



**To: All Appointing Authorities
Chief Legal Counsel
HR Administrators
Governor's Senior Staff**

From: Kent Markus, Chief Legal Counsel *KM*

Date: February 16, 2010

Re: Political Activity Policy (Update.2)

The election season has once again prompted inquiries about political activity by state employees, so we thought this would be a good time to provide an updated set of administration policies on that topic. This memo provides guidance for state employees who want to participate in political and other election-related activities, make campaign contributions, or run for elected office. It also provides guidelines regarding appropriate employee activities concerning ballot issues.

1. Election-related activities. Different laws and rules apply to the permissibility of various election-related activities of classified versus unclassified state employees. As explained more fully below, so as to avoid any suggestion that governmental resources are being improperly used to assist candidates for public office, both classified and unclassified employees must avoid engaging in election-related activity on state time, on state property, or using state equipment (including conference rooms, computers, printers, office supplies, e-mail systems, telephone, copiers, fax machines, vehicles, or any other state property or equipment). In addition, state employees may not engage in any election-related activities which interfere with, or pose a conflict of interest with respect to, their state duties and responsibilities.
2. Classified employees are prohibited by law from engaging in certain election-related activities. Persons in active pay status serving in the competitive classified civil service are significantly limited, by law, in their ability to engage in various partisan political activities at any time, particularly elections involving candidates selected by the various political parties. Examples of both permissible and impermissible activities by classified employees are detailed below.
 - 2.1. Permissible election-related activities for classified employees. On their own time, classified employees may, by law, play only a relatively limited role in partisan campaign activities and may be somewhat more involved in non-partisan election-related activity. The following are examples of activities employees in the classified service may participate in on their own time:
 - Registration and voting;
 - Making voluntary contributions to political candidates or organizations;
 - Attending political rallies;

- Wearing political buttons or badges.
- Signing nominating petitions in support of individuals;
- Expressing, to other individuals, opinions orally or in writing;
- Displaying political materials at home or on their own personal vehicle;
- Circulating non-partisan petitions or petitions relating to issues;
- Running for office for which the candidates are not selected by political parties; and
- Serving as an official election judge (poll worker) in accordance with the applicable poll worker leave policy. (See Section 8 of this memo for more information).

2.2. Prohibited election-related activities for classified employees. The following are examples of activities in which employees in the classified service may not, by law, participate, even on their own time:

- Candidacy for public office in a partisan election (i.e. – an election in which candidates are selected by political parties);
- Candidacy for public office in a nonpartisan general election if the nomination to candidacy was obtained in a partisan primary or through the circulation of nominating petitions identified with a political party;
- Filing of petitions meeting statutory requirements for partisan candidacy to elective office;
- Circulation of official nominating petitions for any candidate participating in a partisan election;
- Service in an elected or appointed office in any partisan political organization;
- Acceptance of a political party-sponsored appointment to any office normally filled by partisan election;
- Campaigning by writing for publications, by distributing political material, or by writing or making speeches on behalf of a candidate for partisan elective office, when such activities are directed toward party success;
- Solicitation, either directly or indirectly, of any assessment, contribution or subscription, either monetary or in-kind, for any political party or political candidate;
- Solicitation of the sale, or actual sale, of political party tickets;
- Partisan activities at the election polls, such as solicitation of votes for other than nonpartisan candidates and nonpartisan issues;
- Providing assistance to any political candidate, political party or other partisan political organization with organizational and recruitment activities, when such activities are directed toward party success;
- Service as witness or challenger for any party or partisan committee;
- Participation in political caucuses of a partisan nature; and
- Participation in a political action committee which supports partisan activity.

2.3. Disciplinary Action. The director of an agency may institute an investigation when there is reason to believe a classified employee has engaged in prohibited election-related and/or partisan activity. Such actions, if proven, may amount to a violation of Ohio law and could result in discipline of the employee up to and including removal.

3. Unclassified employees may, on their own time, engage in election-related and partisan activities. Employees in the unclassified service, who serve at the pleasure of the appointing authority and are

not subject to competitive examination, may, on their own time, engage in partisan and election-related activities, unless otherwise specifically precluded by federal or state law. Unclassified employees may not solicit classified state employees for the financial benefit of a political party or a candidate for public office.

4. Use of state time, property and equipment. Even when state employees may participate in election-related activities, they may not, in general, engage in those activities while on state time, on state property, or using state equipment. Further guidance is provided below:
 - 4.1. Ideally, if a state employee chooses to participate in election-related activities, those activities should be conducted on the weekends or outside normal work hours to eliminate any chance of an inadvertent violation of the law, or even the appearance of impropriety. However, a state employee may engage in permissible political activity during normal work hours if the employee uses a lunch hour, personal leave, compensatory time, or vacation leave for that purpose.
 - 4.2. State employees who choose to participate in permissible election-related activities should, in general, do so only using a personal phone, computer or other communications device.
 - 4.3. In order to maximize compliance with limitations against using state time, property and/or equipment for political purposes, employees should take the following precautions:
 - 4.3.1. Direct incoming election-related telephone calls away from state government offices.
 - 4.3.2. Accurately and carefully document the use of the lunch hour, personal leave, compensatory time, or vacation leave when used for any permissible election-related activities. This includes ensuring that all proper approvals have been obtained.
 - 4.3.3. Interpret the terms “property” and “equipment” broadly to include state offices, conference rooms, computers, printers, office supplies, email systems, telephones, copiers, fax machines, vehicles, or any similar place or item.
 - 4.3.4. Take steps to avoid even the inference of the endorsement of a candidate or issue by the State of Ohio or an agency of the state by exercising caution when displaying a political pin, badge or other political paraphernalia at work.
 - 4.3.4.1. It is best if state employees – classified or unclassified -- do not wear political pins, badges, clothing or other political paraphernalia to work, especially at any time they are interacting with members of the public or other state employees.
 - 4.3.4.2. While the display of a pin, sign or other political paraphernalia at a desk or in an office/cubicle is permissible when it is an employee’s dedicated personal workspace, to the extent that an employee’s workspace has exposure to others, and especially exposure to members of the public, the display of political paraphernalia is strongly discouraged.

- 4.3.4.3. When determining the appropriateness of any display of political paraphernalia, supervisors should determine if the display has crossed, or would give others the impression of crossing, the line from personal expression to advocacy and/or could give members of the public the impression that the State of Ohio or any of its agencies are supporting a particular candidate for public office.
- 4.4. There are certain very limited, exceptional circumstances where it is permissible for a state employee to engage in communications regarding election activity during the course of the standard business day.
 - 4.4.1. Such communication may be permissible if, because of the nature of an employee's position and/or the nature of a matter being handled by the employee, it is not practically feasible to separate the employee's state-related work from such communication. Such communications should be highly limited in time and scope, keeping in mind the principle that such communications are permissible only to the extent they are necessary to avoid the inefficiencies in the operation of state government that would flow from a more stark separation of governmental and election-related communications.
 - 4.4.2. State employees should always inform third parties that it is best if they are not contacted on state time and on state equipment about political matters. Moreover, it is always best to refer political inquiries to appropriate non-state employees for comment, such as a campaign office or campaign volunteer. If the employee wishes to receive further contact on the matter, he or she should provide a personal phone number and/or email address.
- 4.5. Avoid even the suggestion of impropriety by considering the appearance of any conduct given the surrounding circumstances, even if that conduct is permissible under the law.

5. Solicitation by or acceptance of political contributions by elected officers

- 5.1. No current state elected officer, campaign committee of such an officer, employee of the state elected officer's office, or any other person or entity shall solicit or accept a contribution, from any of the following:
 - 5.1.1. A state employee whose appointing authority is the state elected officer;
 - 5.1.2. A state employee whose appointing authority is authorized or required by law to be appointed by the state elected officer;
 - 5.1.3. A state employee who functions in or is employed in or by the same public agency, department, division, or office as the state elected officer.
 - 5.1.4. Of particular importance is that fact that this section of the law restricts employees who work in a cabinet agency from making any contributions to the Strickland

Committee. This limitation does not in any way prohibit those same employees from making campaign contributions to other statewide or legislative candidates.

5.2. No candidate for a state elective office, campaign committee of such a candidate, employee of the candidate's office if the candidate is a state elected officer, or any other person or entity shall solicit or accept a contribution to a candidate for a state elective office or to such a candidate's campaign committee, from any of the following:

5.2.1. A state employee at the time of the solicitation, whose appointing authority will be the candidate, if elected;

5.2.2. A state employee at the time of the solicitation, whose appointing authority will be appointed by the candidate, if elected, as authorized or required by law;

5.2.3. A state employee at the time of the solicitation, who will function in or be employed in or by the same public agency, department, division, or office as the candidate, if elected.

6. Running for elected office

6.1. Classified employees. As noted above, classified state employees, by law, may not be a candidate in a partisan election or a candidate in a non-partisan election if their nomination was obtained in a partisan primary or through the circulation of nominating petitions identified with a political party.

6.2. State employee candidacy guideline. State employees who choose to run for office and who are otherwise permitted to do so under Ohio law, must also abide by the following guidelines:

6.2.1. Conflicts. Avoiding any appearance of impropriety is a critical aspect of maintaining public confidence in public employees. When state employees run for public office, there is inherent risk that the public will confuse their state duties and responsibilities with policy positions they may take as candidates. Accordingly, conflicts of interest and appearances of conflicts of interest must be avoided in the following ways:

6.2.1.1. Because the General Assembly determines the budgets and policy direction of the agencies, boards, commissions, and other entities at which state employees work, no state employee may be a candidate for the General Assembly. State employees must leave state service prior to taking any official action in support of a candidacy (e.g. – creating a candidate committee, soliciting campaign contributions, etc.) for the General Assembly.

6.2.1.2. Candidacies for other significant elected positions (e.g. – mayor or council member of a major metropolitan area, an office with county-wide jurisdiction, etc.) also pose the kinds of risks noted above. To avoid such risks, state employees may be required to leave state service prior to taking

any official action in support of such a candidacy. State employees who are otherwise permitted to do so may run for local school boards, city councils in smaller jurisdictions, and other similar positions as long as no substantial conflict exists, as determined by the employee's appointing authority, between the employee's state duties and the proposed candidacy. The person at an employee's agency, board or commission responsible for guarding against conflicts of interest should be consulted prior to any employee embarking upon any formal candidate related activity. Failure to engage in such a consultation could result in the removal of an employee who has already undertaken candidate activity.

6.2.1.3. Nothing in this section is intended to impact the activity of state officers, as opposed to state employees.

6.2.2. If a state employee runs for an office with duties which conflict with the employee's governmental duties, the employee may be informed that assuming that office, if elected, will necessitate termination of state employment. In some circumstances, activities undertaken as a candidate may, themselves, pose a conflict with an employee's current job duties and appropriate steps should be taken to avoid such conflicts.

6.2.3. Notice Requirement. Prior to initiating any formal actions to run for an elected office, a state employee must provide notice of his or her intent to run to the agency's chief legal counsel or to the person responsible for legal compliance. This notice allows agency legal counsel to:

6.2.3.1. Consult with the agency's appointing authority to determine whether an apparent or potential conflict of interest exists between the employee's job duties and the duties of the elected office or any activities likely to take place during the employee's candidacy;

6.2.3.2. Ascertain whether the employee is required to leave state service prior to taking any official action in support of such a candidacy, is seeking (or should seek) a leave of absence to accommodate campaign activity and whether such a leave is operationally feasible for the agency (see discussion below); and

6.2.3.3. Provide and discuss with the employee the attached document entitled "Political Activity Restrictions" to help assure that the employee does not violate this policy.

6.2.4. Instances requiring notice include:

6.2.4.1. Classified and/or unclassified employees running for non-partisan elected office, such as school board member, township trustee, or city council member.

6.2.4.2. Unclassified employees running for political party leadership positions, such as local or state central committee positions.

6.2.4.3. Unclassified employees running for full-time partisan office.

6.2.5. Leaves of Absence. Because campaigns for certain elected offices can be extremely time-consuming, some employees may wish to request unpaid leaves of absence from their state jobs when running for elected office.

6.2.5.1. When such requests are made, agency legal counsel should consult with agency leaders to determine if such a request is reasonable and if so, the period for which such a leave should be granted, considering the employee's position and how the leave of absence would impact the operations of an agency.

6.2.5.2. If it is decided that such a leave should be granted, legal counsel and the agency director may recommend a specific time period for the employee to take a leave of absence if, in their view, the particular election campaign is likely to adversely affect the employee's ability to fulfill his or her job responsibilities, but the agency can work around the employee's leave of absence.

7. Use of Vacation and Other Leave for Campaign Activity. A state employee wishing to take time off from work to assist in permissible campaign activity may do so if the employee has obtained standard permission to be absent from work. Because an employee may use vacation or other similar leave for any purpose, such an employee may engage in any permissible campaign activity while on any such approved leave. An employee wishing to take an extended leave to work on a campaign may request unpaid leave, up to six months. Unpaid leave may be granted by the employee's appointing authority and will be denied if such leave would pose operational problems to the agency.

8. Ballot issues

8.1. State employees may, without violating this policy, use state time and equipment to provide information relating to ballot issues that may affect the State and its departments.

8.2. While state employees should, in general, avoid the use of state time, equipment, or supplies to support or oppose a ballot issue, in limited circumstances it is appropriate for state employees to publicly indicate their support for or opposition to ballot issues which directly impact their state duties or responsibilities.

8.2.1. The Governor, Lt. Governor, Cabinet Members and other senior state officials are often asked to respond to questions concerning a ballot measure or asked to speak in support of, or in opposition to, a ballot measure at a public gathering or other event. These officials are well-qualified to comment on the impact any ballot initiative may have on the state or an agency's operations. This situation is similar to a cabinet member or administration official testifying before the Ohio General Assembly in support of or in opposition to a legislative measure. It is reasonable

and appropriate for these state officials to advance the administration's publicly-advocated and announced policy in support of, or in opposition to, a legislative proposal impacting their official state duties. It is likewise reasonable and appropriate for administration officials to take the same approach when advocating the administration's position relative to a ballot issue.

- 8.2.2. Determination of when it is appropriate for a state employee to articulate an administration or agency position regarding a ballot issue resides in the discretion of the agency director.
- 8.3. Other permissible employee conduct. Concerning issues relevant to state responsibilities, employees may:
 - 8.3.1. Disseminate, either verbally or in writing, objective information concerning the issue and its impact, particularly as it may relate to a specific department. The public may direct questions to affected departments and, as a result, those departments may need to prepare and disseminate objective information sheets about the issue in order to prepare their employees to answer questions;
 - 8.3.2. Correct or clarify factual errors or misinformation concerning an issue.
- 8.4. Impermissible employee conduct. State employees may not use state resources to:
 - 8.4.1. Engage in activities unrelated to their job duties or the responsibilities of state government; or
 - 8.4.2. Develop, produce and /or disseminate campaign materials regarding a ballot issue.
- 9. Poll worker service. Classified or unclassified state employees who wish to work on Election Day as a poll worker (also known as an election judge) may do so in accordance with the Poll Worker Leave policies of their respective agencies. For those agencies which have not adopted such a policy, employees may use approved vacation, compensatory, or personal leave to work at the polls. For more information on this subject, please visit the DAS Human Resources Division, Policy Development website at <http://ohio.gov/hrpolicy>.
- 10. When in doubt, ask! Employees with questions regarding the propriety of a particular activity should address them to their agency chief legal counsel or the person at their agency or board or commission responsible for legal compliance.

Political Activity Restrictions

The following is a short summary of the political restrictions related to running for office as a State of Ohio employee:

- Employees in the classified service may run for non-partisan offices but may not run for partisan political office. The classified service is defined as all “persons in active pay status serving in the competitive classified civil service of the state.”
- Partisan political offices are those in which candidates are selected in a partisan primary or by nominating petitions identified with a political party or in which candidates are associated on the ballot with a political party.
- **Only an employee in the unclassified service may run for partisan political office.**

Those running for office must abide by these restrictions (see very limited exceptions in Section 4.4 of the Political Activity Policy):

- All state employees who intend to run for office must provide notice as provided in the Political Activity Policy so as to assure compliance with its provisions
- State employees may not participate in political activities while on State time, property or while using State equipment.
- Unclassified employees may not solicit classified state employees for the financial benefit of a political party or a candidate for public office.
- It may be necessary to request a leave of absence to run for political office. Agency Directors have discretion to decide if a request for leave is reasonable or if it should be granted.
- State equipment and time may not be used for campaigning.
 - All political telephone calls must be directed away from state offices.
 - If an employee receives an e-mail or phone call related to political activity, the employee has an affirmative obligation to respond that he or she should not be contacted on state time and on state equipment. If the employee wishes to receive further contact on the matter, he or she should provide a personal phone number and/or email address.
 - State employees may not use state offices, conference rooms, computers, printers, office supplies, e-mail systems, telephone, copiers, fax machines, vehicles, or any other state property or equipment to engage in election-related activities.
- When in doubt, consult your agency legal counsel.