

To: UB Faculty and Staff
From: Sally Reed, Associate Vice President for Human Resources
Subject: Political Activity and Solicitation
Date: January 9, 2020

From time to time, questions arise relating to political activities and solicitation on campus, and with the election season upon us, it seems advisable to ensure that all of us at UB are familiar with the specific policies and laws governing election activities and solicitation during regular work hours. Two key highlights include:

- Employees are not allowed to engage in political activity during work time.
- Use of State materials, equipment or facilities for political purposes is prohibited.

In the interest of institutional compliance with these standards, Information and references are provided from the University system of Maryland (USM) Policy, and the special memo from the State Ethics Commission.

- A. USM 190.0 VII-2.20 – Policy on Soliciting Personnel During Working Hours
(Approved by the Board of Regents, February 28, 1992)
www.usmd.edu/Leadership/BoardOfRegents/Bylaws/SectionVII/VII220.html

“Employees of the University of Maryland System shall have an undisturbed opportunity to perform assigned duties and responsibilities. Solicitation of any UMS employee for any purpose, except where such solicitation is a part of the assigned duties and responsibilities or has been approved by the Chancellor or designee for system wide purposes or the Chief Executive Officer or designee for institution purposes, is prohibited.”

- B. Maryland State Ethics Commission, Special Ethics Law Memo

TO: State Employees, Board Members and Candidates

Subject: Political Activity

Generally, political activity questions involve consideration of the Election Law and the State Personnel and Pension Article, particularly §§2-304 and 2-307(b) of the Personnel and Pension Article. Specific guidance under the Election Law or Personnel Law should be referred to the Office of the Attorney General. In some instances the provisions of the Ethics Law (State Government Article-Title 15), primarily §15-506 (use of prestige), §15-502(b) (secondary employment), and §15-507 (use of confidential information) may present issues. Additionally, candidates for State office must review §§ 15-713 and 15-714 of the Ethics Law related to campaign finance disclosure. The Federal Hatch Act, agency rules, or other statutes may also have an impact on political activity. For example, the Hatch Act can restrict certain political activity of persons whose employment involves an activity financed in whole or in part by federal funding. (This memo does not attempt to cover the impact of the Hatch Act on political activity.)

The State Personnel Law generally authorizes participation in political campaigns by State employees but generally does not allow political activity on State time or job location. The statute also prohibits requiring an employee to contribute to a political campaign or render political services. Similarly, §15-506 of the Ethics Law prohibits employees from using their positions to benefit themselves or others. As a practical matter this would prohibit the use of State time, materials, equipment, or facilities for political purposes. In regard to some of the specific questions that have been raised, the following guidance is provided.

1. Volunteer Campaign Involvement

State law permits State employees to provide volunteer services for campaigns. The Ethics Commission has ruled consistently that the Ethics Law does not limit this activity as long as there is no use of State time, materials, facilities, etc. and if the person's State position is not improperly used for political purposes. State employees may not use their State position, State time, State materials, or State equipment in any way to involve people or other employees in political campaigns. For example, supervisors should not take any action that would suggest that they are urging or requiring subordinates to engage in campaign activity. Law enforcement and other uniformed personnel may not use State uniforms or equipment in political advertising. Confidential information may not be used for political activity purposes.

2. Activity as a Paid Campaign Worker

This type of activity involves the same issues and limitations as volunteer activity (such as no use of State time, facilities or materials and no misuse of position). However, because paid campaign work is employment, you must also consider and evaluate the employment restriction provisions in §15-502(b) of the Ethics Law. For example, an employee generally may not have campaign employment with an entity that does business with his or her agency or that would impair his or her ability to do the State Job. It is possible that campaign employment, such as working for a campaign staff while continuing in a State position could raise questions about the ability of an employee to be objective in his or her State job. This added limitation relating to employment generally means that paid campaign workers must be more careful about undertaking these activities than volunteers. Both paid workers and volunteers must maintain a clear separation between working at a State job and handling matters for a campaign or campaigns. Obviously, one way to reduce the potential for problems is to utilize (with the employing State agency approval) a formal extended leave of absence for paid campaign activities.

3. Running for Office or Holding Office While Remaining a State Employee or State Board Member

Generally, the State Ethics Law and other State laws have been interpreted to allow State employees and board members to run for public office provided they do not use State time, facilities, equipment, or otherwise misuse their State position or confidential information. The State has chosen to treat ethics and campaign finance regulations as separate activities. The State Ethics Commission has advised candidates who have State employment or board memberships that they should avoid interaction between their State duties and campaign contributions. Because of the

potential application of the prestige provisions of the Ethics Law to non-elected officials and employees, candidates have also been advised not to solicit contributions from people whom they might contact in their official capacities or to participate in matters involving donors or those refusing to make contributions.

Whether a successful candidate may serve and remain in their State position requires case-by-case analysis. For example, the State Ethics Commission has ruled that a Public Service Commission Hearing Examiner could not remain in his State position and serve as a County Councilman. (Commission Opinion No. 85-13.) On the other hand, the Commission has ruled that a County Executive could remain as a University Professor while serving as a county official. (Commission Opinion No. 84-2.) Other opinions prohibit a full-time City Councilman in a large jurisdiction from simultaneously serving as a State employee (Opinion 00-3), a State police officer from serving as a City Councilman assigned to public safety (Opinion 00-7) and a State employee working at the Department of Housing & Community Development (DHCD) from serving on a Town council where the Town participated in several DHCD programs and the employee worked in a unit in which some programs were initiated and monitored (Opinion 01-1). Other significant restraints on holding a State job while serving as an elected official may arise under the requirements of the State Constitution that prevent the holding of an elected position while holding a State job if that job is considered to be an office of profit. (Questions regarding the constitutional requirements should be referred to the Attorney General.)

Summary

In summary, Election Law, Personnel Law, the Ethics Law, the Federal Hatch Act, the Maryland Constitution, agency rules, and other laws may have an impact on political activity. Questions about the impact of the State Ethics Law should be referred to the State Ethics Commission. Questions about other State laws, or other requirements should be referred to the Attorney General or other appropriate agencies.

Questions about the Hatch Act may be referred to the U.S. Office of Special Counsel, 1730 M Street, NW, Suite 300, Washington, DC 20036, 1-800-854-2824. (Local government employees may want to consult applicable legal counsel, local ethics laws and Article 24 of the Maryland Code Sections 13-101 to 13-106 for specific provisions that may affect their activity.) (9/2/03) Ethics Commission Site: <http://ethics.maryland.gov/>

QUESTIONS: State Ethics Commission - 410-260-7770
Office of the Attorney General - 410-576-6450

cc: A. Harewood, Vice President, Office of Government and Public Affairs