and service to a political cause;
- May solicit, accept and receive political contributions when the fund raising activities involved are not specifically prohibited by State or Federal Law (See limitations on soliciting funds listed in this Bulletin under the heading Activities Prohibited By State Law and the heading Activities Prohibited By Federal Law);
- May be a candidate for public office in a nonpartisan election or otherwise participate in the nonpartisan affairs of a municipality;

- May actively campaign for candidates in a partisan election or solicit votes in support of or opposition to candidates;
- May attend meetings or rallies, including committee meetings of political organizations, and serve on committees that organize or direct activities at a partisan campaign meeting or rally;
- May sign, originate, and circulate nominating petitions for candidates in a partisan election for public office;
- May transport voters to the polls as part of an effort of a candidate or political party to win a partisan election;
- May serve at the polls as an election official or clerk or as a checker, watcher, or challenger for a political party or a candidate in a partisan election;
- May attend meetings, vote on candidates and issues, and take an active part in the management of a political club, organization, or party;
- May attend political party conventions and take part in the deliberations or proceedings of the convention or any of its committees; and
- May perform volunteer work for a candidate in a partisan election, campaign committee, political party, or nominating convention of a political party.

NOTE: Neither state nor federal laws prohibit the wearing of campaign buttons or badges in the work place during normal working hours, but the employing agency may limit this activity. The employing agency may logically and reasonably differentiate between employees whose work requires frequent public contact and those who seldom meet the public in the performance of their duties.

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