

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ETHICS AND GOVERNMENT ACCOUNTABILITY**



Office of Government Ethics

August 17, 2017

Beverly Perry
Senior Advisor to the Mayor, Office of Federal and Regional Affairs
1350 Pennsylvania Avenue, N.W., Suite 324
Washington, D.C. 20004

Dear Ms. Perry:

This responds to your August 4, 2017 memorandum in which you request a formal advisory opinion from the Board of Ethics and Government Accountability (“Ethics Board”) as to whether certain activities by the District government to encourage District residents to contact United States Senators regarding District statehood would violate the Code of Conduct. Your proposed activities are as follows:

1. The Executive Office of the Mayor (“EOM”) and the New Columbia Statehood Commission would have the Office of the Chief Technology Officer (“OCTO”) develop or create a portal that would include the contact information, email and mailing addresses for all U.S. Senators. District residents would be able to access the portal and would be “matched” to a suggested Senator, with the goal that each resident will “adopt” the suggested Senator.
2. The EOM and the Statehood Commission would send a letter to District residents encouraging them to contact their adopted Senators regarding issues and policies that affect them.
3. The EOM and the Statehood Commission would provide District residents with a suggested introductory letter to send to their adopted Senator. The letter would explain, among other things, that the District resident does not have voting representation in Congress and that the resident has chosen the Senator as his or her surrogate representative.
4. District residents would be expected to email their letters directly to their adopted Senators.

On August 9, 2017, you provided supplementary materials as background to your request for guidance. Those materials reveal that the above-referenced activities are part of a larger effort to “mobilize [the District’s] quest for congressional representation,” with the overall goal of having a “statehood bill voted on in the Senate and House in 2018.”¹

While your request is addressed to the Ethics Board, I view it as invoking my authority as the Director of Government Ethics.² Based on the information you provided as well as this Office’s previous advisory opinions regarding whether District employees may engage in statehood-related activities,³ I conclude that your proposals would not violate section 1801 of the Merit Personnel Act (“MPA”), 6B DCMR §1808, or the Local Hatch Act, all of which are elements of the Code of Conduct.

This Office previously noted that there are “very similar”⁴ considerations to take into account when determining whether proposed statehood activities comply with section 1801 of the MPA, which provides that District employees shall “maintain a high level of ethical conduct,” and 6B DCMR §1808, which notes that District employees shall not misuse government property.” Those considerations led to this Office’s conclusion that District employees may participate in statehood related activities without violating section 1801 of the MPA and 6B DCMR §1808 as long as those employees are authorized to participate in such activities and as long as they do so by using funds and other District resources that are authorized for that purpose.⁵

Consequently, we noted that employees of the Office of the Statehood Delegation, the Statehood Delegation itself, as well as any Executive Branch employees whose official duties include or otherwise support the Mayor’s statehood policy agenda could engage in all of the statehood related activities outlined in the EOM’s June 3, 2016 request for guidance.⁶ Notably, some of the proposed activities in that request, such as the request to compile lists of persons and

¹ See Statehood Package at p.1, provided to the Office of Government Ethics on August 9, 2017.

² D.C. Official Code §1-1162.19(a)(“Upon application made by an employee or public official subject to the Code of Conduct, the Director of Government Ethics shall, within a reasonable period of time, provide an advisory opinion as to whether a specific transaction or activity inquired of would constitute a violation of a provision of the Code of Conduct over which the Ethics Board has primary jurisdiction.”)

³ For an in depth discussion of section 1801 of the Merit Personnel Act (“MPA”), 6B DCMR §1808, and the Local Hatch Act as those regulations relate to statehood related activities, *see* Response to Request for Advisory Opinion Regarding Statehood Activities by OCTFME Employees, 1566-001 (November 30, 2016); *see also* Response to Request for Opinion Regarding Statehood Activities, 1009-010 (June 14, 2016).

⁴ *See* OGE Opinion, 1009-010 at 4; OGE Opinion 1566-001 at 5.

⁵ OGE Opinion, 1009-010 at 3-4; OGE Opinion 1566-001 at 4-5.

⁶ OGE Opinion, 1009-010 at 1-2(“Based on the information in your memorandum, I conclude that the activities outlined in it would not violate section 1801 of the Merit Personnel Act, 6B DCMR § 1808, or the Local Hatch Act.”); *see also* June 3, 2016 Request for Expedited Formal Advisory Opinion from BEGA on Activities Relating to Advisory Ballot Referendum at 2-3.

communicate with them from government servers on community engagement events relating to statehood and building public support from around the country for statehood,⁷ are similar to the activities contemplated by your current request.

We also advised that other agencies not explicitly linked to or tasked with carrying out District statehood initiatives could, nevertheless, provide support or assistance in those endeavors “if done so on behalf of the [Statehood Commission], EOM, the Council, Congresswoman Norton, or another District agency whose activities directly support the Mayor’s Statehood agenda.”⁸ Specifically, we noted that the Office of Cable Television, Film, Music and Entertainment (“OCTFME”) could develop “Create the State” slogans and other media aimed at educating District residents on statehood because the request was initiated by the Statehood Commission and EOM and because OCTFME is statutorily required to produce content for the government and educational channels.⁹

With regard to the activities proposed in your memorandum, I conclude that based on this Office’s previous statehood guidance, OCTO employees may create an online portal to match District residents to Senators so that residents can discuss with their surrogate representatives their lack of voting representation and other issues that impact them. I reach this conclusion based on the fact that the request is initiated by the Statehood Commission and EOM and given that OCTO’s statutory purpose is to “centralize responsibility” for the District government’s information technology and telecommunications systems and “to help District departments and agencies provide services more efficiently and effectively.”¹⁰

In addition, the proposal for EOM and the Statehood Commission to have OCTO create a portal to facilitate District resident’s ability to communicate with Congress regarding statehood appears consistent with OCTO’s statutory purposes as well as the District Statehood Commission’s purposes, which are to “[e]ducate regarding, advocate for, promote, and advance the proposition of statehood and voting rights for the District of Columbia to District residents and citizens of the 50 states.”¹¹ As such, your proposal complies with section 1801 of the Merit Personnel Act, 6B

⁷ See June 3, 2016 Request for Expedited Formal Advisory Opinion from BEGA on Activities Relating to Advisory Ballot Referendum at 2-3.

⁸ OGE Opinion 1566-001 at 4.

⁹ See *id.*

¹⁰ D.C. Official Code §1-1402.

¹¹ D.C. Official Code §1-129.31(b)(1).

DCMR §1808 and our previous statehood guidance, so long as all of the agencies involved in executing this project use funds that are specifically authorized to do so.¹²

Moreover, I note that your proposal complies with the Local Hatch Act. The Local Hatch Act regulates political activity, which is defined as “any activity that is regulated by the District directed toward the success or failure of a political party, candidate for partisan political office, partisan political group, ballot initiative, or referendum.”¹³ Your proposal contemplates a grassroots effort to engage members of Congress on the issue of District statehood and to build support for the introduction and passage of statehood legislation. This endeavor does not fall under the statutory definition of “political activity,” as it is not aimed at the success or failure of a political party, candidate for partisan political office, partisan political group, ballot initiative, or referendum. Therefore, I conclude that the activities you propose do not violate the Local Hatch Act.¹⁴

In addition, however, please note that the District Personnel Manual requires that District employees comply with *all* federal, state, and local laws and regulations.¹⁵ There may be other laws and regulations that are implicated by your proposal which our office does not have the jurisdiction to interpret or enforce.¹⁶

Please be advised that this advisory opinion must be published in the *D.C. Register* within thirty days of its issuance because it is provided to you pursuant to D.C. Official Code §1-1162.19(a). Your identity will not be disclosed, unless you consent to such disclosure in writing. We

¹²The Office of Campaign Finance (“OCF”) may take a different view with respect to permissible expenditures in this area. It is OCF, and not this Office, that has authority to opine on the prohibition concerning expenditures of government resources for “campaign related activities” and to define what constitutes such activities.

¹³ D.C. Official Code §1-1171.01(8)(A).

¹⁴ It is my understanding that the District government will provide “suggested letters” to residents to be sent to members of Congress regarding issues related to the District’s lack of voting representation and District statehood. District residents will be expected to send their letters to members of Congress directly. My conclusion that this proposed activity does not implicate the Local Hatch Act would differ if District residents transmitted letters to Congress through the District’s portal or in clear conjunction with the District government, as there is a possibility that residents will modify the letters in such a manner that the letters could contain language that meets the definition of “political activity,” as defined by the Local Hatch Act. If District resources were used to facilitate the transmittal of such materials, that *could* amount to a violation of the Local Hatch Act. In the alternative, the District could ensure that the suggested letter is *unalterable*, so that “political activity” cannot be added to it. In that case, residents could then transmit the letter to their adopted representative through the portal without violating the Local Hatch Act.

¹⁵ 6B DCMR 1800.3(m).

¹⁶ See e.g., 18 U.S.C. § 1913 (prohibiting the use of monies appropriated by Congress for lobbying), *see also* section 806 (a) of the Consolidated Appropriations Act, 2017, approved May 5, 2017(Pub. L. No. 115-31; 131 Stat. 244) (prohibiting the District of Columbia from using federal funds for any petition, drive, or civil action which seeks to require Congress to provide voting representation in the District of Columbia.)

encourage individuals to so consent in the interest of greater government transparency. Please let me know your wishes about disclosures.

Please let me know if you have any questions or wish to discuss this matter. I may be reached at 202-481-341, or by email at brian.flowers@dc.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read 'B. Flowers', with a horizontal line underneath.

BRIAN K. FLOWERS
Interim Director of Government Ethics
Board of Ethics and Government Accountability

#1009-014

ATTACHMENTS

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Executive Office of Mayor Muriel Bowser



Executive Office of the Mayor

TO: Office of Campaign Finance
Board of Elections and Government Accountability

FROM: Beverly Perry, Senior Advisor

DATE: August 4, 2017

SUBJECT: Request for Formal Advisory Opinion from BEGA and for
Interpretive Opinion from OCF on Statehood Activities

The Executive Office of the Mayor requests your guidance as we undertake new strategies on statehood and Congressional representation for residents of Washington, DC.

Background:

The Executive Office of the Mayor and the New Columbia Statehood Commission would like to have the Office of the Chief Technology Officer (OCTO) develop a computer program that would allow DC residents to contact all members of the United States Senate. This would require that OCTO develop or create a portal that would include the contact information, email and mailing addresses, for all Senators. This information is all public. DC residents will be able to access the portal and would be “matched” to a suggested Senator, with the goal that each resident will “adopt” the suggested Senator to send input on policies and issues that impact them.

The Executive Office of the Mayor and the Statehood Commission would contact DC residents with a letter letting them know about the goal and suggesting the Senators with whom they are “matched.” We would also provide a suggested letter to send to the Senators establishing the relationship, which will be included in the portal.

The Office of the Senior Advisor asked OCTO whether it would be able to build the portal described above. OCTO acknowledges that it has the technological capability to build such a system. However, OCTO recommended that we seek input from your agencies to ensure that our request complies with the DPM Code of Conduct, the Ethics Manual, and the Local Hatch Act.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Executive Office of Mayor Muriel Bowser



Executive Office of the Mayor

Thank you for your advice. If you have further questions, please feel free to call me at 202-724-5326.

Congressional Representation and National Education Campaign

Mission: To mobilize our quest for congressional representation and initiate national citizen engagement, to advance the Statehood movement.

Goals:

1. Activate voters across country to engage in the statehood process
 2. Increase engagement with members of Congress
 3. Build national coalitions of advocates by making appeal to 100-1000 national organizations
 4. Educate all Americans on the District of Columbia, its lack of representation, correct false narratives regarding the District relationship/benefits with the federal government
 5. Engage/lobby target states in effort to get support legislation passed in their State Assemblies.
 6. Get a statehood bill voted on in the Senate and House 2018
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- I. **Surrogate Letter Writing Campaign Launch – 9/5/17**
 - a. Letter Writing Campaign
 - i. Introductory Letter – DC residents request members to represent them
 - ii. Concerns and Issues – alert members that residents will contact them
 - iii. Monthly Issue Letters – forward newsletter to members
 - iv. Meeting Requests – when issue arises, request meeting
 - II. **10 State Strategy – 10/1/17**
 - a. Family and Friends
 - i. Federal: My ____ lives in DC and does not have a voting member in the House of Representatives. I'd like you to support them in their quest for state hood. Until then, I'd like you to serve as their voting member in Congress.
 - ii. State: My ____ lives in Washington, DC and does not have voting representation in the House or Senate. The constitution affords all tax paying citizens voting representation. I'm asking you as my representative to the State Legislature to support a state resolution in support of DC's path to statehood and admission to the union as the 51st State.
 - III. **Connecting and Pairing with Puerto Rico**
 - a. Capital city alliance meeting
 - b. Identify sponsor of legislation to create same federal tax structure for DC
 - IV. **Process**
 - a. Outreach Tactics – 11/1/17
 - i. Letters
 - ii. Website: A full revamp of the statehood website by an outside contractor. The website has to be developed in way for information to be easily found, while engaging to make residents want to check back for information. It should also include a "sign up for updates" option allowing residents to enter email addresses as well as social media information so that updates and "action requests" can be disseminated on short notice.
 - iii. Social media – hire manager by 12/1/17
 1. Twitter
 2. Facebook

- 3. Snapchat
- 4. Site Visits
- iv. Legislative Meetings (should have specific language we'd like to have introduced in each state legislature for continuity of support.
- v. Outreach map (to show specific targets as well as monitor the progress being made in each state and by who
- vi. State/Member profiles: that identify key information about the state as it relates and is unrelated to DC but affects issues of similar sorts, A specific federal appropriation that is unique to that state but not appropriated for the majority of states in the country,
- vii. Statehood Design contests to engage youth/millennials:
 - 1. 1. Logo Design – The statehood campaign has used a graphic generated by the NCSC but has no specific graphic that residents feel they own or represents them and DC Values.
 - 2. 2. Mural Design – Identify a location in the city with high traffic and visibility for a mural design. This will allow residents and tourists alike to take pictures in front of it, as well as post the pictures to generate conversation, engagement, and support via social media
- viii. One Pagers: used to provide residents and nationwide supporters with information to share with other, in addition to serving as talking points with local and national political leaders
- ix. Outside media engagement: People tend to trust their local media affiliates more than they do the national media. We have to maximize coverage and conversation with small, local outlets via news, radio, and television.
- x. Public Service Flyers:

Do you know American History?

We are Washington DC!

Please do not confuse us with your Federal Policy makers.

Like you, we pay taxes to support their work.

But unlike you, we have no voice or vote to urge sensible positions.

Please support our quest for full citizenship.

Congress: _____

Senator: _____

Dear Resident/Voter,

As an American taxpaying citizen, you are entitled to full democratic representation within the halls of government in America. Unfortunately, because you have opted to call Washington DC home, you are being denied voting representation before both houses of Congress. To ameliorate this wrong, your fellow citizens are pursuing Statehood for Washington DC. Until full democracy is bestowed upon Washington, the New Columbia Statehood Commission is suggesting that you adopt a surrogate Congressional representative.

The Commission is suggesting the delegation listed above as your member of the US House of Representatives and two United States Senators from the corresponding state. You may, of course, choose a different delegation. Please use your surrogate representatives as you would direct representation. As important issues are debated, you can have your voice heard by writing and calling your surrogate representatives.

Surrogate representation does not affect or impact your relationship with Congresswoman Eleanor Holmes Norton in any way. Surrogate representation allows you, for the first time, to express your wishes to voting members of both houses of Congress. The ultimate goal is to urge the House and to vote for DC Statehood in 2018.

To register your surrogate relationship, please send the enclosed letter to your representatives during the first week of September of 2017. This effort is sponsored by the New Columbia Statehood Commission to provide an avenue for the people of Washington DC to express their wishes on votes in the Congress of the United States.

Dear Resident/Voter,

Our renewed quest for DC Statehood is off to a good start, but there is still more work to be done. The fight for DC Statehood has to be a collective effort. We must maximize our power in numbers, which includes inviting our family and friends to follow in our footsteps and send letters to Congress in support of voting representation for the residents of Washington DC. Enlisting their help will bring more attention to this voting injustice, providing the additional ammunition needed to make our voices heard in Congress. Our friends and family across the country can work as allies by informing their own congressional delegation of the injustices facing Washington DC residents.

Please pass along the enclosed letter to your family and friends for them to send to their surrogate/congressional delegation. This effort is sponsored by the New Columbia Statehood Commission to provide an avenue for the people of Washington DC to express their wishes on votes in the Congress of the United States.