

**The Ethics Corner...**

by Rick Schwartz

**POLITICS & THE MILITARY  
WORKPLACE A CAUTIONARY NOTE**

*Editor's Note: Our readers may recall a Stars & Stripes cover story a few weeks ago that had a picture of this political rally and the headline:*

***"Something Wrong In This Picture?"***

*An Army Reservist not only appeared on-stage in his ACUs, but went on to take the microphone and endorse the candidate and his foreign policy, on live television.*

*Given all the publicity this event subsequently engendered, and the fact that we still have a long way to go until the November presidential election, we thought our readers might appreciate a primer on the Hatch Act and related DoD directives. Ignorance of the law is no excuse...*

Tempted to weigh in on the upcoming elections or handicap a particular candidate's chances? Looking to use your military or Federal Government background to show others what kind of support a particular candidate has got going for him? You should know first that there are specific restrictions related to this intersection of politics and our working environment designed to preserve the military and the civil service as professional non-partisan institutions. Although this article largely relates to restrictions applicable to DoD civilian employees under the Hatch Act, similar restrictions on active military personnel are described at DoD Directive 1344.10.

In the 21<sup>st</sup> TSC, most, if not all, of us will fall into the Hatch Act category of "Less Restricted" employees. Less Restricted employees are prohibited from:

- using their official authority or influence to interfere with or affect the result of an election;
- knowingly soliciting, accepting, or receiving a political contribution from any person (this may be done in certain limited situations by federal labor or other employee organizations);
- knowingly soliciting or discouraging the participation in any political activity of anyone who has business pending before their employing agency;
- being candidates for public office in partisan political elections; or
- engaging in political activity while on duty, in a government office, **wearing an official uniform**, or using a government vehicle.

For example, these prohibitions effectively prevent Less Restricted employees from doing any of the following:

- hosting or inviting anyone to a political fundraiser;
- accepting or receiving a donation or contribution for a partisan political party, candidate for partisan political office, or partisan political group;
- using an official title or position while engaged in political activity; or
- inviting your subordinate employees to political events or otherwise suggesting to subordinates that they attend the political event or undertake any partisan political activity.

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## ***POLITICS & THE MILITARY WORKPLACE (CONTINUED)***

In addition, Less Restricted employees are prohibited from any of the following examples while on duty and/or in any federal room or building:

- distributing or displaying campaign materials or items;
- wearing partisan political buttons, t-shirts, or other items;
- performing campaign-related chores;
- making political contributions to a partisan political party, candidate for partisan political office, or partisan political group;
- posting a comment to a blog that advocates for or against a partisan political party, candidate for partisan political office, or partisan political group; or
- using any e-mail account to distribute, send, or forward content that advocates for or against a partisan political party, candidate for partisan political office, or partisan political group.

Penalties for violating the Hatch Act are steep: An employee "shall be removed from their position, and funds appropriated for the position from which removed thereafter may not be used to pay the employee or individual. However, if the Merit Systems Protection Board finds by unanimous vote that the violation does not warrant removal, a penalty of not less than a 30-day suspension without pay shall be imposed." (emphasis added)

In addition, the Office of Special Counsel (OSC) has issued guidance concerning display of the President's picture, now that he is a candidate for re-election. It may be found at: <http://www.osc.gov/documents/hatchact/federal/2011-04-05%20FAQ%20Re%20Presidential%20photographs%20and%20candidacy%20for%20reelection.pdf>. The OSC is an independent agency with exclusive jurisdiction to investigate and prosecute Hatch Act complaints before the Merit Systems Protection Board (MSPB).

Two relatively recent cases illustrate the OSC and MSPB's stringent application of the penalties for violations. Following its June 2010 decision in *Special Counsel v. Pattie Ware*, in which the MSPB ordered Ms. Ware's removal from her position for Hatch Act violations, the MSPB published an August 2010 decision in *Special Counsel v. Phillip Mark*, imposing a penalty of a 120-day suspension (reduced from the original penalty of removal).

Mr. Mark violated the Hatch Act when he forwarded one campaign e-mail, from then-presidential candidate Barack Obama soliciting online contributions, to a number of individuals, including co-workers who were not under his supervision. In the forwarded e-mail, which was sent on duty from his government office and contained his name, title, group, duty location, and telephone number, Mr. Mark stated: "FYI ... if you want to help out the campaign! PS ... If you are tired of getting e-mails from me, just let a brotha know! [sic]"

Since Mr. Mark admitted he had violated the Hatch Act, the MSPB only considered the penalty. In reducing Mr. Mark's original penalty of removal, the MSPB pointed out that in its June removal decision, Ms. Ware sent two e-mails seeking political contributions, one of which also invited a number of people to a fundraiser for Barack Obama. Since she also solicited money from three government employees over whom she had authority, the MSPB considered her offenses more egregious. Although the MSPB also found the fact that Mr. Mark was not a political operative or otherwise engaged in political fundraising to be a mitigating factor, his actions still warranted a 120-day suspension.

One last thing to keep in mind is that the MSPB did not accept Mr. Mark's contention that he was ignorant of the Hatch Act, proving the old adage that "ignorance of the law does not excuse." This article is meant to provide only an overview of Hatch Act considerations, and you should bear in mind that the analysis for each individual situation is fact-specific.

***For additional information, to report a violation, or to request an advisory opinion from the OSC as to whether activity you propose to engage in would violate the Hatch Act, please visit the OSC's website at: <http://www.osc.gov/hatchact.htm>.***