State of Wisconsin

DIVISION OF PERSONNEL MANAGEMENT

- MERIT RECRUITMENT AND SELECTION BULLETIN -

Date: October 10, 2016	**Subject: State Employee Political Activity (Classified Civil Service)**
Locator No. DPM-0433-MRS	

This is a re-issue and replacement of policy bulletin OSER-0053-MRS (last released October 8, 2004) on classified state employee political activity. The bulletin includes an update to incorporate a 2012 change to the Hatch Act which permits an employee whose position is partially federally funded to run for office and prohibits employees whose positions are fully federally funded.

During any election year, questions are raised by classified state employees concerning permitted or prohibited political activity. This bulletin provides information about which political activities classified state employees are permitted to undertake and which are prohibited.

The extent to which state employees may engage in political activities is set forth in Sections 11.1207 and 230.40 of the Wisconsin Statutes and in the Federal Hatch Act, 5 U.S.C. §§ 1501, *et. seq.* The following employees are covered by the Hatch Act:

> A state or local officer or employee is covered by the Federal Hatch Act if his or her 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 a federal Agency. (Emphasis added.)

Many of the following state programs receive financial assistance from the federal government: public health, public welfare, housing, urban renewal and area redevelopment, employment security, labor and industry, highways and public works, conservation, agriculture, civil defense, aeronautics and transportation, antipoverty, and law enforcement.

It should be noted that a number of classified state positions are specifically exempted from Hatch Act coverage. These include 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, or by a recognized religious, philanthropic, or cultural organization.

Even when a state agency administers programs receiving federal financial assistance, however, employees of that agency are subject to Hatch Act coverage only when their "principal employment" is in connection with a program receiving federal financial assistance. Employees whose principal employment is not connected with a federally supported program are subject only to the relevant state statutes.

From a practical standpoint, there is only one significant difference between the provisions of the Hatch Act and state law – employees subject to the Hatch Act whose salaries are **paid completely**, directly or indirectly, by loans or grants made by the United States or a Federal agency are prohibited from running for partisan political office, even if they are on annual leave or a leave of absence. State law, on the other hand, states that if a classified employee declares an intention to run for partisan political office the employee must be placed on a leave of absence for the duration of the election campaign and if elected must be separated from service on assuming the duties and responsibilities of such office.

NOTE: In 1984 the Attorney General issued an opinion [73 Op. Atty. Gen. 131 (12/13/84)] addressing this apparent conflict between the Hatch Act and state law. The Attorney General concluded that a non-represented classified state employees covered by the Hatch Act's prohibition on running for partisan political office must nevertheless be granted a leave of absence pursuant to s. 230.40(2), Wis. Stats.; the employee cannot be compelled to resign. Note that this conflict only arises when a classified employee's salary is paid completely, directly or indirectly, by loans or grants made by the United States or a Federal agency. The opinion further stated that even though the appointing authority must grant the leave under state law, under the Hatch Act the agency could lose federal funding in an amount equal to twice the annual rate of pay the employee was receiving at the time of the violation of the Hatch Act. The Attorney General went on to state that leaves of absences for represented employees are governed by the terms of the applicable collective bargaining agreement. There is no contractual language which provides a greater benefit meaning leaves of absence requested by represented employees who declare an intention to run for partisan political office shall be treated in the same fashion as a request from non-represented employees in the classified service. It should also be noted that in a letter opinion to the Secretary of the Department of Natural Resources dated April 30, 2001, the Attorney General concluded that "an employee in the classified service, after declaring an intent to run for partisan political office, may run for such office on a leave of absence composed fully or partially of paid annual leave and sabbatical leave, if he (/she) is otherwise eligible to take such leave." The Attorney General has defined "partisan political office" at 80 Op. Atty. Gen. 68 (5/30/91) and "declares an intention to run" at 81 Op. Atty. Gen. 135 (6/2/94).

The following political activities are <u>permissible</u> for state employees subject to either the state statutes or the Federal Hatch Act:

1. Making voluntary contributions for political purposes.

2. Participating as a candidate for a non-partisan part-time office (e.g., City Alderperson, County Board, School Board, etc.), provided such service will not conflict or interfere with the employee's performance of state position duties.

3. Expressing opinions as an individual privately or publicly on political subjects and candidates.

4. Participating as a candidate for a partisan political office provided a leave of absence is taken from the state position. (For completely federally funded positions, even if the employee is on leave of absence under state law, this remains a violation of the Hatch Act and the agency could lose federal funding as noted above.)

5. Parking an automobile bearing partisan political signs and/or stickers in state parking areas while on duty at state workstation.

6. Being a member of a political party and participating in party affairs. The following are some of the political activities that an employee may participate in provided he or she is <u>off duty</u> and <u>not on state property</u>.

    a. Soliciting votes in support of or in opposition to a partisan candidate for public office or political party office.

    b. Serving as an officer of a political party, a member of a national, state, or local committee of a political party; an officer or member of a committee of a partisan political club; or being a candidate for any of these positions.

c. Directly or indirectly soliciting, receiving, collecting, handling, disbursing, or accounting for assessments, contributions, or other funds for a partisan political purpose.

d. Taking an active part in managing the political campaign of a partisan candidate for public office or political party office.

e. Acting as recorder, watcher, challenger, or similar office at the polls on behalf of a political party or partisan candidate.

f. Organizing, selling tickets to, promoting, or actively participating in a fund-raising activity of a partisan candidate, political party, or club.

g. Driving voters to polls on behalf of a political party or partisan candidate.

h. Serving as a delegate, alternate, or proxy to a political convention.

i. Addressing a convention, caucus, rally, or similar gathering of a political party in support of or in opposition to a partisan candidate for public office or political party office.

j. Initiating or circulating a partisan nominating petition.

k. Endorsing or opposing a partisan candidate for public office or political party office in a political advertisement, a broadcast, campaign literature, or similar material.

l. Organizing or reorganizing a partisan political party organization or political club.

In general, the following political activities are <u>prohibited</u>:

1. Using governmental authority to interfere or affect nomination or election for any public office or position within any political party.

2. Using governmental authority or influence to intimidate, threaten, or coerce any person to vote contrary to his/her own voluntary choosing.

3. Using governmental authority to directly or indirectly intimidate, threaten, or coerce any person to pay, lend, or contribute anything of value, including services, to any party, organization, group, or individual for political purposes.

4. Using any official authority or influence to coerce any individual or group for political action or to confer benefits or effect reprisals to secure desired political action or inaction.

5. Offering money in return for political action or inaction or accepting any benefit in return for political action or inaction.

6. Engaging in political activity on state-owned property including, but not limited to, the wearing of a political identification while on duty where it could impair the effectiveness of the state agency operation.

7. Engaging in any political activity when not on duty to such an extent that efficiency during working hours is impaired or that the employee is tardy or absent from work.

8. Taking any action that makes one a candidate for partisan public office unless on an approved leave of absence.

9. Directly or indirectly soliciting or receiving subscriptions or contributions for any partisan political party or any political purpose while on state time or engaged in official duties or while in a building, office, or room occupied for any purpose by the state.

10. Either orally soliciting or by letter or by electronic mail transmitting any solicitation to a state office or be in any manner concerned in soliciting any assistance, subscription, or support for any partisan, political party or purpose from any person holding any position in the classified service while on state time or engaged in official duties.

11. During the hours when on official duty engaging in any form of political activity calculated to favor or improve the chances of any political party or any person seeking or attempting to hold partisan political office.

12. Using state property, materials, supplies or equipment in connection with political activity.

Questions relating to the political activities of classified state employees should be directed to the Director of the Bureau of Merit Recruitment and Selection.

Stacey Rolston, Deputy Administrator and Acting Director
Division of Personnel Management, Bureau of Merit Recruitment & Selection