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Justin Johnson, Secretary

MEMORANDUM

TO: Agency and Department Heads  
FROM: Justin Johnson, Secretary of Administration  
DATE: July 28, 2015  
RE: Political Activity

Appointees who are not 100% federally funded are not subject to the federal prohibition on running for partisan office under the Hatch Act Modernization Act of 2012.

See Hatch Act Modernization Act guidance from the U.S. Office of Special Counsel at:  
<https://osc.gov/Resources/Hatch%20Act%20Modernization%20Act%20Guidance%20for%20State%20and%20Local%20Employees.pdf>

While the State Personnel Manual does not reflect the changes to the Hatch Act from 2012, the following language continues to apply:

“3.02 Political Activity: An employee as defined in these rules and regulations shall not use his official authority for the purpose of interfering with or affecting the nomination or election of any candidate for public office. An employee shall not command or solicit from any other employee direct or indirect participation in any political activity or enforce or solicit contribution for any political party, organization, or candidate. ... An employee shall retain his right to vote and to express freely his opinion on all political subjects. An employee shall not be prohibited from participation in local community activities or from holding local public office in the community in which the employee resided, provided that such activity does not conflict with section 3.01 [employee conduct].”

In addition, the Executive Code of Ethics contains prohibitions on actions that might result in “undermining [an appointee’s] independence or impartiality or action;” “taking official action on the basis of unfair considerations;” “using public office for the advancement of personal interest;” and “affecting adversely the confidence of the public in the integrity of state government.”

**In light of the above, the position of the Administration is that gubernatorial appointees may not simultaneously be employed by the state and be a candidate in a partisan election. An appointee becomes a candidate in the following circumstances: (1) publicly and unequivocally announcing his or her candidacy or intent to run for office; (2) receiving political contributions or making expenditures for the purpose of bringing about the appointee’s election; or (3) consenting to another person receiving contributions or making expenditures for the purpose of bringing about the appointee’s election.**

In the event an appointee engages in any of the above activities and becomes a candidate, the Administration will work with the appointee to establish a swift transition plan to minimize any disruption to an affected agency.

Revisions to the state personnel policy are currently underway to reflect changes in the Hatch Act Modernization Act.