

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



Office of Government Ethics

September 22, 2022

Advisory Opinion

Guidance on the Local Hatch Act and Fundraising Activities

Pursuant to D.C. Official Code § 1–1162.19(a-1)(1), the Director of Government Ethics issues this advisory opinion, *sua sponte*, to provide guidance on maintaining ethical standards while engaging in political activity. This advisory opinion clarifies prohibited and permissible fundraising activities.

I. Local Hatch Act and Fundraising

The Local Hatch Act¹ (“LHA”), modeled on the federal Hatch Act passed in 1939, similarly regulates the political activities of District government employees. To ensure that District government operations are administered in a non-partisan manner, the LHA restricts certain political activities of District government employees, even as it allows employees to take active roles in political management and political campaigns. The LHA is applicable to employees who fall within the definition of “any individual paid by the District government from grant or appropriated funds . . . [and] a member of a board or commission who is nominated for a position pursuant to [D.C. Official Code §§ 1-523.01(e) and (f)].”² It defines political activity 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.”³ The LHA outlines restrictions on certain activities, such as the use of official authority or influence to affect the results of an election, solicitation or acceptance of political contributions, and running as a candidate for partisan political office, as well as engaging in political activity while on duty.⁴

¹ D.C. Official Code § 1–1171.01 et seq. Prohibition on Government Employee Engagement in Political Activity Act of 2010; see also Rule 9 of the Council of the District of Columbia, (a)(5), Council Code of Official Conduct, which contains parallel language as the LHA.

² D.C. Official Code § 1-1171.01(3).

³ *Id.* at § 1-1171.01(8)(A).

⁴ Council of the District of Columbia, Committee on Government Operations and the Environment, Report, Bill 18-460, the “Prohibition on Government Employee Engagement in Political Activity Act of 2010”.

Although employees may play active roles in political campaigns, the LHA prohibits employees from knowingly soliciting, accepting, or receiving political contributions from any person, except if the employee has filed as a candidate for political office.⁵ D.C. Official Code § 1-1171.01(9)(A) defines political contribution as a gift, loan, anything of value, and promise to make a contribution for any *political purpose*. The LHA defines political purpose as “an objective of promoting or opposing a political party, candidate for partisan political office, or partisan political group that is regulated by the District.”⁶

Notably, soliciting or accepting political contributions, in support or opposition of a candidate who is running for any office in the District government for which candidates represent a party, is considered fundraising.⁷ For example, developing a website or creating a GoFundMe page in support of a D.C. Council candidate is fundraising activity. Sitting at a booth during a fundraising political event and simply collecting donations as patrons enter the event is considered fundraising. Even signing a letter that contains a solicitation or directions on how to contribute campaign funds to a D.C. Mayoral candidate is considered fundraising.

Similar activities that are considered fundraising and therefore are prohibited include organizing a fundraiser for a candidate who is running for partisan office within the District, even if the employee does not attend, appearing by name or photo on that fundraiser advertisement, inviting others to the fundraiser, sending or forwarding e-mails containing solicitations or invitations to that fundraiser, and signing the relevant solicitation letters.⁸ Because fundraising is strictly prohibited, an employee involved in campaign management or hosting a meet and greet for a public official or candidate for public office, must exercise discernment to ensure that their participation would not constitute prohibited fundraising.

II. Permissible Fundraising Activities

There are a few exceptions that permit an employee to accept political contributions. The first exception allows an employee to fundraise for their own non-partisan, District regulated campaign, and their own partisan, non-District regulated campaign.⁹ The second exception allows employees to fundraise for candidates that run for office in political races that are not regulated by the District, such as the Comptroller for a neighboring county in Maryland.¹⁰ The third fundraising exception applies to a specific set of employees who are designated by the Mayor, Council member or the Attorney General, as discussed below.

⁵ D.C. Official Code § 1-1171.02(a).

⁶ D.C. Official Code § 1-1171.01(11).

⁷ *Id.* at § 1-1171.01(7).

⁸ D.C. Official Code § 1-1171.02(a); *See generally*, 5 C.F.R. §§ 734.208, 734.303.

⁹ D.C. Official Code § 1-1171.02 (a)(2) and (a)(3).

¹⁰ *See* D.C. Official Code § 1-1171.01(8) (defining political activity 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).

A. Fundraising for one's own campaign

D.C. Official Code § 1-1171.02(a)(3) prohibits employees from filing as a candidate for election to a partisan political office within the District government. D.C. Official Code § 1-1171.02(a)(2) (the fundraising prohibition) provides an exception for employees to fundraise if the “employee has filed as a candidate for political office.” Therefore, when read together, sections (a)(2) and (a)(3), provide that an employee may run for a non-partisan political office within the District government or a partisan political office that is not regulated by the District, and the employee is allowed to fundraise for their campaign. For example, an employee is permitted to file as a candidate for Advisory Neighborhood Commissioner or State Board of Education and fundraise for their own campaign.

B. Fundraising for a partisan, non-District regulated campaign

As mentioned above, employees are prohibited from knowingly soliciting, accepting, or receiving political contributions for a political party, candidate for partisan political office, or partisan political group that is regulated by the District. The LHA does not prohibit employees from engaging in fundraising for partisan candidates and political groups that are not regulated by the District. Therefore, an employee may fundraise for a candidate who is running for a partisan office in a different state, or even a candidate running for a federal, partisan office. However, that employee is still subject to the prohibitions on engaging in political activity while on duty, in District facilities, or using District resources.¹¹

C. The Designation Rule

Pursuant to D.C. Official Code § 1–1171.02(b), the Designation Rule, an employee may, while on annual or unpaid leave engage in campaign fundraising, including the solicitation, acceptance, and receipt of political contributions if the employee is designated by a public official. The statute identifies the Mayor, the Attorney General, and each member of the Council as public officials that can designate an employee under this rule. The rule specifies that the designated employee may only perform these functions for a principal campaign committee, exploratory committee, or transition committee and that the designation must be made in writing. The rule also prohibits the designated employee from engaging in political activity in any room or building occupied in the discharge of official duties in the District government.¹²

¹¹ See D.C. Official Code § 1-1171.03 (setting rules for engaging in political activity while on duty, in a government room or building, while wearing a uniform or official insignia, or while using a government vehicle.)

¹² On January 8, 2013, the Office of the General Counsel for the Council of the District of Columbia issued memorandum “Effect of Public Law No. 112-230, the Hatch Act Modernization Act of 2012” which discusses designated employees and acknowledging that "existing restrictions on time, place, and manner" of fundraising must apply to employees. The opinion is available at: <https://dccouncil.us/wp-content/uploads/2017/05/20130108%20Memo%20to%20CMs%20re%20Hatch%20Act.pdf>.

The designation shall be made in writing by the Mayor and the Attorney General to the Secretary of the District of Columbia, and the Council to the Secretary of the Council.¹³ All public officials must require their designated employee to file with the Board of Ethics and Government Accountability (“Board”) within 15 days after being designated, a report identifying the employee's name, the name of the person who designated the employee, and the name of the principal campaign committee, exploratory committee, or transition committee for which the employee is designated.¹⁴

A candidate, who is not yet a public official, would not be authorized to designate a District employee to engage in otherwise prohibited fundraising pursuant to this rule. Neither the rule nor the reporting requirements implementing the rule would permit a public official to designate an employee for a principal campaign committee, exploratory committee, or transition committee of another candidate. Therefore, the public official must appoint or designate the employee for his or her own campaign.

III. Fundraising Prohibitions for Social Media

The fundraising prohibition also applies to employees’ conduct on social media. As discussed in the Board of Ethics and Government Accountability (“BEGA”) Advisory Opinion -1559-001, social media is an umbrella term that refers to internet-based tools, programs, and applications that allow their respective users to share information.¹⁵ The general use of social media is not prohibited by the District’s Code of Conduct; however, the capabilities of social media in sharing information, which may include political activity, pose unique considerations under the LHA.

Technological advancements and social media platforms have created a world where individuals are highly accessible. Social media has also made it extremely easy to share links concerning political campaign issues or online donations for campaigns. Knowingly soliciting, accepting, or receiving a political contribution via social media or an online fundraising platform meets the definition of fundraising. Notably, the LHA prohibits employees from engaging in political activity while on duty or while occupying a government building.¹⁶ As such, contributing to any partisan candidate’s campaign while on duty amounts to engaging in political activity. Because District employees are prohibited from using their official authority or influence to affect an election, any political activity conducted by employees must be in their personal capacity and not while on official duty or while wearing District government insignia. An employee’s official title

¹³ D.C. Official Code § 1-1171.02(b)(2).

¹⁴ *Id.* at § 1-1171.02(b)(3)(A).

¹⁵ Advisory Opinion 1559-001 Social Media and the Code of Conduct, January 26, 2017, available at <https://bega.dc.gov/publication/1559-001-social-media-and-code-conduct>.

¹⁶ *See supra* footnote 17.

or agency affiliation should never be used in connection with campaign-related activities, including speaking on a candidate's behalf.

In the District government, work is done both remotely and in-person. Given the extensive advances in social media platforms, employees must be diligent in avoiding political fundraising activity whether in person or online, while physically in their District office, and while working from home while on duty. This obligation extends to employees' personal accounts. BEGA's Hatch Act Social Media Quick Guide details instances where District employees may or may not post political activity.¹⁷

Illustrative Examples

Example 1

On Saturday when an employee is off duty, the employee attends an outdoor party, that includes food and drinks for families, friends, and members of the community. The party is advertised in support of a candidate running for a seat on the D.C. Council. There is a \$25.00 ticket price to attend the event.

This is a fundraising event because there is a cost of attendance, and the purpose of the event is in support of the candidate. The employee may attend the event without violating the LHA. However, the employee may not participate in the event or aid in the furtherance of the event. If the employee takes an active role in the event, such as appearing on a promotional flyer by name, being announced as a host or co-host, or talking to attendees about supporting the candidate, the employee moves from contributing to soliciting contributions, and is now violating the LHA.

Example 2

An employee of the Office of the Chief Technology Officer wishes to help manage the campaign of the Mayor. He engages in community activities on the weekend. The LHA does not prohibit the employee from serving as a general organizer of the partisan political campaign and taking an active role in the management of the campaign, provided the employee does not engage in any of the prohibited activities discussed above, such as engaging in campaign activity while on duty, or coercing a subordinate to support the campaign. However, the employee is prohibited from soliciting, accepting, or receiving political contributions, and he may not host a fundraiser or otherwise fundraise for the candidate, including emails, social media posting, or by any other means.

¹⁷ See Social Media Quick Guide available at https://bega.dc.gov/sites/bega/files/publication/attachments/Social%20Media%20Quick%20Guide%20_0.pdf.

Example 3

The employee in Example 2 wishes to engage in fundraising on behalf of the Mayor. If the Mayor designates the employee pursuant to D.C. Official Code § 1–1171.02(b), the employee may accept political contributions on behalf of the current Mayor. Once designated, the employee can manage all operations of the Mayor’s campaign, including fundraising. However, the employee is still obligated to only conduct political activity while off-duty and outside any room or building occupied in the discharge of official duties of the District government.

Example 4

An employee has social media accounts with Facebook, LinkedIn, Instagram, or a similar site. While sitting in her home office on a zoom call with coworkers at the D.C. Department of Health Care Finance, the employee sees an alert from a friend’s page that posts a message supporting the Mayor’s re-election campaign. The employee likes the posts.

District employees may not like, follow, or friend the social media account of a political party, candidate in a partisan race, or partisan political group while on duty or in the workplace. The workplace now includes teleworking, which includes any space or location in which an employee conducts their District government duties, during their designated working time. In this example, the employee is in violation of the LHA. However, when an employee is at home after work, and finds the Instagram account of a partisan political group, the employee may follow them on Instagram and like their posts. An employee may also engage in discussion concerning the candidate online, so long as none of those discussions constitute fundraising activities.

These examples are meant to be illustrative only and are not exhaustive. Moreover, the analysis required in determining whether an activity may violate the LHA is entirely fact-driven, and small details can make a big difference. Notwithstanding the guidance provided herein, employees should continue to request safe-harbor advice from this Office when considering participation or engaging in political activity.



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