

The Hatch Act — A Pre-Election Primer

by Rick Schwartz

With the increase in campaign rhetoric since Labor Day in anticipation of the upcoming fall elections, it might be a good time to discuss the limitations placed on civilian employees of the Executive Branch by the Hatch Act. (Similar restrictions on electioneering by active military personnel are governed separately). This article is meant to provide only an overview of Hatch Act considerations, and you should bear in mind that the analysis for each individual situation is fact-specific.

In the 21st TSC, most, if not all, of us will fall into the Hatch Act category of “less-restricted” employees. Less-restricted employees are prohibited from:

- using their official authority or influence to interfere with or affect the result of an election;
- knowingly soliciting, accepting, or receiving a political contribution from any person (this may be done in certain limited situations by federal labor or other employee organizations);
- knowingly soliciting or discouraging the participation in any political activity of anyone who has business pending before their employing agency;
- being candidates for public office in partisan political elections; or
- engaging in political activity while: on duty, in a government office, wearing an official uniform or using a government vehicle.

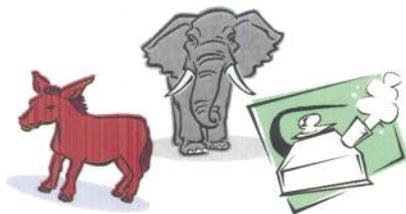


These prohibitions effectively prevent less-restricted employees from doing any of the following:

- hosting or inviting anyone to a political fundraiser;
- accepting or receiving a donation or contribution for a partisan political party, candidate for partisan political office, or partisan political group;
- using an official title or position while engaged in political activity; or
- inviting your subordinate employees to political events or otherwise suggesting to subordinates that they attend the political event or undertake any partisan political activity.

In addition, less-restricted employees are prohibited from any of the following while on duty and/or in any federal room or building:

- distributing or displaying campaign materials or items;
- wearing partisan political buttons, t-shirts, or other items;
- performing campaign-related chores;
- making political contributions to a partisan political party, candidate for partisan political office, or partisan political group;
- posting a comment to a blog that advocates for or against a partisan political party, candidate for partisan political office, or partisan political group; or
- using any e-mail account to distribute, send, or forward content that advocates for or against a partisan political party, candidate for partisan political office, or partisan political group.



Penalties for violating the Hatch Act are steep: an employee “shall be removed” from their position, and funds appropriated for the position from which removed thereafter may not be used to pay the employee or individual. However, if the Merit Systems Protection Board finds by unanimous vote that the violation does not warrant removal, a penalty of not less than a 30-day suspension without pay shall be imposed.” (emphasis added)

Two recent cases illustrate the Office of Special Counsel and Merit Systems Protection Board’s stringent application of the penalties for violations. Following its June decision in *Special Counsel v. Pattie Ware*, in which the MSPB ordered Ms. Ware’s removal from her position for Hatch Act violations, the MSPB published an August decision in *Special Counsel v. Phillip Mark*, imposing a penalty of a 120-day suspension (reduced from the original penalty of removal).

Mr. Mark violated the Hatch Act when he forwarded one campaign e-mail, from then-presidential candidate Barack Obama soliciting online contributions, to a number of individuals, including co-workers who were not under his supervision. In the forwarded e-mail, which was sent on duty from his government office and contained his name, title, group, duty location, and telephone number, Mr. Mark stated: “FYI ... if you want to help out the campaign! PS ... If you are tired of getting e-mails from me, just let a brotha know! [sic]”

Since Mr. Mark admitted he had violated the Hatch Act, the MSPB only considered the penalty. In reducing Mr. Mark’s original penalty of removal, the MSPB pointed out that in its June removal decision, Ms. Ware sent two e-mails seeking political contributions, one of which also invited a number of people to a fundraiser for Barack Obama. Since she also solicited money from three government employees over whom she had authority, the MSPB considered her offenses more egregious. Although the MSPB also found the fact that Mr. Mark was not a political operative or otherwise engaged in political fundraising to be a mitigating factor, his actions still warranted a 120-day suspension.

One last thing to keep in mind is that the MSPB did not accept Mr. Mark’s contention that he was ignorant of the Hatch Act, proving the old adage that “ignorance of the law is no excuse.”



TAX SERVICES STILL AVAILABLE AT KLSC

by Steve Smith

Free tax assistance services are available at the Kaiserslautern Legal Services Center all year round.

Taxpayers who have yet to file their federal or state tax returns for 2009 or earlier years can do so by calling DSN 483-8848 or Civilian 0631-411-8848 to set up an appointment to see Donald Davis, our tax program coordinator. He can prepare original tax returns and amend tax returns that have already been filed. He can still electronically file 2009 income tax returns through October 15, 2010.

Taxpayers who need assistance in deciphering or responding to notices they receive from the Internal Revenue Service or a state Department of Revenue should call the same phone numbers and ask for an appointment with our tax attorney, Mark Christensen, or e-mail him tax questions at tax@eur.army.mil.

The Kaiserslautern Legal Services Center provides tax services to all eligible legal assistance clients, regardless of their branch of service or physical location. If you are willing to make the trip to Kleber Kaserne or send us your supporting documents, we will assist you to the best of our ability. **“First in \$\$\$\$\$\$support!”**