

**STATE ETHICS COMMISSION**  
**45 CALVERT STREET, 3RD FLOOR**  
**ANNAPOLIS, MARYLAND 21401**  
**410-260-7770 / 1-877-669-6085**

**October 1, 2017**

**SUBJECT: Political Activity**

Generally, political activity questions involve consideration of the Election Law Article and the State Personnel and Pensions Article (“SPP”), particularly SPP §§2-304 and 2-307(b). The section below entitled “Political Speech” contains guidance that has been approved by the Office of the Attorney General. That Office should be contacted for additional information and more specific guidance regarding the provisions of the Election Law Article or State Personnel and Pensions Article.

In some instances, the Public Ethics Law (General Provisions, Article 5), primarily §5-506 (use of prestige), §5-502(b) (secondary employment), and §5-507 (use of confidential information) may impact political activities of State employees and officials. However, the Public Ethics Law is intended to regulate the conduct of State officials and employees as individuals. Actions taken by State officials and employees in concert with a policy of, or position taken by, the Executive, Legislative or Judicial Branches, or an agency therein, are more appropriately governed by the particular branch or agency involved as further addressed in the section below entitled “State Initiatives”.

Candidates for State office must review §§ 5-715 and 5-716 of the Public Ethics Law, which relate to campaign finance activities of individual regulated lobbyists and campaign finance disclosure. The Federal Hatch Act, agency rules, or other statutes may also have an impact on political activity. For example, the Hatch Act can restrict certain political activity of persons whose employment involves an activity financed entirely by federal funding. (This memo does not attempt to cover the impact of the Hatch Act on political activity.)

The State Personnel and Pensions Article generally authorizes participation in political campaigns by State employees but does not allow political activity on State time or job location. The statute also prohibits requiring an employee to contribute to a political campaign or render political services. Similarly, §5-506 of the Public Ethics Law prohibits employees from using their positions to benefit themselves or others. As a practical matter, this restriction prohibits the use of State time, materials, equipment, or facilities for political purposes. This provision specifically prohibits one’s use of public resources or title to solicit a political contribution regulated in accordance with the Election Law Article (note that in the case of a State official – Governor, Lieutenant Governor, Comptroller and certain other elected executive branch officials – this limitation applies to the use of public resources, not title).

**Volunteer Campaign Activity**

State law permits State employees to provide volunteer services for campaigns. The Ethics Commission has ruled consistently that the Public Ethics Law does not limit this activity as long as the official or employee does not use State time, materials, facilities, or other resources and the volunteer

does not improperly use the State position for political purposes. State employees may not use their State positions, State time, State materials, or State equipment in any way to involve people or other employees in political campaigns. For example, supervisors should not take any action that would suggest they are urging or requiring subordinates to engage in campaign activity. Law enforcement and other uniformed personnel may not use State uniforms or equipment in political advertising. State officials and employees may not use confidential information for political activity purposes.

### **Activity as a Paid Campaign Worker**

This type of activity involves the same issues and limitations as volunteer activity, such as no misuse of position and no use of State time, facilities or materials. Additionally, because paid campaign work is employment, an official or employee must also consider and evaluate the employment restriction provisions in §5-502(b) of the Public Ethics Law. For example, an employee may not have campaign employment with an entity that does business with the employee's State agency or that would impair the employee's ability to do the State job. It is possible that campaign employment, such as working for a campaign staff while continuing in a State position, could raise questions about the ability of an employee to be objective in the employee's State job. Both paid workers and volunteers must maintain a clear separation between working at a State job and handling matters for a campaign or campaigns. Obviously, one way to reduce the potential for problems is to utilize, with the employing State agency approval, a formal extended leave of absence for paid campaign activities.

### **Running for Office or Holding Office While Remaining a State Employee or State Official**

Generally, the Public Ethics Law and other State laws have been interpreted to allow State employees and officials to run for public office provided they do not use State time, facilities, equipment, or otherwise misuse their State position or confidential information. The State has chosen to treat ethics and campaign finance regulations as separate activities. The State Ethics Commission has advised candidates who have State employment or board memberships that they should avoid interaction between their State duties and campaign contributions. Because of the potential application of the prestige provisions of the Ethics Law to non-elected officials and employees, the Commission has advised candidates not to solicit contributions from people whom they might contact in their official capacities or to participate in matters involving donors or those refusing to make contributions.

Whether a successful candidate may serve and remain in a State position requires case-by-case analysis. For example, the State Ethics Commission has ruled that a Public Service Commission Hearing Examiner could not remain in his State position and serve as a County Councilman. (Commission Opinion No. 85-13.) On the other hand, the Commission has ruled that a County Executive could remain as a University Professor while serving as a county official. (Commission Opinion No. 84-2.) Other opinions prohibit a full-time City Councilman in a large jurisdiction from simultaneously serving as a State employee (Opinion 00-3), a State police officer from serving as a City Councilman assigned to public safety (Opinion 00-7) and a State employee working at the Department of Housing & Community Development (DHCD) from serving on a Town council where the Town participated in several DHCD programs and the employee worked in a unit in which some programs were initiated and monitored (Opinion 01-1). Other significant restraints on holding a State job while serving as an elected official may arise under the requirements of the State Constitution that prevent the holding of an elected position while holding a State job if that job is considered to be an office of profit. (Questions regarding the constitutional requirements should be referred to the Attorney General.)

## **Political Speech**

As noted above, § 5-506 of the Public Ethics Law generally prohibits the use of State time, materials, equipment, or facilities for political purposes and as a consequence, if an employee chose to advocate for a candidate using State time or resources, or used his/her position in such a way to make it appear his/her office or the State was endorsing a candidate, this prohibition would apply.

The Office of the Attorney General has advised that SPP 2-304 recognizes the right of State employees to “freely participate in political activity and express any political opinion”, (see SPP §2-304 (a)(2)(i)), but like the Public Ethics Law, prohibits employees from engaging in political activity on the job during working hours. SPP §2-304(c)(1). As a general rule, the wearing of campaign buttons does not constitute prohibited political activity under this statute. The wearing of political buttons and apparel would likely be considered protected expression under the First Amendment. However, a restriction on that right, if it serves a compelling government interest and is narrowly tailored to further that interest, may be permitted. There is case law suggesting that some public employers whose employees are in public contact positions may limit the wearing of any buttons, apparel, or the display of signs that have messages that are not work related. There are statutory restrictions on political activities by election officials and individuals employed by a board of elections (see Election Law, §2-301), and on political activities by individuals employed by the Department of Legislative Services (see State Government §§2-1203(b)(4), 2-1204(1), 2-1205).

## **State Initiatives**

In carrying out the business of the State, an agency or branch of government may undertake to support a policy or position, which may be reflected in pending legislation. Questions sometimes arise concerning the application of §5-506 of the Public Ethics Law which prohibits an official or employee from intentionally using “the prestige of office or public position for that official’s or employee’s private gain or that of another” in situations where that official or employee advocates an official position of a government branch or agency. The Commission has determined that in situations where an official or employee undertakes to support or advocate for a policy or position adopted or supported by that official’s or employee’s government branch or agency, the regulation of such actions is more appropriately addressed by State personnel law and agency policy. The Commission will continue to address, on a case by case basis, situations where an official or employee uses State time, resources and materials, or otherwise brings to bear the prestige of his/her State office in a matter not officially endorsed by his/her government branch or agency where the actions are undertaken “for that official’s or employee’s private gain or that of another.”

## **Constituent Services and Use of Official Letterhead**

As noted above, §5-506 (a) of the Public Ethics Law contains a prohibition against the use of prestige of one’s office for one’s private gain or that of another. Section 5-506 (b) of the Law provides for an exception to the prestige of office prohibition. The exception states that “[t]he performance of usual and customary constituent services without additional compensation, is not prohibited under subsection (a) of this section.” The “constituent services” exception, by its very title, applies to elected officials who have a constituency, and for purposes of this memorandum is limited in its application to elected Executive Branch officials (note that members of the Legislative Branch should seek guidance on the application of the exception from the Joint Committee on Legislative Ethics). Clearly an elected official is expected, as part of his/her job, to take positions in support of the official’s constituents. Constituent services may

include providing assistance to an individual constituent or undertaking/advocating for State initiatives that will impact constituents as a group.

As the discussion in the “State Initiatives” section, above, indicates, as a general matter the Commission believes it is highly appropriate for an elected official to sponsor and support legislative initiatives, to include submitting bills to the legislative branch and taking positions on those bills and on various ballot initiatives. The Commission views such activities, and efforts to generate support, as customary work of an elected official. While there will be those who disagree with a position endorsed by the official, and such disagreement may follow traditional party lines, advocating for an agenda is permitted as part of an elected official’s normal duties.

However, it is important to distinguish the support of State initiatives from activity involving partisan political matters. The Commission emphasizes that the constituent services exception does not allow the use of public funds, facilities, equipment, services, government time or other government assets or resources for involvement in, support of, or opposition to partisan political activity such as advocating the election or defeat of a candidate or generating written material that is clearly only for the private benefit of the official, State employee or a candidate for office.

The Commission views the use of official letterhead of the elected official as appropriate in official business and for customary constituent services. Other correspondence, particularly if it relates to the partisan political activity of the type noted above, should be sent on stationery that is not printed at State expense, and the preparation and mailing of the correspondence should not involve State resources (including State employees in any aspect of the process). The non-official stationery may use the official’s name and title, but should otherwise ensure it does not incorporate letterhead similar to official letterhead in order to clearly avoid conveying the impression that the communication is the official business of the State. Whether particular circumstances constitute official actions of an elected official or are instead private or partisan political activities may not always be obvious. Whenever questions arise, an elected official should consult with the Ethics Commission.

### **Summary**

In summary, election laws, personnel laws and regulations, the Public Ethics Law, the Federal Hatch Act, the Maryland Constitution, agency rules, and other laws and regulations may have an impact on political activity. Questions about the impact of the Public Ethics Law should be referred to the State Ethics Commission. Questions about other State laws, or other requirements should be referred to the Attorney General or other appropriate agencies. Questions about the Hatch Act may be referred to the U.S. Office of Special Counsel, 1730 M Street, NW, Suite 218, Washington, DC 20036, 1-800-854-2824.