

Applicability of the Hatch Act to Municipal Officers and Employees

By Sung Mo Kim

Municipal officers and employees in New York State, like all citizens, are encouraged to participate in the political process. However, because municipal officials are vested with the public's trust, they have the responsibility to ensure that their political activity does not compromise that trust. In particular, municipal officers and employees must comply with certain laws that were enacted to ensure that the public maintains its trust in government. Such laws may be either state, local, or even federal. Although Article 18 of the General Municipal Law, the state law regulating municipal conflicts of interest, contains no restrictions on political activity, some local codes of ethics do.¹ Moreover, many municipal public servants are also subject to the federal Hatch Act, a fact that they may not know or may not clearly understand. This article will attempt to outline some of the important provisions of the Hatch Act of which municipal employees should be aware.



What Is the Hatch Act?

The Hatch Act is federal legislation that restricts the political activity of certain government employees. The Hatch Act, like many state and local laws that restrict a public servant's political activity, was enacted to ensure that the influence of partisan politics in government institutions was limited and to protect public servants from perceived pressure from political parties to work on political campaigns or give political contributions. The common perception is that partisan politics' influence in government institutions and on municipal employees leads to ineffective, inefficient, and partial government institutions. The provisions of the Hatch Act, which are primarily concerned with candidacy or support for candidates in partisan elections, attempt to ensure that the government institutions' impartiality and integrity are not compromised.

How Is It Administered?

The Hatch Act is administered by the United States Office of Special Counsel (the "OSC"), an independent federal body that, in addition to the Hatch Act, administers two other federal statutes, the Civil Service Reform Act and the Whistleblower Protection Act. In its efforts to promote compliance with the Hatch Act,

the OSC issues advisory opinions to persons seeking guidance about political activity under the Hatch Act, including municipal officers and employees to whom the Act might apply.

To Whom Does It Apply?

The key to understanding the Hatch Act is to know to whom it applies. Therefore, before municipal officials determine what political activity they are prohibited from participating in under the Hatch Act, they must first find out whether they are even subject to the restrictions imposed by the Act.

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While the Hatch Act is a federal law, it applies not only to individuals employed by an agency in the federal executive branch² but also to individuals principally employed³ by state, county, or municipal executive agencies in connection with programs financed in whole or in part by loans or grants made by the United States or a federal agency.⁴

To determine whether he or she is subject to the Hatch Act, a municipal employee must assess whether he or she performs duties in connection with a program financed by federal monies. State and local programs that typically receive federal funding include, for example, public welfare, housing, transportation, and law enforcement. If a municipal employee performs duties in connection with an activity financed in whole or in part by a federal loan or grant, it will not matter that he or she receives his or her salary from non-federal monies; that he or she has no authority or discretion on how those federal funds are spent; or that the federal monies fund only a small portion of the program; he or she will be subject to the Hatch Act. Furthermore, if a municipal employee is subject to the

Hatch Act, he or she will continue to be covered by the Hatch Act even when he or she is on annual leave, sick leave, leave without pay, or administrative leave. Therefore, an employee running for office in a partisan election may not avoid the requirements of the Hatch Act by taking a leave of absence.

In addition, the Hatch Act can apply even to employees of a private, not-for-profit organization if it receives federal funding and if federal legislation other than the Hatch Act contains a provision that the recipient not-for-profit should be treated as a state or local agency for the purposes of the Act, such as, for example, the Head Start Program⁵ or Community Service Block Grant.⁶

The Hatch Act, however, does not apply to municipal employees who exercise no functions in connection with an activity financed in whole or in part by federal loans or grants. Nor does it apply to individuals 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 (officers and employees of school districts that are supported by state funds are thus not subject to the Act), or by a recognized religious, philanthropic, or cultural organization.⁷ Note also that the Act does not apply to employees of the legislative or judicial branches.

Needless to say, any municipal employee who works in a program receiving *any* federal funding should check to see whether he or she is covered by the Hatch Act.

What Activities Does It Prohibit?

Once a municipal officer or employee determines that he or she is subject to the Hatch Act, he or she must know what political activities the Hatch Act prohibits. The Hatch Act prohibits those municipal officials subject to its provisions from, among other things: (1) using their official authority or influence for the purpose of interfering with or affecting the result of an election or nomination for office; (2) directly or indirectly coercing, attempting to coerce, commanding, or advising a state or local employee to pay, lend, or contribute anything of value to a party, committee, organization, agency, or person for political purposes; and (3) running as a candidate for public office in a partisan election, that is, in an election in which any candidate represents, for example, the Democratic or Republican party.⁸ As described earlier, these restrictions are primarily concerned with candidacy or support for candidates in partisan elections.

What Activities Are Permissible?

While the Hatch Act prohibits some conduct by municipal employees concerning partisan elections,

as described above, it does not prohibit municipal employees from: (1) running as a candidate for public office in nonpartisan elections, that is, elections where candidates are running with no party affiliation; (2) holding elective office in political parties, clubs, and organizations; (3) campaigning for candidates for public office in partisan and nonpartisan elections; (4) contributing money to political organizations; and (5) attending and giving a speech at a political fundraiser, rally, or meeting.⁹

What Happens When a Violation Occurs?

When a municipal employee who is subject to the Hatch Act violates the Act by, for example, running for office in a partisan election, he or she could be subject to prosecution by the OSC.

The OSC has not only an advisory function, as discussed above, but also investigative and prosecutorial functions; thus, the OSC is charged not only with interpreting the Hatch Act but also with enforcing violations of the Act. Complaints alleging violations of the Hatch Act can be made to the OSC, which will then investigate the allegation to determine whether the evidence and facts warrant prosecution before the Merits Systems Protection Board (the “MSPB”), an independent quasi-judicial agency that is authorized to adjudicate Hatch Act violations brought by the OSC. Alternatively, when the severity of the violation does not warrant prosecution, that is, when the violation is not sufficiently egregious, the OSC may issue a warning letter to the employee involved.

When an alleged violation is prosecuted before the MSPB, the employee and the state or local agency employing him or her are entitled to be represented by counsel.¹⁰ After a hearing, the MSPB must determine whether a violation of the Hatch Act occurred and, if so, whether such violation warrants the dismissal of the employee.¹¹ If the MSPB finds that the violation warrants dismissal from employment, the employing agency must either remove the employee or forfeit a portion of the federal assistance equal to two years’ salary of the employee.¹² If the MSPB finds that the violation does not warrant the employee’s removal, no penalty is imposed.

Closing Remarks

A municipal employee who has questions about the Hatch Act is not left without help to interpret the Act’s provisions. As described above, the OSC is available to provide advice and guidance to municipal employees about political activity under the Hatch Act. The easiest way to learn more about the Hatch Act and to stay clear of any violations of the Hatch Act is to seek the OSC’s advice.

Additional information on the Hatch Act, the OSC, and the MSPB can be found on the following website: <http://www.osc.gov/hatchact.htm>.

Finally, one should emphasize that municipal employees who wish to be politically active may also be subject to restrictions imposed by their local municipal laws. The Hatch Act does not supersede nor negate the need to comply with additional restrictions imposed on municipal employees by their respective municipal laws. In New York City, for example, the political activity of a City public servant whose duties are in connection with a federally funded program must comply not only with the provisions of the Hatch Act but also with the provisions of the City's laws, including those found in the City's Conflicts of Interest Law. Many municipalities in New York State have similar restrictions on the political activities of their officers and employees.¹³

Violations of the Hatch Act can produce serious consequences, not only for the individual employee but also for the municipality. Municipal attorneys are thus well advised to instruct their clients about the provisions of the Act and the need to comply.

Endnotes

1. Cf. N.Y. Civ. Serv. Law § 107 (prohibiting personnel actions based on political affiliation, activities, or contributions; compelling or inducement of political contributions; solicitation or receipt of political contributions in government offices; and promise of influence). See also *infra* note 13.

2. See 5 U.S.C. § 7322(1).
3. When a municipal employee has two or more jobs, his or her principal employment is that employment to which he or she devotes the most time, and from which he or she derives the most income. See *Smyth v. U.S. Civil Service Commission*, 291 F. Supp. 568 (E.D. Wis. 1968).
4. See 5 U.S.C. § 1501(4).
5. See 42 U.S.C. § 9851.
6. See 42 U.S.C. § 9918.
7. See 5 U.S.C. §§ 1501(4)(a) and (b).
8. See 5 U.S.C. §§ 1502(a)(1)–(a)(3).
9. See 5 C.F.R. §§ 151.111(a) and 151.122(e) and (f).
10. See 5 U.S.C. § 1505.
11. See 5 U.S.C. §§ 1505(1) and (2).
12. See 5 U.S.C. § 1506(a).
13. See, e.g., Code of City of Beacon § 29-6(F); New York City Charter §§ 2604(b)(9), (11), (12), (15); Code of City of Newburgh § 34-2(B)(9); Code of City of Troy §§ 43-1(H), 43-6; Code of Town of Brookhaven § 28-6; Code of Town of Carmel § 13-3(M); Code of Town of Clifton Park §§ 17-4(A)(6), (7), (8); Code of Town of New Paltz § 15-3(J); Code of Town/Village of Harrison §§ 5-11(C), (D), 15-14; Code of Village of Hastings-on-Hudson §§ 18-3(A)(7), (B)(3). These provisions are all available on the General Codes website: <http://www.e-codes.generalcode.com/globalsearch.asp>. Just highlight the relevant municipality and type “ethics” into the Search box.

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