



# NATIONAL FRATERNAL ORDER OF POLICE

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## The Hatch Act: The Political Process and You

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Many of our FOP lodges across the country are very involved in the political process. Some of our members have even been elected to public office. At whatever level of your involvement, it is crucial to be aware of the regulations governing the political process. Though local laws vary from state to state, the Hatch Act is a federal regulation that applies to everyone. This overview will provide you with an introduction to its impact.

### **Who Is Subject to the Hatch Act?**

The prohibitions in the Hatch Act specifically apply to officers or employees of any “state or local agency.” State or local agency means “...the Executive Branch of a state, municipality, or other political subdivision of a state, or an agency or department thereof” 5 U.S.C.S. § 1501(2).

The Hatch Act further defines officer or employee as “an individual employed by a state or local agency whose principal employment is in connection with an activity which is financed in whole or in part by loans or grants made by the United States or federal agency, but does not include: (a) an individual who exercises no functions in connection with that activity; or (b) an individual employed by an educational or research institution, establishment, agency, or system which is supported in whole or in part by a state or political subdivision thereof, or by a recognized religious, philanthropic, or cultural organization.”

The relevant analysis concerning the employee’s contact with federal funds is whether the employee “as a normal and foreseeable incident to her principal job or position...performs duties in connection with an activity financed in whole or in part by federal loans or grants...” *Special Counsel v. Williams* 56 M.S.P.R. 277 (1993). Whether the employee’s salary is paid by federal funds is not a relevant consideration. Activities that have been held to be “in connection with an activity financed in whole or in part by federal loans or grants” have included approving the use of federal funding, supervising employees whose salaries are paid by federal funding, purchasing items with money obtained from federal funds, supervising the use of federal funds, overall responsibility for the operations of departments funded at least in part by federal funds, reviewing and analyzing policies and procedures to determine compliance with applicable federal law, reviewing federal grant applications, preparing annual reports regarding federal funding, and preparing press releases and answering questions regarding federal funding.

### **Hatch Act Prohibitions**

The Act does not prohibit all forms of political expression. An officer retains the right to express his or her opinion on political subjects and candidates. The Act targets officers

and employees who use their status as a state or municipal employee to influence the outcome of any partisan election or proceeding when federal funding is involved. What is and isn't allowed can be summarized.

*It is permissible for officers to:*

- Attend fundraisers, display yard signs or bumper stickers, and attend political rallies;
- Give a speech or keynote address at a political fundraiser, so long as the officer is not on duty and does not solicit contributions. The invitation for the speech or address may have the officer's name, but may not solicit contributions or state the officer's official title;
- Canvass for votes in support of or in opposition to partisan political candidates or a candidate for political party office;
- Endorse or oppose a partisan political candidate in a political advertisement, broadcast, campaign literature, or similar material, so long as the officer is not on duty and not wearing a uniform, badge or insignia;
- Run for any nonpartisan office (The entire election must be non-partisan—if any candidate in the race runs on a partisan ticket, the candidacy of the officer is not permitted under the Act). A nonpartisan race is not covered by the Hatch Act, and the officer may therefore solicit and receive political contributions;
- Write a personal check to a political candidate;
- Participate in a committee for a lodge regarding endorsements of candidates, so long as the endorsement comes from the labor organization and not an individual police officer, and the duties do not involve personal solicitation, acceptance or receipt of political contributions.

*It is impermissible to:*

- Allow one's name or likeness to be used in campaign literature in the police officer's professional capacity;
- Host a fundraiser for a political candidate and recruit attendees using the officer's official title (however, a spouse who is not covered under this Act may host such a fundraiser and the officer may attend, but may not personally solicit contributions to the fundraiser);
- Allow the officer's name to appear on an invitation to a fundraiser as a sponsor of the fundraiser or as a point of contact for the fundraiser;
- Engage in campaigning during working hours;
- Use any official authority for influence for political purposes, including using the officer's official title or authority to coerce individuals to participate in political activity;
- Run for any elected partisan office;
- Solicit, accept, or receive uncompensated individual volunteer services from a subordinate for any political purpose.

The Act prohibits a public employee from running for any elected partisan office. Specifically, the entire election must be nonpartisan. Just because the employee may

run unaffiliated with any party, he or she would still violate the terms of the Hatch Act if any of the other candidates are running on a partisan ticket.

In addition, simply putting a state or local governmental employee on unpaid administrative leave will not cure any violations of the Hatch Act. "Covered" employees are "subject to the prohibitions of the Hatch Act regardless of leave status, such that a covered employee on leave without pay to run for political office is subject to the prohibitions of the Act."

### **Repercussions for Violating the Hatch Act**

When an officer violates the Hatch Act, an employer may use the Act as a basis for terminating the officer. Any time a federal agency learns that a state or local officer or employee may be violating the Act, it is required to report the matter to Special Counsel for the Merit Systems Protection Board.

This is only an overview. We strongly urge you to seek advice from your local lodge attorney regarding specific questions or concerns. Understanding the laws that govern your political activity is vital to the success of your lodge.