



HATCH ACT INFORMATION (REGARDING POLITICAL ACTIVITIES)

8.19.14

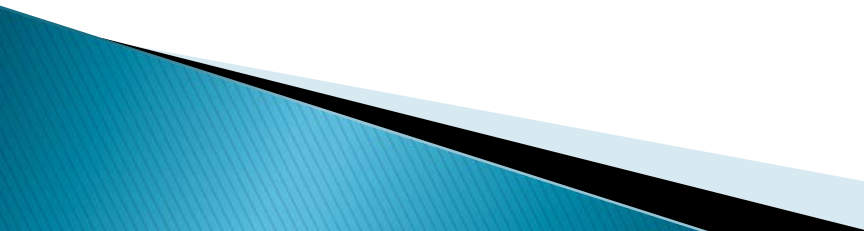


Presented by:
Darrin P. Sobin
Director of Government Ethics
202-481-3411
darrin.sobin@dc.gov

Hatch Act


- ▶ Effective January 28, 2013, the federal law (“federal Hatch Act”) was amended substantially, reducing the application and impact of the federal Hatch Act on District government employees.
 - Public Law No. 112–230, “Hatch Act Modernization Act of 2012.”
- ▶ On February 19, 2013, the D.C. Council enacted an amendment to the 2010 “Local Hatch Act,” which became effective on March 7, 2013. The Local Hatch Act now governs the political activities of D.C. government employees.
 - “Prohibition on Government Employee Engagement in Political Activity Act of 2010”, effective March 31, 2011 (D.C. Law 18–335; 58 DCR 599), as amended by the “Prohibition on Government Employee Engagement in Political Activity Amendment Act of 2013” (D.C. Law 20–4, effective May 18, 2013) (the “Local Hatch Act”).

Local Hatch Act

- ▶ The Local Hatch Act became effective on March 7, 2013 and came under BEGA's jurisdiction.
 - ▶ The Local Hatch Act establishes restrictions on the *political activity* of D.C. government *employees*.
- 



Definition of “Employee”

- ▶ The Local Hatch Act defines a D.C. government “employee” as:
 - any individual paid by the D.C. government from grant or appropriated funds for his or her services or holding office in D.C.;
 - a member of a board or commission who is nominated for a position pursuant to § 2(e) of the Confirmation Act of 1978; (D.C. Official Code § 1-523.01(2)(e))
 - a member of a board or commission who is nominated pursuant to § 2(f) of the Confirmation Act of 1978 when the member is engaged in political activity that relates to the subject matter that the member’s board or commission regulates. (D.C. Official Code § 1-523.01(2)(f))
 - D.C. Official Code § 1-1171.01(3)
- 

Confirmation Act – Section 2(e)

Boards and Commissions

1. Alcoholic Beverage Control Board
2. Board of Library Trustees
3. Board of Trustees of the University of the District of Columbia
4. Board of Zoning Adjustment
5. Police Complaints Board
6. Contract Appeals Board
7. Board of Elections
8. Commission on Human Rights
9. Housing Finance Agency Board of Directors
10. Lottery and Charitable Games Control Board
11. Historic Preservation Review Board
12. Metropolitan Washington Airports Authority Board of Directors
13. Office of Employee Appeals
14. Public Employee Relations Board
15. Public Service Commission
16. Rental Housing Commission
17. Washington Convention and Sports Authority Board of Directors
18. Water and Sewer Authority Board of Directors
19. Zoning Commission
20. Taxicab Commission
21. Housing Authority Board of Commissioners
22. Homeland Security Commission
23. Commission on Fashion Arts and Events

Confirmation Act – Section 2(e) Boards and Commissions

- ▶ If you are a member of a Board or Commission nominated pursuant to Section 2(e) of the Confirmation Act, then you are an “Employee” for the purposes of the Local Hatch Act
- ▶ You are, therefore, subject to the prohibitions found in the Local Hatch Act


Confirmation Act – Section 2(f)

Boards and Commissions

1. Apprenticeship Council
2. Armory Board
3. Board of Dentistry
4. Board of Medicine
5. Board of Nursing
6. Board of Nursing Home Administration
7. Board of Psychology
8. Child Support Guideline Commission
9. Commission on the Arts and Humanities
10. Boxing and Wrestling Commission
11. Multistate Tax Commission
12. Public Access Corporation Board of Directors
13. Board of Real Estate
14. Board of Dietetics and Nutrition
15. Board of Occupational Therapy
16. Board of Optometry
17. Board of Pharmacy
18. Board of Physical Therapy
19. Board of Podiatry
20. Board of Social Work
21. Board of Professional Counseling
22. Board of Respiratory Care
23. Board of Massage Therapy
24. Board of Chiropractic
25. Statewide Health Coordinating Council
26. Board of Barber and Cosmetology
27. Board of Real Estate Appraisers
28. Board of Funeral Directors
29. Board of Veterinary Examiners
30. Board of Architecture and Interior Designers
31. Board of Accountancy
32. Board of Industrial Trades
33. Board of Professional Engineering
34. Housing and Community Development Reform Commission
35. Commission on Asian and Pacific Islander Community Development
36. Board of Marriage and Family Therapy
37. Small and Local Business Opportunity Commission
38. Security Officer Advisory Commission
39. Motor Vehicle Theft Prevention Commission
40. Commission on African Affairs
41. Science Advisory Board to the Department of Forensic Sciences
42. Commission on African-American Affairs
43. Health Benefits Exchange Board

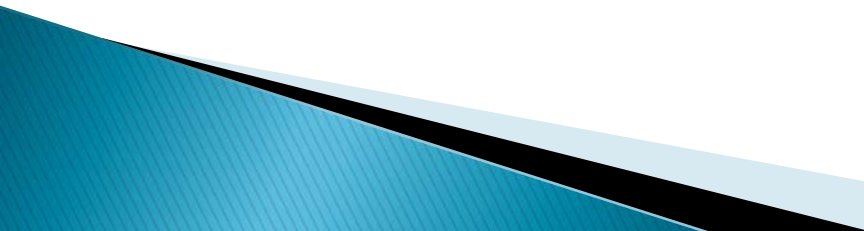
Confirmation Act – Section 2(f)

Boards and Commissions

- ▶ If you are a member of a Board or Commission nominated pursuant to Section 2(f) of the Confirmation Act, then you are an “Employee” for the purposes of the Local Hatch Act when you are engaged in political activity that relates to the subject matter that your Board or Commission regulates.
 - ▶ You are, therefore, subject to the prohibitions found in the Local Hatch Act when you are engaged in political activity that relates to the subject matter that your Board or Commission regulates.
- 



All other Boards and Commissions

- ▶ Although Members of all other Boards and Commissions are not covered by the Local Hatch Act (unless the Member is otherwise employed by the District), they are subject to:
 - D.C. Code Section 1-1162.23, the Ethics Act's Conflict of Interest provision, which prohibits using official position or title...in a manner that they know is likely to have a direct and predictable effect on their financial interests or the financial interests of a person closely affiliated with them.
 - D.C. Code Section 1-1163.36, which prohibits the use of District government resources for campaign-related activities, such as engaging in any campaign-related activities during work time or using any resources of the District government for any campaign-related activities.
- 

Not an “Employee”

- ▶ If not otherwise employed by the District, the Local Hatch Act does not include the following as D.C. government employees:
 - Employees of the courts of the District of Columbia;
 - The Mayor;
 - The members of the Council;
 - Advisory Neighborhood Commissioners;
 - Members of the State Board of Education;
 - Members of the District of Columbia Statehood Delegation; and
 - The Attorney General (after January 1, 2018);
- D.C. Law 18-355, Sec. 2. (3)(A)(i-vii).

Definition of “Political Activity”

- ▶ The Local Hatch Act defines “political activity” as:
 - Any activity that is *regulated by the District* and directed toward the success or failure of a political party, candidate for partisan political office, partisan political group, ballot initiative, or referendum.
 - D.C. Official Code § 1-1171.01(8)(A)

Political Activity that is “Regulated by the District”

“Regulated by the District” =

- ▶ any election, ballot initiative, or referendum that is regulated by the District of Columbia Board of Elections.

“Political Activity” Prohibitions

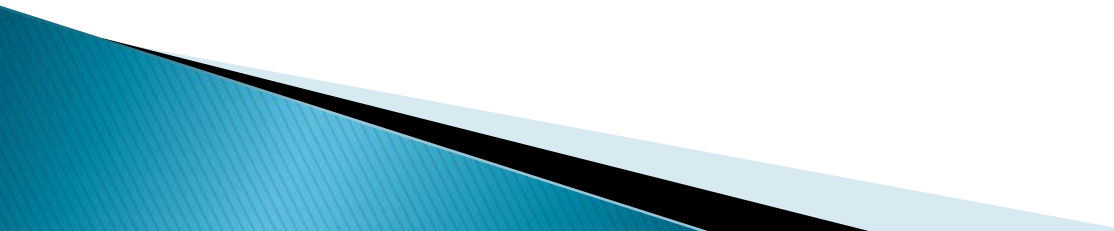
- ▶ When engaging in “political activity” that is **regulated by the District, D.C.** government employees cannot:
 - Knowingly solicit, accept, or receive a political contribution from any person (*except* if the employee has filed as a candidate for political office);
 - File as a candidate for election to a *partisan* political office.
 - Knowingly direct, or authorize anyone else to direct, that any subordinate employee participate in an election campaign or request a subordinate to make a political contribution.
- ▶ When engaging in **ANY** “political activity,” D.C. government employees cannot:
 - Use their official authority or influence for the purpose of interfering with or affecting the result of an election;

Definition of “Partisan Political Office”

- ▶ The Local Hatch Act defines “partisan political office” as:
 - *Any office in the District government for which any candidate is nominated or elected as representing a party, any of whose candidates for Presidential elector received votes in the last preceding election at which Presidential electors were selected, but shall exclude an office or position within a political party or affiliated organization.*



Partisan Political Office

- ▶ Any office in the District Government for which any candidate is nominated or elected as representing a party.
 - ▶ Parties whose candidates received votes in the last/preceding Presidential election (2012)
 - 1. Democrat
 - 2. Republican
 - 3. Libertarian
 - 4. Statehood Green
- 

“Political Activity” that is *not* regulated by the District

- ▶ When engaging in “political activity” that is *not* regulated by the District:
 - A D.C. government employees who *is not* a District resident may file as a candidate to a partisan political office in their local, non-District elections without restriction by the Local Hatch Act.
 - A D.C. government employee engaged in political activity that is *not* regulated by the District is permitted to solicit, accept, or receive political contributions from any person.
 - D.C. Official Code § 1-1171.02

Fundraising as “Political Activity”

- ▶ The Local Hatch Act permits D.C. government employees to take an active part in political management or in political campaigns.
 - This means that, if you are D.C. government employee:
 - you can work on and manage the District-regulated partisan or non-partisan political campaign of another;
 - you can work on, manage, and fund-raise for your own District regulated non-partisan campaign;
 - you can work on, manage, and fund-raise for a non-District regulated campaign of another or yourself, regardless of whether it is a partisan or non-partisan campaign.
 - **BUT**
 - you **CANNOT** fund-raise for the District-regulated campaign of another, even if it is a non-partisan campaign.



“Meet and Greet” Events

- ▶ A “Meet & Greet” event is an event where attendees can meet and greet a candidate.
- ▶ Organizing a “Meet and Greet” event is a permissible “Political Activity” because the Local Hatch Act permits District employees to take an active part in political management & campaigns.
 - BUT -
- ▶ District employees are **prohibited** from fundraising for the District regulated campaign of another person.
 - THEREFORE -
- ▶ If the Meet & Greet is for fundraising purposes, District employees are prohibited from taking an active part in the event (other than attending).
- ▶ If the Meet & Greet has a cost to attend, District employees are prohibited from taking an active part in the event (other than attending). Because there is a cost to attend the event (which is being held to promote a candidate), it is a fundraising event.
 - The purpose of the event is to promote a candidate. Contributions made to cover the costs of the event constitute political contributions. Therefore, if the Meet & Greet event has a cost, it is a fundraising event and District employees are prohibited from taking an active part in the event, other than attending.

Non-Partisan Political Office

- ▶ D.C. government employees who *are* District residents may file as candidates for *non-partisan* District office.
 - D.C. Official Code § 1-1171.02
- ▶ D.C. government employees who *are not* District residents may participate in their local, non-District elections *without restriction* by the Local Hatch Act.

Permitted “Political Activity” for Designated Employees of the Mayor or Council

- ▶ The Mayor and each member of the Council may designate *one* D.C. government employee *while on unpaid leave* to knowingly solicit, accept, or receive political contributions.
- ▶ The designated D.C. government employee may not perform this function while on duty or in any room or building occupied in the discharge of official duties in the District government, including any agency or instrumentality thereof.
- ▶ The designation must be made in writing and filed with the Board of Ethics and Government Accountability.
 - D.C. Official Code § 1-1171.02(b)



Prohibited “Political Activity” for *ALL* D.C. government employees

- ▶ *ALL* D.C. government employees are prohibited from engaging in *ALL* political activity, regardless of whether it is regulated by the District, while:
 - On duty;
 - In any room or building occupied in the discharge of official duties in the D.C. government, including any agency or instrumentality thereof;
 - Wearing a uniform or official insignia identifying the office or position of the employee;
 - Using any vehicle owned or leased by the District, including an agency or instrumentality thereof.
 - D.C. Official Code § 1-1171.03(a)

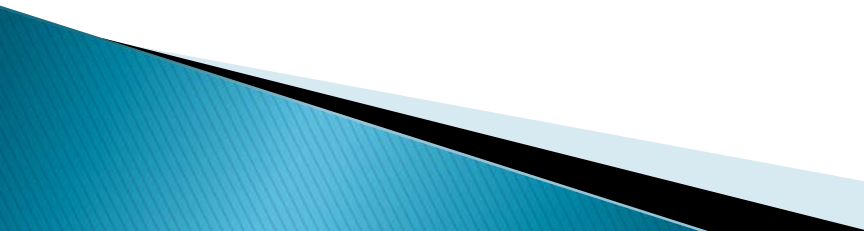
- ▶ In addition, a D.C. government employee may not coerce, explicitly or implicitly, any subordinate employee to engage in political activity.
 - D.C. Official Code § 1-1171.03(b)

- or

- ▶ Use their official authority or influence for the purpose of interfering with or affecting the result of an election;
 - D.C. Official Code § 1-1171.02(a)(1)

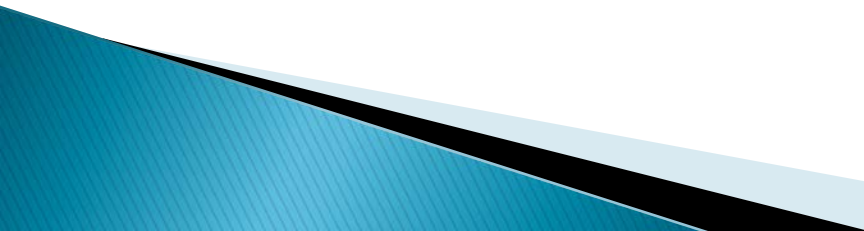


Apply Your Knowledge

- ▶ Question: I am a Member of a Board or Commission nominated pursuant to Section 2(e) of the Confirmation Act. I reside in the District, but my childhood friend is running for office in Maryland, on a partisan ticket. I am permitted to campaign for my friend?
 - ▶ Answer: True
 - ▶ Question: I am permitted to solicit campaign funds for my friend's campaign?
 - ▶ Answer: True
- 

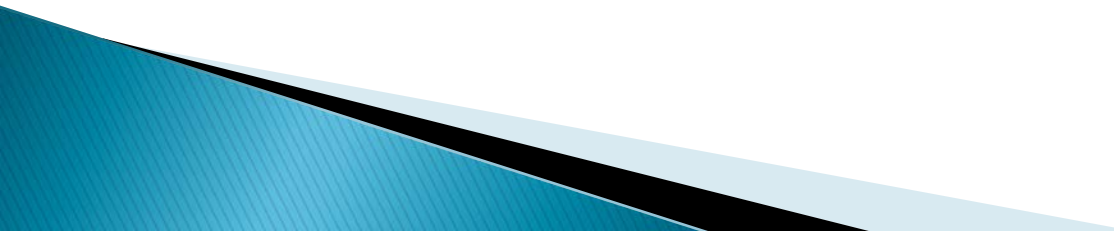


Apply Your Knowledge

- ▶ Question: I am a Member of a Board or Commission nominated pursuant to Section 2(f) of the Confirmation Act. I want to fundraise for a ballot initiative that is related to the subject matter that my Board or Commission regulates. I am permitted to fundraise for the ballot initiative?
 - ▶ Answer: False
 - ▶ Question: I am permitted to fundraise for a ballot initiative that is not related to the subject matter that my Board or Commission regulates?
 - ▶ Answer: True
- 

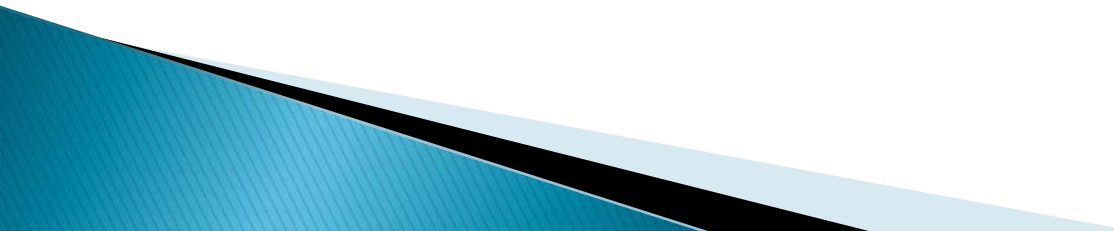


Apply Your Knowledge

- ▶ Question: I am a Board or Commission Member who was not nominated pursuant to Section 2(e) or 2(f) of the Confirmation Act. There are no restrictions on my Political Activity?
 - ▶ Answer: False
 - ▶ Question: Because I'm not covered by the Local Hatch Act, I can fundraise for/from anyone?
 - ▶ Answer: False
- 



Apply Your Knowledge

- ▶ Question: I received an email from a partisan political candidate in my District government email inbox, I have violated the Local Hatch Act?
 - ▶ Answer: False
 - ▶ Question: I forwarded the email to my fellow Members, I have now violated the Local Hatch Act?
 - ▶ Answer: True
- 

Questions about the federal Hatch Act?

- ▶ If you have questions about the federal Hatch Act specifically, you may contact the Hatch Act Unit of the federal government's Office of Special Counsel (OSC). Inquiries about the federal Hatch Act may be made in writing or by telephone to:

Hatch Act Unit

U.S. Office of Special Counsel

1730 M Street, N.W., Suite 218

Washington, D.C. 20036-4505

Tel: (800) 85-HATCH or (800) 854-2824

(202) 254-3650

Fax: (202) 254-3700

Requests for federal Hatch Act advisory opinions (only) may be made by e-mail to: hatchact@osc.gov

Permitted and Prohibited Political Activities for D.C. government employees

May Not

May

<ul style="list-style-type: none"> ❖ MAY NOT use your official authority or influence for the purpose of interfering with or affecting the result of an election. 	<ul style="list-style-type: none"> ❖ MAY take an active part in political management or in political campaigns, including working on or managing a campaign.
<ul style="list-style-type: none"> ❖ MAY NOT knowingly solicit, accept, or receive a political contribution from any person for a District regulated election. (<i>except</i> if the employee filed as a candidate) 	<ul style="list-style-type: none"> ❖ MAY contribute money to political campaigns, political parties, or partisan political groups. ❖ MAY attend and be active at political rallies and meetings.
<ul style="list-style-type: none"> ❖ MAY NOT file as a candidate for election to a <i>partisan</i> political office in a District regulated election. 	<ul style="list-style-type: none"> ❖ MAY file as a candidate for election to a <i>non-partisan</i> political office in a District regulated election.
<ul style="list-style-type: none"> ❖ MAY NOT coerce, explicitly or implicitly, any subordinate employee to engage in political activity. 	<ul style="list-style-type: none"> ❖ MAY register and vote as you choose. ❖ MAY assist in voter registration drives. ❖ MAY attend and be active at political rallies and meetings.
<ul style="list-style-type: none"> ❖ MAY NOT engage in political activity while – ❖ on duty ❖ in any room or building occupied in the discharge of official duties of the District government, including an agency or instrumentality ❖ wearing a uniform or official insignia identifying the office or position of the employee ❖ using any vehicle owned or leased by the District. 	<ul style="list-style-type: none"> ❖ MAY join and be an active member of political clubs or parties. ❖ MAY hold office in political clubs or parties. ❖ MAY express opinions about candidates and issues. If the expression is political activity, however, then the expression is not permitted while on duty, in a District government building, while wearing uniform or insignia, or while using any District vehicle.

Questions about the Local Hatch Act?

- ▶ If you have questions about the Local Hatch Act, you may contact BEGA.
- ▶ Inquiries may be made by telephone or by email to:

Yancey Burns

Attorney Advisor, BEGA

Phone: (202) 481-3405

Email: yancey.burns@dc.gov