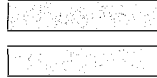


**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ETHICS AND GOVERNMENT ACCOUNTABILITY**



Office of Government Ethics



VIA EMAIL

Robert Vinson Brannum
158 Adams Street, NW
Washington, DC 20001
rbrannum@robertbrannum.com

Dear Mr. Brannum:

This opinion responds to your January 1, 2018, request to the Board of Ethics and Government Accountability for an advisory opinion as to whether the Local Hatch Act and ethics laws prohibit you, an employee and member of the Commission on the Martin Luther King Jr. Holiday, from hosting “meet and greets” for partisan political candidates. Specifically, you have requested guidance as to whether the following activities would violate the Local Hatch Act:

- A. Hosting political “meet and greets, not fundraisers” at your home;
- B. Publicizing and inviting others to attend political meet and greets in your home.¹

The Code of Conduct is applicable to all District government employees.² Based on the information within your request, I conclude that the aforementioned activities would not violate

¹ In your submission, you requested guidance on whether the following activities would violate the Local Hatch Act:

- A. to host political “meet and greets” [not fundraisers] in (your) home,
- B. not to receive funds, solicit funds, or request donations in support of costs related to hosting “meet and greets” [not fundraisers] in (your) home,
- C. not to receive funds, solicit funds, or request donations or contributions in support of any candidate or campaign during any “meet and greet” [not fundraisers] hosted in (your) home,
- D. to publicize and invite others to attend political “meet and greets” [not fundraisers] hosted in (your) home, or
- E. not to attend a partisan political fundraiser independently hosted by (your) wife in (your) home.

This opinion addresses your prospective activities, as *refraining* from the other activities you describe would not violate the Local Hatch Act.

You also requested guidance on whether these activities violate any “election expenditure laws.” However, that request must be submitted to the Office of Campaign Finance and the Board of Elections, as it falls outside this Office’s jurisdiction. *See* section 202(a)(1) of the Ethics Act (stating that the purpose of the Board of Ethics and Government Accountability shall be to “administer and enforce the Code of Conduct”) D.C. Official Code § 1-1162.02(a)(1).

the Local Hatch Act³ or 6B DCMR § 1800.3(g)⁴, both of which are elements of the Code of Conduct.

The Local Hatch Act

The Local Hatch Act restricts the political activities of District government “employees.” This term is defined to include any individual who is “paid by the District government from grant or appropriated funds for his or her services or holding office in the District of Columbia . . .” or who is “a member of a board or commission” pursuant to D.C. Official Code §§ 1-523.01(e) and (f).⁵ Political activity 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.”⁶ One of the overarching principles of the Local Hatch Act is to prohibit District government “employees” from engaging in political activity related to *any* type of election while on duty.⁷ Specifically, District government “employees” are prohibited from engaging in all political activity while on duty; in a room or building occupied in the discharge of official duties; wearing a uniform or official government insignia, or using a government vehicle.⁸

While the Local Hatch Act strictly limits employees’ conduct while on duty, it permits them to engage in certain political activities outside of work, i.e. in their personal capacity. Those allowances depend on whether the political activity relates to a partisan⁹ campaign as opposed to a nonpartisan campaign, and whether such an election is regulated by the D.C. Board of

² See section 101(7) of the Ethics Act (defining statutes and rules that comprise the Code of Conduct) D.C. Official Code § 1-1161.01 (7). Additionally, the Board of Ethics and Government Accountability is statutorily authorized to administer and enforce the Code of Conduct as to “all employees and public officials serving the District of Columbia, its instrumentalities, subordinate and independent agencies, the Council of the District of Columbia, boards and commissions, and Advisory Neighborhood Commissions . . .” D.C. Official Code §§ 1-1162.01a, 1-1162.02(a)(l).

³ The Prohibition on Government Employee Engagement in Political Activity Act of 2010, effective March 31, 2011 (D.C. Law 18-335; D.C. Official Code § 1-1171.01 et seq.).

⁴ DPM § 1800.3(g) (Title 6B, Chapter 18 of the D.C. Municipal Regulations also referred to as the District Personnel Manual or DPM is included within the Code of Conduct).

⁵ D.C. Official Code § 1-1171.01(3).

⁶ *Id.* at § 1-1171.01(8)(A).

⁷ *Id.* at § 1-1171.01(4) (defining “on duty” as the time period when an employee is [i]n a pay status other than paid leave, compensatory time off, credit hours, time off as an incentive award, or excused or authorized absence (including leave without pay); or [r]epresenting any agency or instrumentality of the District government in an official capacity”).

⁸ *Id.* at § 1-1171.03(a)(1) – (4).

⁹ D.C. Official Code § 1-1171.01(5) (defining partisan as an adjective means related to a political party).

Elections¹⁰ or by another jurisdiction. An employee may lawfully take an active part in political management or political campaigns – both partisan and non-partisan. This authorization extends to both District-regulated elections as well as those regulated by other jurisdictions. However, the employee must not use his or her official title or position to interfere with or affect the result of any such election.¹¹ The employee also must not knowingly direct – or authorize anyone else to direct – a subordinate to participate in a political campaign or make a financial contribution to a campaign.¹²

In District-regulated elections, an employee is prohibited from fundraising,¹³ and may not file as a candidate for a partisan political office.¹⁴ However, an employee is permitted to file as a candidate in a nonpartisan District election – such as Advisory Neighborhood Commissioner – and may fundraise for his/her own nonpartisan campaign. Employees also can run for partisan offices in jurisdictions other than the District.

Meet and Greet Events

A “meet and greet” is an event where members of the community can meet a political candidate. These events often take place at a residence within the community that the candidate seeks to serve if elected to political office. Because the Local Hatch Act allows employees to take an active part in political management and campaigns, you are permitted to organize and host “meet and greet” events for partisan or nonpartisan candidates.¹⁵ However, in doing so, you are still prohibited from fundraising.¹⁶ Therefore, you must ensure that you engage in absolutely no fundraising at any “meet and greet” events that you host, or in which you play an active role.

Fundraising also includes requiring attendees to pay “cost-of-attendance” or make financial donations to cover any expenses related to the event that you incur. Since the “meet and greet” benefits the candidate participating in it, you cannot accept such contributions or donations to offset the cost of the event, as those donations from other attendees would be considered political contributions made in support of that candidate. However, this restriction only applies when an

¹⁰ Hereinafter, an election that is regulated by the D.C. Board of Elections will be referred to as a “District-regulated” election or campaign.

¹¹ D.C. Official Code § 1-1171.02(a)(1).

¹² D.C. Official Code § 1-1171.02(a)(4).

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

¹⁴ D.C. Official Code § 1-1171.02(a)(3).

¹⁵ See supra footnote 11.

¹⁶ Fundraising is defined as “knowingly soliciting, accepting, or receiving a political contribution from any person, except if the employee has filed as a candidate for political office.” *Id.* at § 1-1171.02(a)(2). See D.C. Official Code § 1-1171.01(9)(A) defining political contribution as a gift, subscription, loan, advance, or deposit of money, or anything of value; contract, promise, or agreement to make a contribution; payment for personal services rendered; and paid or unpaid personal services for any political purpose. Employees are prohibited from fundraising for political contributions, which are made with the “objective of promoting or opposing a political party, candidate for partisan political office, or partisan political group that is regulated by the District.” D.C. Official Code § 1-1171.01(11).

employee is *hosting* a “meet and greet” event, or playing an active role in it. Employees are permitted to *attend* “meet and greets” that are organized for fundraising purposes – and they can even make a personal contribution to the candidate in question – but the employee cannot take an active part in organizing or conducting such an event.

In your submission, you acknowledged that the Local Hatch Act prohibits you from “raising funds for local partisan political campaigns and candidates,” and you indicated that you do not intend to receive funds, solicit funds, or request donations in support of a candidate, or to offset your costs related to hosting such “meet and greets.” Therefore, under the Local Hatch Act, you are permitted to host “meet and greets” but not “fundraisers” in your home.

Regarding your second question — whether you are permitted to publicize and invite others to attend political meet and greet events in your home — the Local Hatch Act does not prohibit you from engaging in such activity. However, because some “meet and greets” turn into fundraisers – and people may incorrectly assume that your event allows fundraising – your event should be publicized as a “meet and greet **only**.” This Office further recommends that employees include a disclaimer on any advertising materials expressly stating that the “meet and greet” is not being held for fundraising purposes to minimize the risk of confusion.

In sum, your prospective activity does not violate the Local Hatch Act.

6B DCMR § 1800.3(g)

As a District government employee, you are required to adhere to ethical standards, even when engaging in activities outside of work. Similar to the Local Hatch Act’s prohibition on the use of official title/position to interfere with or affect the results of an election, section 1800.3(g) of the District’s personnel regulations provides that an employee “shall not use public office or position for private gain.”¹⁷ Therefore, when hosting or publicizing your “meet and greets,” you are prohibited from using your District employment to endorse any political candidate, political group, or political party; or in any manner that could be construed to imply that the District sanctions your personal activities or the activities of another; or in a manner that is intended to coerce or induce a person to provide a benefit to another.¹⁸

In conclusion, assuming your compliance with the rule previously stated, your two proposed activities described above do not violate 6B DCMR § 1800.3(g).

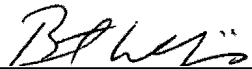
Please be advised that this advice is provided to you pursuant to section 219(a) of the Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform

¹⁷ D.C. Official Code § 1-1171.01 et seq.; DPM §1800.3(g).

¹⁸ 5 CFR § 2635.702(a)-(c). While this Office is not bound by the rules promulgated by the federal Office of Special Counsel and the manner in which it interprets the federal Hatch Act, 5 U.S.C. § 7321–7326 (Pub. L. 103–94, § 2(a), Oct. 6, 1993, 107 Stat. 1001), this Office frequently looks to the federal Office for guidance. In this instance, the example articulated by the Office of Special Counsel provides a good framework for District employees as well.

Amendment Act of 2011 (“Ethics Act”), effective April 27, 2012 (D.C. Law 19-124, D.C. Official Code § 1-1161.01 et seq.), which empowers me to provide such guidance. As a result, no enforcement action for violation of the District’s Code of Conduct may be taken against you in this context, provided that you have made full and accurate disclosure of all relevant circumstances and information in seeking this advisory opinion.

Finally, you are advised that the Ethics Act requires this opinion to be published in the District of Columbia Register within 30 days of its issuance, but that your identity will not be disclosed unless and until you consent to such disclosure in writing, should you wish to do so. I encourage individuals to so consent in the interest of greater government transparency. Please, then, let me know your wishes about disclosure. Please let me know if you have any questions or wish to discuss this matter further. I may be reached at (202) 481-3411, or by email at Brentton.wolfingbarger2@dc.gov.



Brent Wolfingbarger
Director of Government Ethics
Board of Ethics and Government Accountability

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