

Date: August 8, 2002

In reply refer to: Ethics –8/02

Subject: Federal Hatch Act Advisory

To: OCFO Employees

During the last Presidential election, a number of complaints were filed with the US Office of Special Counsel (OSC) regarding the use of electronic messaging devices, and text-messaging pagers to send or deliver partisan political messages. This memorandum offers advice concerning the use of computers, cellular telephones, and handheld wireless e-mail devices (e.g., Palm Pilots and BlackBerrys, etc.). Whether government-issued or personally owned, the use of these devices is prohibited for distributing partisan political messages while in uniform, on duty, or in a Government building or vehicle.

The Hatch Act (5 United States Code §§ 7321-7326) generally permits most Federal employees to actively participate in political management and campaigns. The purpose of the Hatch Act is not to prohibit all discourse by Federal employees on political subjects or candidates. In fact, it explicitly protects the rights of Federal employees to express their opinion on political subjects and candidates, both publicly and privately. Thus, the Hatch Act does not prohibit “water-cooler” type discussions and exchanges of opinions among coworkers concerning the events of the day (including political campaigns).

Electronic messaging technology is often used instead of a face-to-face conversation or a telephone call. The fact that a “water-cooler” type discussion takes place through the use of e-mail does not, in and of itself, transform the discussion from the protected exchange of personal opinion into prohibited political activity. However, electronic messaging technology can be put to use other than serving as an alternative mode for casual conversation. E-mail also provides employees with the means to disseminate their opinion on political subjects and candidates to a much wider audience than is possible in a casual face-to-face conversation or phone call. In short, electronic messaging technology enables employees to engage in a form of electronic leafleting or “electioneering” at the worksite, which may constitute prohibited “political activity.”

Following are some of the relevant considerations when determining if an e-mail falls under the Hatch Act’s prohibition against on-duty political activity:

- Is the purpose of the message to encourage the recipient to support a particular political party or vote for a particular candidate for partisan political office?
- Is the audience specific or general? How many people are on the distribution? What is the sender’s relationship to the recipient?
- Is the message being sent in a Federal building in a Government-owned vehicle, or when the employee is on duty.

By way of illustration, on the day before the 2000 Presidential election, a Government employee, while on duty and in a Government building, used his Government computer to e-mail all agency employees a message captioned "URGENT! FORWARD TO UNDECIDED & NADERITES." The text of the message praised Presidential Candidate Al Gore, and encouraged recipients to forward the message to as many people as possible because there were "only 18 more hours to bring Nader voters to their senses and get them to vote for the ONLY candidate for President--Al Gore!!!"

OSC concluded that this employee violated the Hatch Act by sending this message. The content of the message explicitly encouraged its recipients to vote for Al Gore and urged others to do so. The message was sent to a large audience, including many individuals with whom the sender had no prior acquaintance or personal relationship. At the time the e-mail was sent, the sender was on duty, and in a Government building.

By contrast, let's assume a Government employee on duty in a Federal facility used a Government-owned computer to e-mail a message to a few coworkers to engage in a friendly political debate. The e-mail message was captioned "follow up on our discussion this morning," and attached the text of a newspaper column critical of one of the Presidential candidates' tax proposals, with a statement supporting the columnist views. In this instance, the content of the message expresses the sender's *personal opinion* about a candidate for partisan political office. It may be true that the message is intended to encourage the recipients to support the sender's candidate of choice. Nonetheless, the message was sent to a small group of colleagues, while on duty, in a Government facility through the use of Government equipment. The Hatch Act was not violated because the e-mail message was simply a functional substitute for the permissible face-to-face expression of a personal opinion on political subjects.

Ultimately, between these two extremes, there are many possible variations. The determination as to whether an employee has engaged in prohibited political activity must necessarily be made on a case-by-case basis. This advisory is intended only to outline the general considerations that apply and to alert employees covered by the Hatch Act to the fact that use of Government e-mail to transmit political messages implicates the Act's prohibitions.

Finally, please note that the Hatch Act prohibits "activity directed toward the success or failure of a political party, candidate for partisan political office, or a partisan political group." An employee who is merely a recipient of a message such as the one described in the text does not violate the Hatch Act. Even if an employee retrieves or reviews the message while on duty or in a Government building, these acts are not directed toward the success or failure of a political party, candidate, or group.

Inquiries regarding this memorandum should be referred to your supervisor. Supervisors, should contact the National Finance Center's Ethics Office at Extension 5-5679 for assistance.



for
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