

CF OPERATING PROCEDURE
NO. 60-5, Chapter 1

STATE OF FLORIDA
DEPARTMENT OF
CHILDREN AND FAMILIES
TALLAHASSEE, March 22, 2018

Human Resources

POLITICAL ACTIVITIES

1-1. Purpose. This operating procedure establishes uniform procedures within the Department of Children and Families to ensure compliance with state policy governing Career Service System employee political activities and unlawful acts.

1-2. References.

- a. Section 110.233, Florida Statutes (F.S.), Political Activities, Unlawful Acts and Penalties.
- b. Section 104.31, F.S., Political Activities of State, County and Municipal Officers and Employees.
- c. Chapter 60L-36, Florida Administrative Code (F.A.C.), Political Activities.
- d. Federal Hatch Political Activities Act (5 U.S. Code 1501 through 1508).

1-3. Definitions.

- a. Employee. Any person employed in an established position in the Career Service System.
- b. Political Activity. For the purposes of this operating procedure, the act of seeking election to a public office.
- c. Local Public Office. County or municipal offices including such offices as county or city commissioner or county school board member.
- d. Partisan Election. An election in which any candidate represents a political party whose candidates for presidential election received votes in the last presidential election.
- e. Local Delegated Authority. The Assistant Secretary, Regional Managing Director, or Chief Hospital Administrator.

1-4. Candidacy for Public Office. No employee may seek or hold a public office without authorization from the local delegated authority and approval from the Department of Management Services (DMS).

a. Approval for any employee to be a candidate for a local (county or municipal) public office while employed by the agency must meet the following requirements:

(1) Employees whose positions are subject to the Federal Hatch Act may not become candidates in any partisan election;

(2) Duties and responsibilities of the elected office do not result in a conflict of interest or interfere with the employee's state employment; and,

This operating procedure supersedes CFOP 60-5, Chapter 1, dated January 1, 2000.

OPR: OSGC

DISTRIBUTION: A

(3) No campaign or elected office activities may be performed by the employee during the employee's assigned working hours with the state.

b. An employee who has been granted approval to become a candidate for local public office may be granted a leave of absence without pay or may be allowed to use accrued annual or compensatory leave.

c. In addition to the procedures prescribed by Chapter 60L-36, F.A.C., the following process is required:

(1) An employee who wants to run for local public office shall submit written notification of intent to run for election through his or her supervisor no less than 55 days prior to the deadline for qualifying for the office. Notification must include the title of the local public office; a general description of the duties and hours of work involved; what effects, if any, such duties will have on the employee's regular duties with the department; and the amount of remuneration, if any, to be received if elected.

(2) The supervisor must review and submit the notification to the servicing employee relations representative within five calendar days. Comments concerning the employee's shift assignment, work hours, overtime requirements, or special job requirements should be attached.

(3) The servicing employee relations representative, in consultation with his or her Human Resources Administrator, must determine that the holding of the local public office involves no interest that conflicts or interferes with the employee's job and, if applicable, verify that the office is non-partisan as prescribed in the Federal Hatch Act. The employee request and a written determination whether the request is appropriate must be sent to the delegated authority or designee within five calendar days.

(4) If there is no conflict, the delegated authority, via the Employee Relations Human Resources Administrator, will advise (DMS) in writing and include the employee's written notification of intent to run for election along with a recommendation for approval.

(5) If it is determined that the holding of the local public office involves an interest which may reasonably conflict with or interfere with the employee's state employment, the employee shall be advised in writing by the delegated authority or designee. A copy of the disapproval will be sent to the Employee Relations Center of Excellence and to DMS by the Employee Relations Human Resources Administrator. The notice to the employee should include information regarding the employee's right to a proceeding before the agency head or designee, as provided in section 120.57, F.S.

(6) This same procedure applies when an employee already holds a local public office at the time of employment in the Career Service System or when the employee seeks reelection to the same office while an employee in the Career Service System.

(7) The department must retain a copy of the request and a copy of the written decision in the employee's personnel file.

1-5. Political Activities.

a. Political activities which are permitted: Employees are permitted to express their opinions on political subjects and candidates, and to take an active part in campaigns outside of working hours (including the wearing of badges or buttons and displaying bumper stickers and posters).

b. Unlawful acts and prohibited political activities include the following situations:

(1) No employee will be appointed to, demoted, or dismissed from any position in the Career Service System, or in any way favored or discriminated against with respect to employment in the Career Service System because of political opinions or affiliations.

(2) No employee will use or promise to use, directly or indirectly, any official authority or influence, whether possessed or anticipated, to secure or attempt to secure for a person an appointment or advantage in appointment to a position in the Career Service System, or an increase in pay or other advantage in employment in any such position for the purpose of influencing the vote or political action of any person or for any consideration. However, letters of inquiry, recommendations, and references by public employees or public officials will not be considered political pressure unless any such letter contains a threat, intimidation, or irrelevant, derogatory, or false information.

(3) No employee will, directly or indirectly, give, render, pay, offer, solicit, or accept any money, service, or other valuable consideration for, or on account of, any appointment, proposed appointment, promotion or proposed promotion to, or any advantage in a position in the Career Service System.

(4) No employee will use official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for office.

(5) No employee will directly or indirectly coerce, attempt to coerce, command or advise a state or local officer or employee to pay, lend, or contribute anything of value to a party or committee.

(6) Employees of the department whose principal employment is in connection with an activity which is funded wholly or in part by federal funds or grants are subject to the Federal Hatch Act regarding political activities.

(7) An employee who seeks or holds public office contrary to or without complying with the provisions of section 110.233, F.S., shall be presumed to have become ineligible for continuation of employment and shall be deemed to have resigned from the Career Service System.

c. Political activities of employees will be consistent with Florida Statutes, the Florida Administrative Code, and the Federal Hatch Act.

BY DIRECTION OF THE SECRETARY:

(Signed original copy on file)

JOHN JACKSON
Acting General Counsel

SUMMARY OF REVISED, ADDED, OR DELETED MATERIAL

This revision updates Department policy including, but not limited to, the following:

1. Updates the reference to Chapter 60L-36, Florida Administrative Code.
2. Adds definition for "local delegated authority."
3. Updates point of contact to human resources employee relations representative.
4. Includes sample letters in attachments.

DRAFT Sample Letter (Career Service Employees)
(use letterhead paper)

Date

TO: (Employee's Name)

FROM: (To be determined)

SUBJECT: Your (Date) Request for Approval to Run for Partisan Office

We have reviewed your (communication) of (date) directed to (name) (requesting approval to/of your intention to) run in a partisan election for the office of (title) in (year).

As a career service employee you may be a candidate for or hold public office when authorized by the agency head and approved by the Department of Management Services. According to Rule 60L--36.002, Florida Administrative Code, such approval may be granted when the agency determines that pursuing or holding public office will create no conflict of interest with your state employment and will not interfere with your job duties.

In addition to the approvals described above, employees whose positions are subject to the Federal Hatch Act may not become candidates in any partisan election, and paragraph (4) of the DMS rule provides that the agency head shall determine which of that agency's employees are subject to the Hatch Act. The Hatch Act, 5 U.S.C.A. §1501(4) defines a covered state or local officer or employee under the Act as: "an individual employed by the state or local agency whose 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." The Act specifically excludes from its application "an individual who exercises no functions in connection with that activity."

Please be aware that any decision of whether a position is covered under the Hatch Act is subject to review by the U.S. Office of Special Counsel (OSC) and ultimately subject to determination by the Federal Merit Systems Protection Board. The OSC is authorized by law to provide Hatch Act advisory opinions, and is also responsible for enforcing the Hatch Act. OSC receives complaints alleging Hatch Act violations, investigates the complaints, and prosecutes cases before the Merit Systems Protection Board. Before you move forward with your plans to run in the partisan election, you should consider contacting OSC to ask for an advisory opinion on coverage of your position under the Hatch Act. You may contact them at (800) 85-HATCH, or (202) 254-3650, for further information on how to request an advisory opinion. Generally, OSC will request your name and contact information, a copy of your current job description with the Department, and the name and contact number of the individual with the Department knowledgeable about financial grants and other federal funding coming into the Department and the Institution where you work. The Department will be glad to provide you the name of an individual who can provide that information to the OSC. Depending on the complexity of the facts in your situation, OSC advises it usually takes two weeks to one month after receiving your information to issue the advisory opinion. If your situation is complex, OSC will require more time to respond to your request.

Should you run for a partisan office and the Merit Systems Protection Board ultimately determines you have violated the Hatch Act, the Board may order your dismissal from your position with the Department. Should that occur, the Department would be required to comply with the order or risk forfeiture of federal assistance equal to two years of your current salary. Given that choice, you would be dismissed from your employment with the Department.

The Department has reviewed the material furnished with your request, the job description of your current position with the Department, and the relationship of your position in connection with federal loans or grants received by the Department. Our review of that information has resulted in our view that your position with the Department (is or is not) covered by the Hatch Act. (Depending on our conclusion of application of the Hatch Act to the employee's position, one of the following three sentences will be included: 1) We are forwarding your request to run for office to the Department of Management Services, recommending their approval of your request to run for the public office you have described. or 2) We are not forwarding your request to run for office to the Department of Management Services based on our belief the position is covered by the Hatch Act. or 3) We are uncertain as to coverage of your position under the Hatch Act, and are pending your request for approval until your receipt of a favorable advisory opinion from the Office of Special Counsel.

Sincerely,

(To be determined)

DRAFT Sample Letter (Select Exempt Employee)
(use letterhead paper)

DATE:

TO: (Employee's Name)

FROM: (To be determined)

SUBJECT: Your (Date) Memo Announcing your Intent to Run for Partisan Office

We have reviewed your (communication) of (date) directed to (name), advising of your intention to run in a partisan election for the office of (title) in (year).

As you may know, employees whose positions are subject to the Federal Hatch Act may not run for public office in a partisan election. The Hatch Act, 5 U.S.C.A. § 1501(4) defines a covered state or local officer or employee under the Act as: "an individual employed by the state or local agency whose 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." The Act specifically excludes from its application "an individual who exercises no functions in connection with that activity."

Pursuant to Rule 60L-36.002(4), Florida Administrative Code, the agency head of the employing agency must determine whether an employee's position is covered by the Hatch Act prior to the employee becoming a candidate in a partisan election. Please be aware that any Department decision of whether a state employee's position is covered under the Hatch Act is not binding on the U.S. Office of Special Counsel (OSC). The OSC is responsible for enforcing the Hatch Act. OSC receives complaints alleging Hatch Act violations, investigates the complaints, and prosecutes cases before the Merit Systems Protection Board.

The OSC provides Hatch Act advisory opinions to employees considering declaring as a candidate in partisan elections. Before you move forward with your election plans, you should consider contacting the OSC for an advisory opinion on coverage of your position under the Hatch Act. You may contact them at (800) 85-HATCH, or (202) 254-3650, for further information on how to request an advisory opinion. Generally, OSC will request your name and contact information, a copy of your current job description with the Department, and the name and contact number of the individual with the Department knowledgeable about financial grants and other federal funding coming into the Department and the Institution where you work. The Department will be glad to provide you the name of an individual who can provide that information to the OSC. Depending on the complexity of the facts in your situation, OSC advises it usually takes two weeks to one month after receiving your information to issue the advisory opinion. If your situation is complex, OSC will require more time to respond to your request.

Should you run for a partisan office, and the Merit Systems Protection Board ultimately determines you have violated the Hatch Act, the Board may order your dismissal from your position with the Department. The Department would be required to comply with the order or risk forfeiture of federal assistance equal to two years of your current salary. Given that choice you would be dismissed from your employment with the Department.

March 22, 2018

CFOP 60-5, Chapter 1

If you have further questions about application of the Hatch Act to your current position with the Department, please contact the U.S. Office of Special Counsel at the numbers given above.

Sincerely,

(Person to be determined)