



# NEW YORK STATE JOINT COMMISSION ON PUBLIC ETHICS



# POLITICS IN THE STATE WORK PLACE

2017 TRAIN THE TRAINER PROGRAM

# Topic Overview

## Civil Service Law § 107

- Overview
- Penalties
- Frequently Asked Questions/
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- Advisory Opinions
- Frequently Asked Questions/ Hypotheticals

## Agency Rules

- Examples
- Frequently Asked Questions/ Hypotheticals

CIVIL SERVICE LAW § 107  
“LITTLE HATCH ACT”

## Civil Service Law § 107: Prohibition against certain political activities; improper influence

The term "political activity" means doing something in active *support* of or *opposition* to:

- a political party
- a candidate for partisan political office or
- a partisan political group.

# Recommendations based on political affiliations... what the law says



If you are involved in hiring potential employees, you cannot ask questions regarding a candidate's political affiliation, political contributions, or how an applicant voted in an election.

## Inquiry regarding political affiliations... what the law says



You may not be questioned, directly or indirectly, about your political affiliation as a condition of employment.

## Political Assessments...what the law says



State offices may not be used for soliciting or collecting any political contributions.

# Political assessments...what the law says



Employees cannot use their State positions or authority to coerce, intimidate or influence employees for any political purpose.

## Prohibition against promise of influence... what the law says



No State officer or employee shall corruptly use or promise to use any official authority or influence in exchange for political action on another's part.

## How does the federal Hatch Act apply?

The federal Hatch Act restricts the political activities of individuals principally employed by State agencies in connection with programs financed in whole or in part by loans or grants from the United States government or federal agencies.

The Hatch Act expressly prohibits candidacy for public office in a partisan election.

PUBLIC OFFICERS  
LAW § 73 – BUSINESS OR  
PROFESSIONAL ACTIVITIES

# Public Officers Law § 73(17)(a) – Political questions in employment decisions

Public Officers Law § 73(17)(a) prohibits asking an applicant during the hiring process, or in other employment decisions, about:

- (i) their political party affiliation;
- (ii) whether the applicant has made campaign contributions; or
- (iii) whether the applicant cast a vote for or against any elected official, candidate, or political party.

## Public Officers Law § 73(17)(b) – - Refusal to answer political questions

Public Officers Law § 73(17)(b) prohibits employees from making hiring/firing/promotional decisions based upon a person's refusal to answer a political inquiry.

# Public Officers Law § 73(17)(c) – Political Donations

Public Officers Law § 73(17)(c) prohibits State employees from using their authority or influence to "compel or induce" another employee to make political donations.

# Public Officers Law §73(7-a): Bar on Paid Lobbying



You cannot receive payment to lobby on any proposed or pending bill or resolution in the Senate or Assembly.



## Public Officers Law §73(7-a): What you can and cannot do

- Permissible: Joining an association's members on Lobby Day – uncompensated.
- Impermissible: A State employee may not earn any compensation as a lobbyist for a private firm.

# Penalties

Violations of Public Officers Law § 73 provide for a civil penalty of up to \$40,000 and the value of any gift, compensation or benefit received. The violation may also be referred to a prosecutor and is punishable as a class A misdemeanor.



PUBLIC OFFICERS  
LAW § 74 – CONFLICTS  
OF INTEREST

# General Rule: Public Officers Law § 74(2)



**New York State officers and employees and Legislative members and employees shall not...**

“have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity or incur any obligation of any nature, which is in substantial conflict with the proper discharge of his (or her) duties in the public interest.”

## Public Officers Law § 74(3)(c) – Using Confidential Information

No officer or employee ... should disclose confidential information they have acquired in the course of their official duties nor use such information to further their personal interests.

# Public Officers Law § 74(3)(c): What you can and cannot do

Impermissible: You provide information about a co-worker's disciplinary history contained in their personnel file within your State agency for use in an opponent's campaign.

Question: What is an example within your agency?

## Public Officers Law § 74(3)(d) - Unwarranted Privileges, Misuse of State Resources

No covered person shall use or attempt to use their official position to secure unwarranted privileges or exemptions for themselves or others, including but not limited to, the misappropriation to themselves or to others of the property, services or other resources of the state for private business or other compensated non-governmental purposes.

## Public Officers Law § 74(3)(d): Examples of Permissible Activities

- Request to set up a table in the hallway of the State building to provide information regarding the constitutional convention. Here, the employees do not have special access and it is considered a “public space.”
- State employees representing PEF standing outside office building before workday to pass out constitutional convention materials.
  - The activity is permissible as the employees were not using State resources, were not abusing State time, and were acting in their PEF capacity.

# Examples of political activity that violate Public Officers Law § 74:



Circulating a candidate's nominating petition within your office



Using the computer in your office after work to produce a brochure in support of a candidate's campaign



Using your work e-mail to send invitations to campaign events to friends within the agency



Using New York State Internet connections to forward e-mail messages received from a partisan campaign or someone supporting a partisan candidate

# POL § 74(d): Advisory Opinions

# Public Officers Law § 74(3)(d): Running for Office in conflict with State job

## **Advisory Opinion 92-16:**

Issues Raised: The employee - involved with the leasing of property for his agency - asked his supervisor whether POL §74 prohibited him from:

- 1) seeking election to a seat on the city council in the area of his jurisdiction, and
- 2) holding such seat if elected.

## Public Officers Law § 74(3)(d): Running for Office in conflict with State job

### **Advisory Opinion 92-16:**

Duties included: Identifying suitable spaces for State leases, negotiations and lease formation and the servicing of State leases, which could include interacting with residents of the City or persons with City property interests who would also have a relationship to him as a Councilman.

## Public Officers Law § 74(3)(d): Fundraising

### **Advisory Opinion 98-12:**

Issues Raised: A State employee who was the supervisor of several units asked the Commission whether:

- 1) he could work on the political campaign of a candidate for elected office, and
- 2) whether there are any restrictions on his engaging in political activities.

## Public Officers Law § 74(3)(d): Political fundraising

If an entity properly solicited by him makes a contribution and subsequently has a matter before him or a unit he supervises, he should recuse himself if the matter arises within one year of the contribution, although the length of the period may vary depending upon the circumstances.

ONE YEAR  
AND  
COUNTING

## Public Officers Law § 74(3)(d): Fundraising

A State employee may participate in mass mailings, even if some of the letters will reach individuals or business entities from which he otherwise could not solicit funds.  
A State employee *may not* engage in targeted campaign mailings.



## Public Officers Law § 74(3)(d): Fundraising

An employee may not use his official title, position, or authority in his fundraising efforts or solicit from subordinates in his unit.

# Public Officers Law § 74(3)(d): Statewide Elected Official Fundraising

## **Advisory Opinion 16-02:**

Public Officers Law § 74 applies to elected officials when they are engaged in campaign fundraising.

This Advisory Opinion modified 98-12 – A Statewide elected official may not solicit or accept funds from a person or entity that is an active subject of the official's, or the official's office's, enforcement powers.

## Public Officers Law § 74(3)(f) - Appearance of a Conflict and Professional Behavior:

A covered person shall not by his conduct give reasonable basis for the impression that any person can improperly influence him or unduly enjoy his favor in the performance of his official duties, or that he is affected by the kinship, rank, position or influence of any party or person.

## Public Officers Law § 74(3)(f): Advisory Opinion 92-16

The Commission concluded that the employee, either during a campaign or once elected, may be affected in his official duties for the State by individuals' or entities' support or non-support for him in the political arena.

## Public Officers Law § 74(3)(h) – Appearance of Misconduct

A covered person shall endeavor to pursue a course of conduct which will not raise suspicion among the public that he is likely to be engaged in acts that are in violation of his trust.

## Public Officers Law § 74(3)(h): Advisory Opinion 92-16

The candidate-employee had discretion over decisions that would affect the landlord/potential donor with whom the agency did business.

The Commission concluded:

“it is not possible to ensure that [an employee's] decisions made during a campaign are based on merit and not on a desire to obtain campaign support.”

# Penalties

Public Officers Law § 74(3)(d):

Civil penalty of up to \$10,000 and the value of any gift, compensation or benefit received as a result of such violation.

Public Officers Law § 74(3)(f) and (h):

These sections carry no monetary civil penalty under the Public Officers Law; however violators are still subject to their agency's disciplinary action, which may include a fine or garnishment.

POL § 74:  
REGULATIONS

## 19 NYCRR 932.1

The purpose of these regulations is to effectuate the conflicts of interests provisions of the Public Officers Law and to provide an approval procedure for outside activities by policy makers, heads of State agencies, and Statewide Elected Officials.

## 19 NYCRR 932.4

No head of a State Agency, Statewide Elected Official, or Policy Maker (regardless of whether the person serves on an unpaid or per diem basis) shall serve as an officer, director, or board member of any Party or Political Organization.

## 19 NYCRR 932.4

No head of a State Agency, Statewide Elected Official, or Policy Maker (regardless of whether the person serves on an unpaid or per diem basis) shall serve as a member, officer, director, board member, or district leader of any Party Committee.

## 19 NYCRR 932.4

Nothing in this section shall prohibit a head of a State Agency, Statewide Elected Official, or Policy Maker from serving as a delegate to a State or national Party convention.

## 19 NYCRR 932.5 – Running for Office

Policy Makers (not including those who serve on an unpaid or per diem basis) shall obtain approval from their Agency and JCOPE prior to holding elected or appointed public office (regardless of Compensation) as an outside activity.

# AGENCY SPECIFIC RULES

## Agency Specific Rules

A State Agency may adopt its own rules, regulations, or procedures regarding political restrictions in the work place that are more restrictive than those contained in the POL or in JCOPE regulations.

There can be stricter policies beyond State agencies, including public authorities. (Example: Gov. Cuomo's Executive Order No.2)

# Policies

- Charging leave during an employee's standard work day
- Exceptions for coordinating schedules between State office staff and campaign staff
- Press inquiries
- Campaign contributions

# **JCOPE CONTACT INFORMATION**

**FOR GENERAL INQUIRIES, CALL:  
1-800-87-ETHICS or (518)  
408-3976**

**FOR LEGAL GUIDANCE EMAIL US AT:  
[legal@jcope.ny.gov](mailto:legal@jcope.ny.gov)**

**FOR QUESTIONS ON TRAINING EMAIL  
US AT:  
[education@jcope.ny.gov](mailto:education@jcope.ny.gov)**