POLITICAL ACTIVITY

of Federal Officers and Employees

UNITED STATES CIVIL SERVICE COMMISSION

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A detailed and technical treatment of legal principles and procedures governing the Commission's political-activity cases is presented in *Hatch Act Decisions of the United States Civil Service Commission*, obtainable from the Superintendent of Documents, Government Printing Office, Washington 25, D.C., *$1.50 a copy.*

I. General Prohibitions and Exceptions

The broadest and most widely applicable restrictions on political activity of Federal officers and employees are contained in section 4.1 of Civil Service Rule IV and in section 9 (a)[1] of the Hatch Act. In practically the same words, these provisions prohibit the following:

(1) Using official authority or influence for the purpose of interfering with an election or affecting its results.

(2) Taking an active part in political management or in political campaigns.

CIVIL SERVICE RULE IV

Section 4.1 of Civil Service Rule IV reads as follows:

Prohibition against political activity.—Persons in the executive branch shall retain the right to vote as they choose and to express their opinions on all political subjects and candidates, but such persons shall not use their official authority or influence for the purpose of interfering with an election or affecting the result thereof. Persons occupying positions in the competitive service shall not take any active part in political management or in political campaigns except as may be provided by or pursuant to statute.

SECTION 9 OF THE HATCH ACT

Section 9 of the Hatch Act (Hatch Political Activities Act of August 2, 1939, as amended; 5 U. S. C. 118i) reads as follows:

(a) It shall be unlawful for any person employed in the executive branch of the Federal Government, or any agency or department thereof, to use his official authority or influence for the purpose of interfering with an election or affecting the result thereof. No officer or employee in the executive branch of the Federal Government, or any agency or department thereof, shall take any active part in political management or in political campaigns. All such persons shall retain the right to vote as they may choose and to express their opinions on all political subjects and candidates. For the purposes of this section the term "officer" or "employee" shall not be construed to include (1) the President and Vice President of the United States; (2) persons whose compensation is paid from the appropriation for the office of the President; (3) heads and assistant heads of executive departments; (4) officers who are appointed by the President, by and with the advice and consent of the Senate, and who determine policies to be pursued by the United States in its relations with foreign powers or in the Nation-wide administration of Federal laws. The provisions of the second sentence of this subsection shall not apply to the employees of The Alaska Railroad, residing in municipalities on the line of the railroad, in respect to activities involving the municipality in which they reside.

(b) Any person violating the provisions of this section shall be removed immediately from the position or office held by him, and thereafter no part of the funds appropriated by any Act of Congress for such position or office shall be used to pay the compensation of such person: *Provided, however*, That the United States Civil Service Commission finds by unanimous vote that the violation does not warrant removal, a lesser penalty shall be imposed by direction of the Commission: *Provided further*, That in no case shall the penalty be less than ninety days' suspension without pay: *And provided further*, That in the case of any person who has heretofore been removed from the service under the provisions of this section, the Commission shall upon request of said person reopen and reconsider the record in such case. If it shall find by a unanimous vote that the acts committed were such as to

[1] The United States Supreme Court, in an opinion (330 U. S. 75), affirmed a judgment of the District Court of the United States for the District of Columbia holding that the provisions of section 9 (a) of the Hatch Act were not unconstitutional.

warrant a penalty of less than removal it shall issue an order revoking the restriction against reemployment in the position from which removed, or in any other position for which he may be qualified, but no such revocation shall become effective until at least ninety days have elapsed following the date of the removal of such person from office.

(c) At the end of each fiscal year the Commission shall report to the President for transmittal to the Congress the names, addresses, and nature of employment of all persons with respect to whom action has been taken by the Commission under the terms of this section, with a statement of the facts upon which action was taken, and the penalty imposed.

OTHER SECTIONS OF THE HATCH ACT

Sections 15, 16, 18, and 21 of the Hatch Act also relate to political activity of Federal officers and employees.

Section 15 (5 U. S. C. A., sec. 118–l) states that the provisions in the act containing prohibitions against "taking any active part in political management or in political campaigns" are deemed to include activities prohibited by the civil-service rules. It reads as follows:

The provisions of this Act which prohibit persons to whom such provisions apply from taking any active part in political management or in political campaigns shall be deemed to prohibit the same activities on the part of such persons as the United States Civil Service Commission has heretofore determined are at the time this section takes effect prohibited on the part of employees in the classified civil service of the United States by the provisions of the civil-service rules prohibiting such employees from taking any active part in political management or in political campaigns.

Sections 16, 18, and 21 set forth certain exceptions to the provisions prohibiting political activity.

Section 16 (5 U. S. C. A., sec. 118m) states an exception relating to political campaigns in localities adjacent to the National Capital or in localities where the majority of the voters are Government employees. It reads as follows:

Whenever the United States Civil Service Commission determines that, by reason of special or unusual circumstances which exist in any municipality or other political subdivision, in the immediate vicinity of the National Capital in the States of Maryland and Virginia or in municipalities the majority of whose voters are employed by the Government of the United States, it is in the domestic interest of persons to whom the provisions of this Act are applicable, and who reside in such municipality or political subdivision, to permit such persons to take an active part in political management or in political compaigns involving such municipality or political subdivision, the Commission is authorized to promulgate regulations permitting such persons to take an active part in such political management and political campaigns to the extent the Commission deems to be in the domestic interest of such persons.

Section 18 (5 U. S. C. A., 118n) states an exception relating to elections not specifically identified with National or State issues or political parties. It reads as follows:

Nothing in the second sentence of section 9 (a) or in the second sentence of section 12 (a) of this Act shall be construed to prevent or prohibit any person subject to the provisions of this Act from engaging in any political activity (1) in connection with any election and the preceding campaign if none of the candidates is to be nominated or elected at such election as representing a party any of whose candidates for presidential elector received votes in the last preceding election at which presidential electors were selected, or (2) in connection

with any question which is not specifically identified with any National or State political party. For the purposes of this section, questions relating to constitutional amendments, referendums, approval of municipal ordinances, and others of a similar character, shall not be deemed to be specifically identified with any National or State political party.

Section 21 (5 U. S. C. A., sec. 118k–l) states an exception relating to activities of employees of institutions and organizations of specified types. It reads as follows:

Nothing in sections 9 (a) or 9 (b), or 12 of this Act shall be deemed to prohibit or to make unlawful the doing of any act, by any officer or employee of any educational or research institution, establishment, agency, or system which is supported in whole or in part by any State or political subdivision thereof, or by the District of Columbia or by any Territory or Territorial possession of the United States; or by any recognized religious, philanthropic, or cultural organization.

STATUTES ON RELATED SUBJECTS

In addition to being subject to section 4.1 of Civil Service Rule IV, and to the sections of the Hatch Act quoted above, Federal officers and employees are subject to statutes relating to—

(1) Political assessments (see p. 26 of this pamphlet).
(2) Political coercion (see p. 30).
(3) Political discrimination (see p. 31).
(4) Purchase and sale of public office (see p. 31).

INDIVIDUAL RESPONSIBILITY

Each officer and employee is responsible for refraining from prohibited political activity. He is presumed to be acquainted with the legal provisions applicable to him, and his ignorance of them will not excuse a violation. If he is in doubt as to whether any particular activity is prohibited, he should present the matter in writing to the United States Civil Service Commission before engaging in the activity.

II. Jurisdiction of the Commission

EMPLOYEES IN THE COMPETITIVE SERVICE

There is no language in the Hatch Act that fixes responsibility for enforcement of the prohibitions against political activity of Federal officers and employees.

However, it is important to note that the prohibitive language of section 9 (a) of the Hatch Act is substantially the same as that of section 4.1 of Civil Service Rule IV. The Civil Service Commission's jurisdiction in political-activity matters was not affected by passage of the Hatch Act.

Section 15 of the Hatch Act provides that the activities that are prohibited by the act are those that the Commission had theretofore determined were prohibited, under the civil-service rules, on the part of employees in the competitive civil service.

Thus, under Civil Service Rule IV *and* under the Hatch Act, the Civil Service Commission has authority to enforce prohibitions against political activity of Federal officers and employees whose positions are in the competitive civil service.

PENALTY PROVISIONS

The Attorney General has held (40 A. G. 14) that where both the law and the rule are violated the statutory penalty is mandatory.

An officer or employee found to have violated the restrictions imposed by section 9 (a) of the Hatch Act and section 4.1 of Civil Service Rule IV must be immediately removed from the position or office held by him and—in accordance with a decision by the Comptroller General (25 Comp. Gen. 271)—may not be employed again in any position the salary or compensation of which is payable under the same appropriation as the position from which removed. This restriction is not limited to the appropriation act for any particular fiscal year.

If, however, the Commission determines by unanimous vote that the violation does not warrant removal, it may impose a lesser penalty under the terms of the amendment to the Hatch Act of August 25, 1950, but the penalty so imposed must be at least a 90-day suspension.

In an opinion of the Attorney General of September 12, 1947 (40 A. G. 545) it was held that the penalty provisions of the Hatch Act require the removal of an employee from the civil-service position or office that he is holding at the time his violation of the act is established, despite the fact that this position may be different from that held at the time the violation occurred. It is immaterial whether the second civil-service position has been obtained by transfer, promotion, or reappointment.

AUTHORITY UNDER RULE V

Section 5.4 of Civil Service Rule V reads as follows:

> Whenever the Commission finds that an appointment has been made in violation of the Civil Service Act, Rules, or Regulations, or that any employee subject thereto has violated such Act, Rules, or Regulations or is holding a position in violation thereof, it is authorized, after giving due notice and opportunity for explanation to the employee and the agency concerned, to certify the facts to the proper appointing officer with specific instructions as to discipline or dismissal.

Section 5.5 of Civil Service Rule V reads as follows:

> If the appointing officer fails to carry out the instructions of the Commission issued under section 5.4 of this Rule, the Commission shall certify the facts to the head of the agency concerned. If the head of the agency fails to carry out the instructions of the Commission within ten days after receipt thereof, the Commission shall notify the Comptroller General of the United States and no payment or allowance shall be made of the salary or wages accruing to the employee concerned after such notification.

The General Accounting Office is without jurisdiction to review the determinations of the Civil Service Commission under Rule V and, upon certification by the Commission that an employee is holding a po-

sition in violation of the Civil Service Act and rules, the General Accounting Office has no alternative to withholding credit for payments made for salary or compensation (decision, Comptroller General July 20, 1939, to the Postmaster General).

COMMISSION PROCEDURE

In taking action on alleged violations of section 4.1 of Civil Service Rule IV, the Civil Service Commission proceeds under regulations that provide for—

(1) Investigation of the complaint—either by correspondence, in instances where the violation may be established by record evidence, or by representatives of the Commission and the employing agency. (The employee may make a statement and furnish the names of witnesses to support it.)

(2) Issuance of a Proposed Order, when there is prima facie proof of prohibited political activity, with a description of the specific charges and an opportunity to respond in writing.

(3) A hearing, in certain cases, at the discretion of the Commission—but not when the violation is established by indisputable record evidence or is admitted by the employee.

(4) Issuance of a Final Order either dismissing the Proposed Order or finding that the employee violated the law and the rule against political activity and prescribing the penalty.

The Commission's procedure applies in the cases of those employees who resigned from their positions prior to a final determination by the Commission.

The Commission's regulations also provide for the reconsideration of the record, as authorized by law, upon request, of employees who were removed between August 2, 1939, and August 25, 1950, for established political-activity violations, to determine whether the violations were such as to warrant a penalty of less than removal.

III. Applicability of Rule and Statute

GENERAL STATEMENT

In the absence of specific statutory exemption, the basic political-activity restrictions apply to any person employed in the executive branch of the Federal Government, or any agency or department thereof, or in the government of the District of Columbia. Some persons are subject to these restrictions by virtue both of section 4.1 of Civil Service Rule IV and of section 9 (a) of the Hatch Act; others are subject to them solely by virtue of section 9 (a) of the Hatch Act.

Section 4.1 of Civil Service Rule IV applies to all employees in the competitive service.

Section 9 (a) of the Hatch Act applies to all persons employed in the executive branch of the Federal Government [2] whether or not such persons are in the competitive service. The effect of section 9 (a) of the statute is to place the same restrictions upon the political activities of all officers and employees of the executive branch of the Government that section 4.1 of Civil Service Rule IV places upon the political activities of officers and employees in the competitive service.

GROUPS OF EMPLOYEES

Part-time and Intermittent Employees

Any person whose employment with the Federal Government is only part-time or intermittent, not in any case occupying a substantial portion of his time and not affording his principal means of livelihood, is subject to the political-activity prohibitions of section 9 (a) of the Hatch Act and section 4.1 of Civil Service Rule IV while in active-duty status, and not otherwise. Such an employee may be listed as a candidate for a public elective office provided that he does not engage in political activity on any day on which he performs duty as a Federal employee. The period of active duty embraces the whole period of status as a paid employee, rather than just the working hours of the day.

Temporary and Emergency Employees

Temporary and emergency employees are subject to the statute and the rule.

Employees on Leave

In general, an employee who is subject to the basic political-activity prohibitions while on active duty is subject to them while on leave with pay, leave without pay, or furlough, and incurs the same penalties for an offense committed while in leave or furlough status as for an offense committed while on active duty. This is true even though the leave is terminal leave, and even though the employee's resignation has been submitted and accepted. However, if lump-sum payment is made for accrued annual leave, the person involved is not subject to the political-activity restrictions during the period covered by the lump-sum payment or thereafter.

It is not permissible for an employee to take leave of absence for the purpose of working with a political candidate, committee, or organization, or for the purpose of becoming a candidate for office with the understanding that he will resign his position if nominated or elected.

Postmasters and Post-Office Employees

All postmasters and acting postmasters, all employees in post offices of the first, second, and third classes, and all special delivery messen-

[2] Except (*a*) the President and Vice President of the United States; (*b*) persons whose compensation is paid from the appropriation for the office of the President; (*c*) heads and assistant heads of executive departments; and (*d*) officers who are appointed by the President by and with the advice and consent of the Senate, and who determine policies to be pursued by the United States in its relations with foreign powers or in the Nation-wide administration of Federal laws.

gers in post offices of the first class are subject to the political-activity restrictions of Civil Service Rule IV and section 9 of the Hatch Act.

Persons Not Subject to Political-Activity Restrictions

The political-activity restrictions of section 9 of the Hatch Act and section 4.1 of Civil Service Rule IV do not apply to the following persons:

EXECUTIVE BRANCH

The President and Vice President of the United States.

Persons who are compensated from the appropriation for the Office of the President.

Heads and assistant heads of departments.

Officers who are appointed by the President by and with the advice and consent of the Senate, and who determine policies to be pursued by the United States in its relations with foreign powers or in the Nation-wide administration of Federal laws.

Ambassadors of the United States.

Ministers of the United States.

LEGISLATIVE BRANCH

Officers and employees of the legislative branch of the Federal Government, including secretaries and clerks of Members of Congress and congressional committees.

JUDICIAL BRANCH

Officers and employees of the judicial branch of the Federal Government, including United States Commissioners, clerks of United States courts, referees in bankruptcy, and their secretaries, deputies, and clerks.

DISTRICT OF COLUMBIA

The Commissioners of the District of Columbia.[3]

The Recorder of Deeds of the District of Columbia.[3]

OTHER

Officers or employees of any educational or research institution, establishment, agency, or system that is supported in whole or in part by any State or political subdivision, or the District of Columbia, or by any Territory or Territorial possession of the United States, or by any recognized religious, philanthropic, or cultural organization.

Persons who are retained from time to time to perform special services on a fee basis and who take no oath of office, fee attorneys, inspectors, appraisers, and management brokers for the Home Owners' Loan Corporation and special fee attorneys for the Reconstruction Finance Corporation.

Persons who receive benefit payments, such as old-age assistance and unemployment compensation under the Social Security Act, rural-rehabilitation grants, and payments under the agricultural conservation program.

Persons retired from the Federal service, unless reemployed in the executive branch of the Federal Government.

Persons serving as star route and contract carriers and clerks in fourth-class post offices, provided such persons are not at the same time holding other Government employment.

Employees of the Alaska Railroad residing in municipalities on the line of the railroad in respect to activities involving the municipality in which they reside.[3]

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[3] Excepted only from the prohibition against active participation in political management or in political campaigns.

IV. Prohibited Activities

The Hatch Act is designed to prevent those subject to it from assuming general political leadership or from becoming prominently identified with any political movement, party, or faction, or with the success or failure of any candidate for election to public office.

The following sections are devoted to a discussion of activities that, prior to enactment of section 15 of the Hatch Act (see p. 2), the Civil Service Commission had determined to be activities prohibited by the civil-service rules.

ACTIVITY BY INDIRECTION

Any political activity that is prohibited in the case of an employee acting independently is also prohibited in the case of an employee acting in open or secret cooperation with others. Whatever the employee may not do directly or personally, he may not do indirectly or through an agent, officer, or employee chosen by him or subject to his control. Employees are, therefore, accountable for political activity by persons other than themselves, including wives or husbands, if, in fact, the employees are thus accomplishing by collusion and indirection what they may not lawfully do directly and openly. Political activity in fact, regardless of the methods or means used by the employee, constitutes the violation.

This does not mean that an employee's husband or wife may not engage in politics independently, upon his or her own initiative, and in his or her own behalf. Cases have arisen, however, in which the facts showed that the real purpose of a wife's activity was to accomplish a political act prohibited to her husband, the attempt being made for her husband's benefit and at his instigation or even upon his coercion. This may be true of individuals or it may occur among groups of employee's wives associated for the purpose of securing for their husbands what the husbands may not secure for themselves. In such situations, it is obvious that the prohibitions against political activity are being violated. The collusion or coercion renders the wife's activity imputable to the husband, he being guilty of the same infraction as if he were openly a participant.

CONVENTIONS

Candidacy for or service as delegate, alternate, or proxy in any political convention or service as an officer or employee thereof is prohibited. Attendance as a spectator is permissible, but the employee so attending must not take any part in the convention or in the deliberations or proceedings of any of its committees, and must refrain from any public display of partisanship or obtrusive demonstration or interference.

PRIMARIES—CAUCUSES

An employee may attend a primary meeting, mass convention, caucus, and the like, and may cast his vote on any question presented,

but he may not pass this point in participating in its deliberations. He may not act as an officer of the meeting, convention, or caucus, may not address, make motions, prepare or assist in preparing resolutions, assume to represent others, or take any prominent part therein.

MEETINGS

Service in preparing for, organizing or conducting a political meeting or rally, addressing such a meeting, or taking any part therein except as a spectator is prohibited.

COMMITTEES

The holding of the office of precinct committeman, ward committeeman, etc., or service on or for any committee of a political party organization is prohibited. An employee may attend as a spectator any meeting of a political committee to which the general public is admitted but must refrain from activity as indicated in the preceding paragraphs.

Whether a committee has an ultimate political purpose determines whether an employee may properly serve as a member. An employee may be assigned to duties that, considered alone, seem far removed from active politics; but those duties may assume an active political character when considered as part of the whole program. The Commission has held that service by an employee as chairman of a food committee at an occasion signifying the opening campaign speech of a nominee for Governor of a State is not permissible. No attempt can be made to differentiate between workers on or under political committees with respect to the degree to which they are politically active.

CLUBS AND ORGANIZATIONS

Employees may be members of political clubs, but they may not be active in organizing such a club, be officers of the club or members or officers of any of its committees, or act as such, or address a political club. Service as a delegate or alternate from such a club to a league of political clubs is service as an officer or representative of a political club and is prohibited, as is service as a delegate or representative of such a club to or in any other organization. In other words, an employee may become a member of a political club and may vote on questions presented but may not take an active part in its management or affairs, and may not represent other members or attempt to influence them by his actions or utterances.

Section 6 of the act of August 24, 1912 (37 Stat. 555), provides in part—

> That membership in any society, association, club, or other form of organization of postal employees not affiliated with any outside organization imposing an obligation or duty upon them to engage in any strike, or proposing to assist them in any strike, against the United States, having for its objects, among other things, improvements in the condition of labor of its members, including hours of labor and compensation therefor and leave of absence, by any person or groups of persons in said Postal Service, or the presenting by any such person or groups of persons of any

grievance or grievances to the Congress or any Member thereof, shall not constitute or be cause for reduction in rank or compensation or removal of such person or groups of persons from said service.

Membership in a labor union by employees subject to the Hatch Act is not prohibited, where the organization is nonpartisan in character and has as its primary object improvements in the conditions of labor of its members and other matters related to their individual welfare. Matters concerned solely with organization and management of a union of Federal employees are not political management or political activity in violation of section 9 (a) of the Hatch Act, and adoption of a resolution limited to these matters would not violate the law. However, a Federal employee who engages in prohibited political activity under the direction or suggestion of a union local will be held personally accountable irrespective of whether he is acting as an individual or as a member of a group, including a union local.

Membership by a Federal employee in a party or organization advocating the overthrow of the Government of the United States is unlawful. Section 9A of the Hatch Act (title 5, U. S. C. A. 118j) reads as follows:

(1) It shall be unlawful for any person employed in any capacity by any agency of the Federal Government, whose compensation, or any part thereof, is paid from funds authorized or appropriated by any Act of Congress, to have membership in any political party or organization which advocates the overthrow of our constitutional form of government in the United States.

(2) Any person violating the provisions of this section shall be immediately removed from the position or office held by him, and thereafter no part of the funds appropriated by any Act of Congress for such position or office shall be used to pay the compensation of such person.

Civil-service employees may hold office in organizations established for social betterment. It is pointed out, however, that in certain circumstances activities of such organizations may take on a character of partisan political activity. Employees who become members or officers of organizations of this type must take the responsibility for seeing that the activities in which they engage do not become political in character.

CIVIC ORGANIZATIONS AND CITIZENS' ASSOCIATIONS

Activity in organizations having for their primary object the promotion of good government or the local civic welfare is not prohibited by the act of August 2, 1939, as amemded, provided such activities have no connection with the campaigns of particular candidates or parties.

CONTRIBUTIONS

Employees may make voluntary contributions to a regularly constituted political organization for its general expenditures, subject to the limitation laid down in section 608, title 18, U. S. Code. The term "contribution" includes a gift, subscription, loan, advance, or deposit of money or anything of value, and includes a contract, promise, or agreement, whether or not legally enforceable, to make a contribution.

While employees may make contributions, they may not solicit,

collect, receive, disburse, or otherwise handle contributions made for political purposes. Employees may not be concerned directly or indirectly in the sale of dinner tickets of a political party organization or in the distribution of pledge cards soliciting subscriptions to the dinners.

The Commission has held that voluntary contributions may be made at any time, even subsequent to a general election, so long as they are made to a regularly constituted political organization for its general expenditures.

It is not permissible for a Federal administrative official to furnish the names of his personnel and their addresses for the purpose of political solicitation.

In addition, certain sections of the criminal code place restrictions on contributions by Federal employees. Contributions may not be handed over to another person in the Federal service; they may not be made in a Federal building; etc. For the text of these sections of the criminal code and further information on this matter, see part VIII, pages 26 through 32. These sections of the criminal code are within the jurisdiction of the Department of Justice, and the law provides severe penalties for violations.

EXPRESSION OF OPINIONS

Although the act reserves to employees affected the right to "express their opinions on all political subjects and candidates," this reservation is subject to the prohibition that employees may not take any active part in political management or in political campaigns. Public expression of opinion in such a way as to constitute taking an active part in political management or in political campaigns is accordingly prohibited.

BADGES, BUTTONS, PICTURES, AND STICKERS

Employees may not distribute campaign literature, badges, or buttons. They are not prohibited from wearing political badges or buttons or from displaying political posters or pictures in the windows of their homes or on their automobiles. However, it is regarded as contrary to the spirit of the law for a public servant to make a partisan display of any kind while on duty conducting the public business.

NEWSPAPERS—PUBLICATION OF LETTERS OR ARTICLES

An employee may not publish or be connected editorially or managerially with any newspaper generally known as partisan from a political standpoint, and may not write for publication or publish any letter or article, signed or unsigned, in favor of or against any political party, candidate, or faction. An employee who writes such a letter or article is responsible for any use that may be made of it whether or not he gives consent to such use.

The Commission has held that as a general rule a newspaper that is considered as being partisan from a political standpoint, either during the campaign or in the interval between campaigns, is regarded

as being subject to application of the restrictions against activity in connection therewith. It is not required that a publication be regarded as the organ of a political organization or that it have an official connection with any political organization or party. The words "editorially" and "managerially" are intended to apply to responsibilities and duties that have to do with the making of decisions affecting the editorial policies. The objective behind the restriction on activity in connection with such publications or newspapers is prohibition of political activity of a partisan character through the medium of the public press by a person subject to the statute and the rule.

Whether or not ownership of stock or membership on a board of directors of a corporation that publishes a daily newspaper is a violation of the political-activity restrictions will depend upon the degree to which the individual, by virtue of such ownership or membership, participates in controlling the editorial policy or news management of the publication. If a Federal employee makes decisions or assists in making decisions on editorial policy or news management with respect to the political status of the publication, a violation of the restrictions occurs, but mere ownership of stock would not of itself constitute a violation of the political-activity restrictions.

There is no direct prohibition against correspondence work by an employee for newspapers. The employee will have the responsibility, however, of ascertaining that any material he submits is not in contravention of the restrictions.

ACTIVITY AT THE POLLS AND FOR CANDIDATES

An employee has the right to vote as he pleases, and to exercise this right free from interference, solicitation, or dictation by any fellow employee or superior officer or any other person. It is a violation of the Federal Corrupt Practices Act to pay or offer to pay any person for voting or refraining from voting, or for voting for or against any candidate for Senator or Representative in, or Delegate or Resident Commissioner to, Congress. It is also a violation of the law to solicit, receive, or accept payment for one's vote or for withholding one's vote. (See U. S. Code, title 18, sec. 597.)

Under the act of August 2, 1939, it is a criminal offense for any person to intimidate, threaten, or coerce any other person for the purpose of interfering with the right of such other person to vote as he may choose in any election of a National character. It is also a criminal offense to promise any employment, position, work, or compensation, or other benefit made possible by an act of Congress, as a consideration, favor, or reward for political activity or for the support of or opposition to any political candidate or party.

An employee subject to the law must avoid any offensive activity at primary and regular elections. He must refrain from soliciting votes, assisting voters to mark ballots, helping to get out the voters on registration and election days, acting as the accredited checker, watcher, or challenger of any party or faction, or any other partisan political activities at the polls. Rendering partisan political service,

such as transporting voters to and from the polls and candidates on canvassing tours, whether for pay or gratuitously, is held to be within the scope of prohibited political activities. This is not intended to prohibit one subject to the act from transporting members of his immediate family to and from the polls, in view of the community of interest that exists in such cases. The foregoing provisions do not apply if the election in question is covered by the exceptions embodied in section 18 of the law of August 2, 1939, as amended. (See p. 17.)

The publication or distribution of election campaign statements not containing names of persons responsible therefor is prohibited by law. The United States Code, title 18, section 612, reads as follows:

> Whoever wilfully publishes or distributes or causes to be published or distributed, or for the purpose of publishing or distributing the same, knowingly deposits for mailing or delivery or causes to be deposited for mailing or delivery, or, except in cases of employees of the Post Office Department in the official discharge of their duties, knowingly transports or causes to be transported in interstate commerce any card, pamphlet, circular, poster, dodger, advertisement, writing, or other statement relating to or concerning any person who has publicly declared his intention to seek the office of President, or Vice President of the United States, or Senator or Representative in, or Delegate or Resident Commissioner to Congress, in a primary, general, or special election, or convention of a political party, or has caused or permitted his intention to do so to be publicly declared, which does not contain the names of the persons, associations, committees, or corporations responsible for the publication or distribution of the same, and the names of the officers of each such association, committee, or corporation, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

ELECTION OFFICERS

A Federal employee may serve as an election officer provided that in so doing he discharges the duties of the office in an impartial manner, as prescribed by State or local law. While serving as an election officer he may not engage in, or become involved in, activities in behalf of a political party or candidate.

PARADES

An employee may not participate in or help organize a political parade. An employee may be a member of a band or orchestra that takes part in parades or rallies provided such band or orchestra is generally available for hire as a musical organization.

PETITIONS

The first amendment to the Constitution of the United States provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble and to petition the Government for a redress of grievances." Section 6 of the act of August 24, 1912 (37 Stat. 555), provides that "the right of persons employed in the civil service of the United States, either individually or collectively, to petition Congress, or any Member thereof, or to furnish information to either

House of Congress, or to any Committee or Member thereof, shall not be denied or interfered with."

An employee subject to the law of August 2, 1939, as amended, is permitted to sign petitions, including nominating petitions, as an individual, without reference to his connection with the Government, but he may not initiate them, or canvass for the signatures of others, if such petitions are identified with political management or political campaigns. Employees are permitted to exercise the right as individuals to sign a petition favoring a candidate for office, but they may not, either as Government employees or as a group or association of Government employees, solicit others to become candidates for office.

CANDIDACY FOR PUBLIC OFFICE

Candidacy for nomination or for election to a National, State, county, or municipal office is not permissible. The prohibition against political activity extends not merely to formal announcement of candidacy but also to the preliminaries leading to such announcement and to canvassing or soliciting support or doing or permitting to be done any act in furtherance of candidacy. An employee may not solicit others to become candidates for nomination or for election to such an office.[4]

The Attorney General held in an opinion to the Secretary of the Interior dated April 17, 1940 (39 Op. Atty. Gen. 423), that the Hatch Act does not apply to the acceptance and holding of a local office to which an employee was elected without being a candidate, his name not appearing on the ballot but being written in by voters. However, the Commission interprets this opinion as applicable only in cases where the writing in of an employee's name is a spontaneous action on the part of the voters and does not come about as a result of prearrangement whereby the employee was in effect a candidate before the vote was cast.

This decision is authority for the statement that the mere holding of a public office is not in itself a violation. (See also Attorney General's Circular No. 3301, October 26, 1939.)

However, it should be noted that membership on a political committee is not a public office, within the meaning of the foregoing, even though held by election in the regular election as a political representative of a ward, precinct, county, or of the voting subdivision of a State. The holding of such political offices is prohibited.

V. Exceptions to Hatch Act Restrictions

The Hatch Act specified two conditions under which political activity on the part of Federal officers and employees is permissible.

(1) Section 18 of the act sets forth an exception relating to elections

[4] For exceptions, see "V. Exceptions to Hatch Act Restrictions," pp. 16–19.

not specifically identified with National or State issues or political parties.

(2) Section 16 of the act sets forth an exception relating to political campaigns in communities adjacent to the District of Columbia or in communities the majority of whose voters are employees of the Federal Government.

Both sections are quoted on page 3 of this pamphlet.

SECTION 18

To be permissible under section 18, the activity must be of a strictly local character—completely unrelated to issues and candidates that are identified with National and State political parties.

SECTION 16

For many years prior to enactment of the Hatch Act, Federal employees residing in certain municipalities near the District of Columbia were permitted to be candidates for, and to hold, local office in those municipalities.

The permission was granted either by an individual Executive order or by action of the Commission based on an Executive order, and it remained in full force and effect until the passage of the act of August 2, 1939, which prohibited active participation in political management or in political campaigns, without exception. When this act was amended by the act of July 19, 1940, a new section was added (section 16, 54 Stat. 767) whereby the Commission was authorized to promulgate regulations extending the privilege of active participation in local political management and local political campaigns to Federal employees residing in any municipalities or other political subdivisions of the States of Maryland and Virginia in the immediate vicinity of the District of Columbia or in municipalities the majority of whose voters are employed by the Government of the United States.

The Commission has promulgated regulations governing the extension of the privileges set forth in the section quoted above and copies of these regulations are available upon request to the Commission's central office in Washington, D. C. Under these regulations it is necessary that a formal request be received from the representatives of the community involved and that the petitioners furnish certain specified information relative to their community and its elections. In all cases the final decision as to the extension of the privileges of section 16 to any individual municipality depends on the municipality's meeting certain prerequisites that are set forth in the Commission's regulations.

The Commission has extended the privileges allowed by section 16 of the Hatch Act to the following municipalities or political subdivisions by formal action recorded on the dates indicated:

In Maryland

Annapolis (May 16, 1941).
Berwyn Heights (June 15, 1944).
Bethesda (Feb. 17, 1943).
Bladensburg (Apr. 20, 1942).
Brentwood (Sept. 26, 1940).
Capitol Heights (Nov. 12, 1940).

Cheverly (Dec. 18, 1940).
Chevy Chase, sections 1 and 2 (Mar. 4, 1941).
Chevy Chase, section 3 (Oct. 8, 1940).
Chevy Chase, section 4 (Oct. 2, 1940).
Martin's Additions 1, 2, 3, and 4 to Chevy Chase (Feb. 13, 1941).
Chevy Chase View (Feb. 26, 1941).
College Park (June 13, 1945).
Cottage City (Jan. 15, 1941).
District Heights (Nov. 2, 1940).
Edmonston (Oct. 24, 1940).
Fairmont Heights (Oct. 24, 1940).
Forest Heights (Apr. 22, 1949).
Garrett Park (Oct. 2, 1940).
Glenarden (May 21, 1941).
Glen Echo (Oct. 22, 1940).
Greenbelt (Oct. 4, 1940).
Hyattsville (Sept. 20, 1940).
Kensington (Nov. 8, 1940).
Landover Hills (May 5, 1945).
Morningside (May 19, 1949).
Mount Rainier (Nov. 22, 1940).
North Beach (Sept. 20, 1940).
North Brentwood (May 6, 1941).
North Chevy Chase (July 22, 1942).
Northwest Park (Feb. 17, 1943).
Riverdale (Sept. 26, 1940).
Seat Pleasant (Aug. 31, 1942).
Somerset (Nov. 22, 1940).
Takoma Park (Oct. 22, 1940).
University Park (Jan. 18, 1941).
Washington Grove (Apr. 5, 1941).

In Virginia

Alexandria (Apr. 15, 1941).
Arlington County (Sept. 9, 1940).
Clifton (July 14, 1941).
Fairfax County (Nov. 10, 1949).
Falls Church (June 6, 1941).
Herndon (Apr. 7, 1945).
Vienna (Mar. 18, 1946).

Other Municipalities

Bremerton, Wash. (Feb. 27, 1946).
Port Orchard, Wash. (Feb. 27, 1946).
Elmer City, Wash. (Oct. 28, 1947).
Anchorage, Alaska (Dec. 29, 1947).
Benicia, Calif. (Feb. 20, 1948).
Warner Robins, Ga. (Mar. 19, 1948).

The Commission's actions extending the privileges of active participation in local self-government of the above-listed communities to resident Federal officers or employees are subject to the following restrictions:

(1) Federal officers and employees in the exercise of these privileges must not neglect their official duties and must not engage in nonlocal partisan political activities.

(2) Federal officers and employees must not run for local office as candidates representing a political party or become involved in political management in connection with the campaign of a party candidate for office.

(3) Federal officers and employees who are candidates for local elective office must run as independent candidates and must conduct their campaigns in a purely nonpartisan manner.

(4) Federal officers and employees elected or appointed to local offices requiring full-time service must resign their positions with the Federal Government. If elected or appointed to offices requiring only part-time service they may accept and hold the same without relinquishing their Federal employment provided the holding of such part-time office does not conflict or interfere with their duties as officers or employees of the Federal Government. The department or independent agency in which Federal officers or employees are employed is the sole judge of whether or not the holding of the local office conflicts or interferes with their official duties as officers or employees of the Federal Government.

(5) The permission granted by the Commission to any particular community may be suspended or withdrawn by the Commission when in its opinion the activities resulting therefrom are or may become detrimental to the public interest or inimical to the proper enforcement of the political-activity law and rules.

VI. State Officers and Employees

This publication deals primarily with the political-activity restrictions applicable to Federal officers and employees. However, it should be mentioned that there are other provisions of the so-called Hatch Act that apply Federal political-activity restrictions to those officers and employees of a State, or local agency of a State, whose principal employment is in connection with an activity financed in whole or in part by Federal loans or grants. These restrictions are also enforceable by the United States Civil Service Commission. The following rule of jurisdiction has been adopted by the Commission in these cases:

> An officer or employee of a State or local agency is subject to the Act if, as a normal and foreseeable incident to his principal job or position, he performs duties in connection with an activity financed in whole or in part by Federal loans or grants; otherwise he is not.

The restrictions applicable to State or local agency officers and employees falling within the scope of this rule of jurisdiction prohibit the following:

(1) Use of official authority or influence for the purpose of interfering with an election or a nomination for office, or affecting the result thereof.

(2) Directly or indirectly coercing, attempting to coerce, commanding, or advising any other such officer or employee to pay, lend, or contribute any part of his salary or compensation or anything else of value to any party, committee, organization, agency, or person for political purposes.

(3) Active participation in political management or in political campaigns.

The first two restrictions are self-explanatory and the third covers the same activities that are described in part IV of this pamphlet.

VII. Federal Officers or Employees Holding Local Office

While the Hatch Act and the civil-service rule prohibit Federal employees from being candidates for local elective office except in the instances mentioned in part B, above, there also must be considered

those instances in which a Federal officer or employee wishes to accept an appointive office under a State or local government or in which a State or local officeholder wishes to accept Federal employment and does not wish to relinquish his State or local office or position. In these latter instances the mere holding of the local office in the absence of facts showing partisan political activity would not constitute a violation of the Hatch Act; however, the terms of an Executive order dated January 17, 1873, must be applied.

EXECUTIVE ORDER OF JANUARY 17, 1873

In general, this order prohibits persons from accepting or holding any office or position under a State, Territorial, or municipal government at the same time that they hold Federal civil office by appointment.

Certain specific exceptions to this general prohibition are set forth in the original order and in subsequent amending orders, and it has been ruled that unless a position or office is specifically listed as an exception, it must be viewed as within the prohibitions of the order of 1873 (25 Dec. Comp. Treas. 234).

Also, during the period of the national emergency, Executive Order No. 8516 of August 15, 1940, is in effect. This order suspends and makes inoperative the Executive order of January 17, 1873, insofar as the United States Civil Service Commission shall by regulation authorize appointments to positions directly concerned with the national defense. The Commission has by formal action under the authority of the Executive order of August 15, 1940, decided that the Executive order of January 17, 1873, is not to be applied to persons appointed subsequent to August 15, 1940, to positions declared by the Commission to be directly concerned with the national defense.

NOTE.—These Executive orders are no longer effective insofar as they conflict with the political-activity restrictions of section 9 (a) of the Hatch Act, and are not to be construed as permitting officers and employees in the executive branch of the Federal Government to become candidates for any elective office that is to be filled in an election involving candidates who are either directly or indirectly representing a political party.

The Executive order of January 17, 1873, is in full force and effect as applied to Federal employees holding positions not directly concerned with the national defense and to persons appointed to the Federal service prior to August 15, 1940. It reads as follows:

Whereas it has been brought to the notice of the President of the United States that many persons holding civil office by appointment from him or otherwise under the Constitution and laws of the United States while holding such Federal positions accept offices under the authority of the States and Territories in which they reside or of municipal corporations, under the charters and ordinances of such corporations, thereby assuming the duties of the State, Territorial, or municipal office at the same time that they are charged with the duties of the civil office held under Federal authority:

And whereas it is believed that, with but few exceptions, the holding of two such offices by the same person is incompatible with a due and faithful discharge of the duties of either office; that it frequently gives rise to great inconvenience, and often

results in detriment to the public service; and, moreover, is not in harmony with the genius of the Government:

In view of the premises, therefore, the President has deemed it proper thus and hereby to give public notice that, from and after the 4th day of March, A. D. 1873 (except as herein specified), persons holding any Federal civil office by appointment under the Constitution and laws of the United States will be expected, while holding such office, not to accept or hold any office under any State or Territorial government, or under the charter or ordinances of any municipal corporation; and, further, that the acceptance or continued holding of any such State, Territorial, or municipal office, whether elective or by appointment, by any person holding civil office as aforesaid under the Government of the United States, other than judicial offices under the Constitution of the United States, will be deemed a vacation of the Federal office held by such person, and will be taken to be and will be treated as a resignation by such Federal officer of his commission or appointment in the service of the United States.

The offices of justices of the peace, of notaries public, and of commissioners to take the acknowledgment of deeds, of bail, or to administer oaths, shall not be deemed within the purview of this order and are excepted from its operation, and may be held by Federal officers.

The appointment of deputy marshals of the United States may be conferred upon sheriffs or deputy sheriffs. Any deputy postmasters, the emoluments of whose office do not exceed $600 per annum, are also excepted from the operation of this order and may accept and hold appointments under State, Territorial, or municipal authority, provided the same be found not to interfere with the discharge of their duties as postmasters. Heads of departments and other officers of the Government who have the appointment of subordinate officers are required to take notice of this order, and to see to the enforcement of its provisions and terms within the sphere of their respective departments or offices and as relates to the several persons holding appointments under them, respectively.

INTERPRETATION OF ORDER OF JANUARY 17, 1873

An Executive order of January 28, 1873, as amended by Executive order of August 27, 1933, is as follows:

Inquiries having been made from various quarters as to the application of the Executive order issued on the 17th of January relating to the holding of State or municipal offices by persons holding civil offices under the Federal Government, the President directs the following reply to be made:

It has been asked whether the order prohibits a Federal officer from holding also the office of an alderman or of a common councilman in a city, or of a town councilman of a town or village, or of appointments under city, town, or village governments. By some it has been suggested that there may be distinction made in case the office be with or without salary or compensation. The city or town offices of the description referred to, by whatever names they may be locally known, whether held by election or by appointment, and whether with or without salary or compensation, are of the class which the Executive order intends not to be held by persons holding Federal offices.

It has been asked whether the order prohibits Federal officers from holding positions on boards of education, school committees, public libraries, religious or eleemosynary institutions incorporated or established or sustained by State or municipal authority. Positions and service on such boards and committees, and professorships in colleges are not regarded as "offices" within the contemplation of the Executive order, but as employments or service in which all good citizens may be engaged without incompatibility and in many cases without necessary interference with any position which they may hold under the Federal Government. Officers of the Federal Government may therefore engage in such service, provided the attention required by such employment does not interfere with the regular and efficient discharge of the duties of their office under the Federal Government. The head of the department under whom the Federal office is held will in all cases be the sole judge whether or not the employment does thus interfere.

The question has also been asked with regard to officers of the State militia. Congress having exercised the power conferred by the Constitution to provide for organizing the militia, which is liable to be called forth to be employed in the service of the United States, and is thus, in some sense, under the control of the General Government, and is, moreover, of the greatest value to the public, the Executive order of the 17th January is not considered as prohibiting Federal officers from being officers in the militia in the States and Territories.

It has been asked whether the order prohibits persons holding office under the Federal Government being members of local or municipal fire departments, also whether it applies to mechanics employed by the day in the armories, arsenals, and navy yards, etc., of the United States. Unpaid service in local or municipal fire departments is not regarded as an office within the intent of the Executive order, and may be performed by Federal officers, provided it does not interfere with the regular and efficient discharge of the duties of the Federal office, of which the head of the department under which the office is held will in each case be the judge.

Mechanics and laborers employed by the day in armories, arsenals, navy yards, etc., and master workmen and others who hold appointments from the Government or from any department, whether for a fixed time or at the pleasure of the appointing power, are embraced within the operation of the order.

EXECUTIVE ORDER OF AUGUST 15, 1940

This order, which suspends the prohibitions of the Executive order of January 17, 1873, as applied to certain national-defense appointments and appointees, reads as follows:

By virtue of and pursuant to the authority vested in me by section 1753 of the Revised Statutes of the United States (U. S. C., title 5, sec. 631) and as President of the United States, it is ordered that the Executive order of January 17, 1873, as amended, prohibiting, with certain exceptions, Federal officers and employees from holding State, Territorial and municipal offices, be, and it is hereby, suspended and made inoperative insofar as the United States Civil Service Commission, shall, by regulation, authorize appointments to positions directly concerned with national defense.

The Commission has promulgated the following regulations to govern the application of the above-quoted Executive order:

1. August 15, 1940, shall be considered as the effective date for application of Executive Order 8516 and therefore the prohibitions of the Executive order of January 17, 1873, shall not be applied to persons appointed subsequent to August 15, 1940, to positions directly concerned with the national defense.

2. Executive Order 8516 shall apply with equal force and effect to Federal officers or employees appointed subsequent to August 15, 1940, to State or local positions directly connected with national defense and to State or local officers or employees appointed subsequent to August 15, 1940, to Federal positions directly connected with national defense.

3. (*a*) All Federal positions, appointments to which were governed by the War Service Regulations, shall be considered positions directly connected with national defense.

(*b*) The applicability of Executive Order 8516 to State or local positions will be determined by the facts in each particular case.

4. Nothing in these regulations, nor in Executive Order 8516, shall be construed to permit the holding of a State or local position by a Federal officer or employee or the holding of a Federal position by an officer or employee of a State or local government, when such holding is prohibitied by the rules or regulations of the department or agency wherein said officer or employee is employed, or when the duties of the State or local position will conflict or interfere with the individual's official duties as a Federal employee, provided that the employing department or agency will be considered as the sole judge in determining these factors.

5. The terms of Executive Order 8516 are subject to the general political activity restrictions of section 4.1 of Civil Service Rule IV and the Hatch Act. Therefore the

authority granted by the Executive order can in no way be construed as authorizing any person subject to such political activity restrictions to become a candidate for election or re-election to any public elective office which is to be filled in an election involving party candidates.

EXECUTIVE ORDERS CREATING EXCEPTIONS TO THE EXECUTIVE ORDER OF JANUARY 17, 1873

Federal employees are again cautioned that the authority conferred by these orders is subject to the general restrictions of the Hatch Act. Thus, these orders do *not* authorize Federal employees to be candidates for *any* elective office that is to be filled in an election involving party candidates for public office.

A brief summarization of these orders is as follows:

Employees of the Department of Agriculture.—Officers and employees of the Department of Agriculture are authorized to hold State and Territorial positions when such action is deemed necessary by the Secretary of Agriculture to secure a more efficient administration (Executive order of June 26, 1907).

Collectors of cotton statistics, Bureau of the Census.—State and county officials may be appointed special agents under the Bureau of the Census for the collection of cotton statistics (Executive order of August 4, 1909).

Moderators of town meetings.—The temporary office of moderator of a town meeting and offices of a like character are excepted from the operation of the order of January 17, 1873 (Executive order of August 24, 1912).

Employees of the Reclamation Service and the National Park Service.—Employees of the Reclamation Service and the National Park Service may, with the approval of the Secretary of the Interior, accept appointments as deputy State fish or game wardens, if no compensation is attached to the position (Executive order of July 9, 1914).

Lighthouse Service—Laborers.—Laborers in charge of lights in the Lighthouse Service [5] are excepted from the operation of the order of January 17, 1873 (Executive order of October 6, 1915).

Special agents, Department of Labor.—Persons holding State, Territorial, or municipal positions may be appointed as special agents when such action is deemed necessary by the Secretary of Labor to secure a more efficient administration of any law coming within the purview of the Department of Labor (Executive order of January 2, 1923).

Employees of the Veterans' Administration.—Officers and employees of the United States Veterans' Administration serving in a medical capacity and on a part-time basis may with the consent of the Administrator hold State, county, or municipal positions in which employed in a medical capacity. Officers and employees of the United States Veterans' Administration may with the consent of the Administrator accept appointments under State, county, or municipal authority as deputy sheriffs (Executive order of August 6, 1924).

Employees of the Alaska Railroad.—Employees of the Alaska Railroad, permanently residing in municipalities on the line of the railroad, are permitted to become candidates for and hold municipal office therein (Executive order of October 22, 1926).

Appointments in the Department of Commerce.—Persons holding State, Territorial, or municipal positions may receive, unless prohibited by law, appointments under the Department of Commerce when the Secretary of that Department deems such employment necessary to secure more efficient administration of the duties of his department (Executive order of July 3,1931).

Officers of the Public Health Service.—Officers of the Public Health Service [6] are permitted, upon recommendation of the Surgeon General of the Public Health Service, and the approval of the Secretary of the Treasury, to hold office in State, Territorial, or local health organizations, in order to cooperate with and aid State,

[5] The Lighthouse Service has been consolidated with the Coast Guard, Treasury Department.
[6] The Public Health Service is now under the Federal Security Agency.

Territorial, or local health departments; and State, Territorial, or local health officials or employees are permitted, unless prohibited by law, to hold office in the Public Health Service when the Surgeon General and the Secretary of the Treasury deem such employment necessary to secure a more efficient administration of the duties imposed upon the Public Health Service (Executive order of August 31, 1931).

Officers under municipalities of the Virgin Islands.—Membership in the Colonial Council of the Municipality of St. Thomas and St. John, or in the Colonial Council of the Municipality of St. Croix, Virgin Islands, being unremunerative positions, shall not be deemed disqualification for employment in the Federal service of the Virgin Islands, notwithstanding the Executive order of January 17, 1873, provided it does not interfere with the efficient discharge of the duties of the Federal position, of which the head of the department under which the position is held will be the judge (Executive order of February 27, 1933).

Employees of the National Park Service.—Employees of the National Park Service are permitted, with the approval of the Secretary of the Interior, to accept appointments as deputy sheriffs under the laws of the States or Territories in which such employees may be on duty: *Provided,* That their services as such deputy sheriffs shall be without compensation and shall not in any manner interfere or conflict with the performance of their duties as employees of the National Park Service (Executive order of April 3, 1936).

Medical officers, Indian Service.—Officers and employees of the Indian Service, Department of the Interior, serving in a medical or sanitary capacity, either on a part-time or full-time basis, may hold, with the consent of the Secretary of the Interior, State, county, or municipal positions of a similar character: *Provided,* That such services shall not in any manner interfere or conflict with the performance of their duties as officers or employees of the Indian Service: *And provided further,* That there shall be no additional compensation when the Federal officer or employee is carried on a full-time basis (Executive order of May 13, 1936).

District advisers in the Department of the Interior under the act of June 28, 1934.—State, county, or municipal officers, when duly elected by qualified voters of a grazing district, may be appointed by the Secretary of the Interior to serve as district adviser under the act of June 28, 1934 (48 Stat. 1269), as amended by the act of July 14, 1939 (Public, No. 173, 76th Cong.), for intermittent duty, when the Secretary of the Interior deems such services necessary in the interest of grazing on public lands (Executive order of June 17, 1937).

Immigration inspector, Department of Labor, Virgin Islands.—Officers and employees of the Municipalities of St. Thomas and St. John or of the Municipality of St. Croix, Virgin Islands, may be appointed to the position of immigration inspector for the Virgin Islands (Executive order of November 6, 1937).

Employees of the Department of the Interior.—Officers and employees of the Interior Department, upon approval of the Secretary of the Interior, may hold office under State, Territorial, and municipal governments engaged in cooperative and related work with the Department, provided that the services to be performed pertain to such work and do not interfere with the performance of the Federal duties. State, Territorial, and municipal employees engaged in cooperative and related work with the Interior Department may be appointed in the Department of the Interior when the Secretary deems such employment necessary to secure more efficient administration of said work. Appointments of such officers and employees to positions subject to the civil-service laws must be made in accordance with such laws (Executive order of January 21,1938).

Employees of the United States Marshal for the Virgin Islands.—Any officer or employee of the police or prison departments of the Territorial and municipal governments of the Virgin Islands may be appointed to the position of deputy or any other position in the office of the United States Marshal for the Virgin Islands (Executive order of May 24,1938).

Employees of the Division of Grazing, Department of the Interior.—Employees of the Division of Grazing of the Department of the Interior, with the approval

of the Secretary, may accept appointment as deputy fire warden, deputy fish warden, or deputy game warden under the States in which such employees may be on duty, provided that their services in the State position are without compensation and do not interfere with the performance of the duties of the Federal position (Executive order of August 4, 1938).

School teachers and instructors.—Officers and employees of the Federal Government may hold positions as teachers or instructors in any State, Territorial, or municipal school or university, provided, that their holding of such position shall not in any manner interfere or conflict with the performance of their duties during their regular hours of duty as officers or employees of the Federal Government (Executive order of April 11, 1940).

Employees of the Social Security Board, Federal Security Agency.—Officers and employees of the Social Security Board, Federal Security Agency, upon recommendation of the Board and approval of the Federal Security Administrator, may hold office under State, Territorial, and municipal governments engaged in cooperative and related work with the Board, as authorized by Federal and State laws, provided that the services to be performed pertain to such work and do not in any manner interfere or conflict with the performance of the Federal duties. State, Territorial, and municipal officers or employees engaged in cooperative and related work with the Social Security Board may accept appointment in and serve under the Social Security Board when the Board and the Administrator deem such employment necessary to secure a more efficient administration of the duties imposed upon the Social Security Board, provided that the appointment of any such officer or employee to a position subject to civil service laws under the Social Security Board shall be made in accordance with civil service laws, rules, and regulations (Executive order of April 29, 1940).

Employees of the Bureau of Reclamation, Department of the Interior.—Employees of the Bureau of Reclamation, with the approval of the Secretary of the Interior, may accept appointments as constables or deputy sheriffs under the laws of the States or Territories in which such employees may be on duty, provided that their services as such constables or deputy sheriffs shall be without compensation and shall not in any manner interfere or conflict with the performance of their duties as employees of the Bureau of Reclamation (Executive order of April 28, 1947).

Employees of the United States Atomic Energy Commission.—Officers and employees of the Atomic Energy Commission, with the approval of the General Manager thereof or one of his designees, may hold State or local offices, under the laws of the States in which such employees may be on duty, provided that the General Manager or his designee shall determine in each instance that holding such office shall not in any manner interfere or conflict with the performance of the duties of such persons as employees of the Commission (Executive order of March 15, 1949).

Offices under municipality of Norris, Tennessee.—Officers and employees of departments, offices, and agencies, including corporations, in or under the executive branch of the Government of the United States who are residents of the City of Norris, Tenn., may hold municipal office under the laws of the State of Tennessee and the applicable laws and ordinances of the City of Norris, Tenn., provided that in each instance the Federal agency concerned shall approve the holding of such office by the Federal officer or employee involved and shall determine that the holding of such office will not in any manner interfere or conflict with the performance of the duties of such person as an officer or employee of the Federal Government (Executive order of May 6, 1949).

NOTE.—*Utilization of service of State and local officers.*—The heads of a number of Federal agencies are authorized by specific statutes to employ the services of State and local officers.

VIII. Criminal Law Violations and Related Subjects

In addition to being restricted by the act of August 2, 1939 (as amended), civil-service rules, Executive orders, and departmental regulations, the freedom of officers and employees of the executive civil service to engage in politics is limited by a number of statutes. These statutes are generally applicable to all officers and employees of the United States, whether or not in the competitive service, and, in some cases, the language of the statute is sufficiently broad to include any person receiving compensation for services from money derived from the Treasury of the United States, and other persons. These statutes are set forth in the following sections. Some of the activities prohibited under penalty of fine and imprisonment are:

(1) Solicitation or receipt of political contributions by one officer or employee from another.

(2) The giving or handing over of a political contribution by one employee to another.

(3) Solicitation or receipt of political contributions in a Federal building by any person, whether or not an employee of the Government.

(4) Solicitation or receipt by any person of political contributions from any person receiving any benefit under any act of Congress appropriating funds for relief.

(5) Solicitation or receipt of any thing of value, either for personal reward or as a political contribution, in return for the promise to use, or the use of, influence to secure an appointive office under the United States.

(6) Payment or the offer of payment for the use of influence in securing appointive office under the United States.

(7) Promising employment, compensation, or other benefit made possible by act of Congress as consideration or reward for political activity.

(8) Discrimination by an officer or employee in favor of, or against, another officer or employee on account of political contributions.

(9) Depriving any person on account of race, creed, color, or political activity, of compensation or other benefit made possible by any act of Congress appropriating funds for relief.

(10) Disclosure for political purposes of any list or names of persons receiving benefits under an act of Congress appropriating funds for relief and the receipt of such a list or names for political purposes.

POLITICAL ASSESSMENTS

Solicitation of Political Contributions

The United States Code, title 18, section 602, reads as follows:

Whoever, being a Senator or Representative in, or Delegate or Resident Commissioner to, or a candidate for Congress, or individual elected as, Senator, Representative, Delegate, or Resident Commissioner, or an officer or employee

of the United States or any department or agency thereof, or a person receiving any salary or compensation for services from money derived from the Treasury of the United States, directly or indirectly solicits, receives, or is in any manner concerned in soliciting or receiving, any assessment, subscription, or contribution for any political purpose whatever from any other such officer, employee, or person, shall be fined not more than $5,000 or imprisoned not more than three years, or both.

Solicitation From Benefit Recipients

The United States Code, title 18, section 604, reads as follows:

Whoever solicits or receives or is in any manner concerned in soliciting or receiving any assessment, subscription, or contribution for any political purpose from any person known by him to be entitled to, or receiving compensation, employment, or other benefit provided for or made possible by any Act of Congress appropriating funds for work relief or relief purposes, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

Furnishing List of Benefit Recipients

The United States Code, title 18, section 605, reads as follows:

Whoever, for political purposes, furnishes or discloses any list or names of persons receiving compensation, employment or benefits provided for or made possible by any Act of Congress appropriating, or authorizing the appropriation of funds for work relief or relief purposes, to a political candidate, committee, campaign manager, or to any person for delivery to a political candidate, committee or campaign manager; and

Whoever receives any such list or names for political purposes—

Shall be fined not more than $1,000 or imprisoned not more than one year, or both.

Circulars of Solicitation Bearing Names of Federal Employees

In an opinion of October 17, 1902 (24 Op. 133), the Attorney General held that the sending of a circular letter by a political committee to Federal officers and employees soliciting financial aid in Congressional or State elections, upon or attached to which appear the names of Federal officers or employees, is a violation of section 11 of the Civil Service Act (now sec. 602, title 18, of the U. S. Code), which declares that no officer or employee of the Government shall be in any manner concerned in soliciting or receiving any assessment or contribution for any political purpose whatever from any officer or employee of the United States. The statute unquestionably condemns all such circulars, notwithstanding the particular form of words adopted, in order to show a request rather than a demand, and to give the responses a quasi-voluntary character.

"Political Assessments" Defined

The following is an extract from the decision in *United States* v. *Scott* (74 Fed. 213), in the Circuit Court of the District of Kentucky, rendered October 7, 1895, by Taft, J.:

To charge a man with soliciting a contribution from United States officers for a political purpose carries with it by implication a charge that the accused knew the purpose for which the contribution was solicited. The words "for a political purpose" may reasonably be construed to qualify not only the contribution but the solicitation. Similarly, to charge that a man received from another his contribution for a political purpose, by implication charges that the reception was for the same

purpose as the contribution. * * * Nor was it necessary to set out the specific averment that the defendant knew that the persons from whom the contributions were received were officers of the United States.

The following extract is from the decision rendered by McCall, J., in the case of *United States* v. *Dutro, L. W.*, 1913, Western District of Tennessee (unreported):

The statute under which the indictment was found prohibits (and I shall speak of this concrete case) the postmaster at Memphis, Tenn., from receiving, or being in any manner concerned in receiving, any assessment, subscription, or contribution for any political purpose whatever from any official, clerk, or employee of the United States.

There are four counts in the indictment. Two of them charge the defendant with receiving subscriptions and contributions for political purposes from an officer, clerk, or employee of the United States, and two of them charge defendant with being concerned in receiving such assessment or subscription for political purposes from a clerk or employee of the United States.

Evidently one of the purposes of Congress in enacting the legislation was to prohibit superior officers from bringing pressure to bear upon their subordinates in order to secure contributions for campaign purposes, and the act is couched in very broad terms.

This evidence (which so far is uncontradicted) shows that the defendant, Mr. Dutro, did receive two contributions for campaign purposes from an officer or clerk or employee of the United States. Whatever may have been Mr. Dutro's frame of mind in regard to his connection with it, the one fact remains, as the evidence shows, that he received these contributions for the purposes and from the parties which the law prohibits. Perhaps and no doubt he did so without any thought that he was violating any statute, and felt that he was acting purely as a conveyor of these contributions to the political parties for whom they were intended, to accommodate those who were making the contributions, and purely as a personal matter, but I think under the evidence his action was in violation of the statute.

The other two counts, as I have pointed out, charge the defendant with being concerned in receiving assessments, subscriptions, or contributions for campaign purposes from a clerk, employee, or officer of the United States. There is a controversy here between counsel as to what the word "concerned" means. From what the law books say which have been read here, and from my own impression, it seems that the word "concerned" means to be interested in, or take part in, receiving such contributions. If Mr. Dutro, by his connection with these two subscriptions, took a part in the contributions being made by employees of the Government for campaign purposes, he would be guilty. I think the natural construction of the phrase or term or word necessarily leads to the conclusion that he did take a part in receiving the contributions, because he received and conveyed them from the contributors to the parties for whom they were intended, and, as the proof so far shows, he knew that the parties who were making the contributions were clerks under him in the Post Office Department, and he knew the purpose for which the money was to be used and where it was to go.

The foregoing case definitely establishes the principle that an employee of the Government who receives a political contribution from another such employee as a mere agent or messenger for the purpose of turning it over to a political organization commits a violation of the statute.

Solicitation or Receipt of Political Contributions in Federal Buildings

The United States Code, title 18, section 603, reads as follows:

Whoever, in any room or building occupied in the discharge of official duties by any person mentioned in section 602 of this title, or in any navy yard, fort, or

arsenal, solicits or receives any contribution of money or other thing of value for any political purpose from any such person, shall be fined not more than $5,000 or imprisoned not more than three years, or both.

Letters Addressed to Federal Buildings

The Commission by a minute of March 23, 1897, held that addressing a letter to a Government employee in a Government building soliciting political contributions is a solicitation in that building, but notwithstanding numerous violations no opportunity arose of having the question judicially determined until 1907, when an indictment was obtained against Edward S. Thayer at Dallas, Tex. A demurrer to the indictment was sustained on the ground that the act required the personal presence in the Government building of the solicitor. Appeal was taken to the Supreme Court, and the judgment of the lower court was reversed. (*United States* v. *Thayer*, 209 U. S. 39.) The opinion of the Court, delivered by Justice Holmes on March 9, 1908, establishes definitely the proposition that solicitation by letter or circular addressed to and delivered by mail or otherwise to an officer or employee of the United States at the office or building in which he is employed in the discharge of his official duties is a solicitation "in a room or building" within the meaning of this section, the solicitation taking place where the letter was received. (See also *United States* v. *Smith*, 163 Fed., 926, where the letter was personally delivered.)

Letters Delivered in Federal Buildings

The Commission holds that the sending through the mails of letters to Government employees soliciting political contributions, their street or home address being omitted from the envelopes with the result that the letters are delivered by the postal authorities in the Government building in which they are employed, constitutes a violation of section 603 of the Code. It is a maxim of the law that a person is presumed to intend the natural and probable consequences of his acts, and failure or omission to take measures to avoid delivery of such letters in a Government building will render the offender liable to prosecution.

Discrimination on Account of Political Contributions

The United States Code, title 18, section 606, reads as follows:

Whoever, being one of the officers or employees of the United States mentioned in section 602 of this title, discharges, or promotes, or degrades, or in any manner changes the official rank or compensation of any other officer or employee, or promises or threatens so to do, for giving or withholding or neglecting to make any contribution of money or other valuable thing for any political purpose, shall be fined not more than $5,000 or imprisoned not more than three years, or both.

Payment of Political Contributions by One Employee to Another

The United States Code, title 18, section 607, reads as follows:

Whoever, being an officer, clerk, or other person in the service of the United States or any department or agency thereof, directly or indirectly gives or hands over to any other officer, clerk, or person in the service of the United States, or to any Senator or Member of or Delegate to Congress, or Resident Commissioner,

any money or other valuable thing on account of or to be applied to the promotion of any political object, shall be fined not more than $5,000 or imprisoned not more than three years, or both.

POLITICAL COERCION

Section 2, clause second, of the Civil Service Act directs that the civil-service rules "shall provide and declare as nearly as the conditions of good administration will warrant, as follows: * * * Sixth. That no person in said service has any right to use his official authority or influence to coerce the political action of any person or body." In pursuance of this section, Civil Service Rule IV, section 4.1, provides, in part, that "Persons in the executive branch * * * shall not use their official authority or influence for the purpose of interfering with an election or affecting the result thereof." This provision applies to all persons in the executive civil service, and is held to prohibit a superior officer from requesting or requiring the rendition of any political service or the performance of political work of any sort by subordinates.

Intimidation and Coercion of Voters in Elections of Certain Officers

The United States Code, title 18, section 594, reads as follows:

Whoever intimidates, threatens, coerces, or attempts to intimidate, threaten, or coerce, any other person for the purpose of interfering with the right of such other person to vote or to vote as he may choose, or of causing such other person to vote for, or not to vote for, any candidate for the office of President, Vice President, Presidential elector, Member of the Senate, or Member of the House of Representatives, Delegates or Commissioners from the Territories and Possessions, at any election held solely or in part for the purpose of electing such candidate, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

Administrative Employees of United States or Any State Use of Official Authority To Influence Elections

The United States Code, title 18, section 595, reads as follows:

Whoever, being a person employed in any administrative position by the United States, or by any department or agency thereof, or by the District of Columbia or any agency or instrumentality thereof, or by any State, Territory, or Possession of the United States, or any political subdivision, municipality, or agency thereof, or agency of such political subdivision or municipality (including any corporation owned or controlled by any State, Territory, or Possession of the United States or by any such political subdivision, municipality, or agency), in connection with any activity which is financed in whole or in part by loans or grants made by the United States, or any department or agency thereof, use his official authority for the purpose of interfering with, or affecting, the nomination or the election of any candidate for the office of President, Vice President, Presidential elector, Member of the Senate, Member of the House of Representatives, or Delegate or Resident Commissioner from any Territory or Possession, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

This section shall not prohibit or make unlawful any act by any officer or employee of any educational or research institution, establishment, agency, or system which is supported in whole or in part by any State or political subdivision thereof, or by the District of Columbia or by any Territory or Possession of the United States; or by any recognized religious, philanthropic, or cultural organization.

Use of Official Authority in Coercing Voters

The United States Code, title 18, section 598, reads as follows:

Whoever uses any part of any appropriation made by Congress for work relief, or for increasing employment by providing loans and grants for public-works projects, or exercises or administers any authority conferred by any Appropriation Act for the purpose of interfering with, restraining, or coercing any individual in the exercise of his right to vote at any election, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

POLITICAL DISCRIMINATION

Failure To Contribute or Render Political Service Not Prejudicial

Section 2, clause second, of the Civil Service Act reads as follows:

Fifth, that no person in the public service is for that reason under any obligations to contribute to any political fund, or to render any political service, and that he will not be removed or otherwise prejudiced for refusing to do so.

Section 4 of the act of August 2, 1939, 53 Stat. 1147 (U. S. Code, title 18, section 61c), reads as follows:

It shall be unlawful for any person to deprive, attempt to deprive, or threaten to deprive, by any means, any person of any employment, position, work, compensation, or other benefit provided for or made possible by any act of Congress appropriating funds for work relief purposes, on account of race, creed, color, or any political activity, support of, or opposition to any candidate or any political party in any election.

Deprivation of Employment, Compensation, or Other Benefit

The United States Code, title 18, section 601, reads as follows:

Whoever, except as required by law, directly or indirectly, deprives, attempts to deprive, or threatens to deprive any person of any employment, position, work, compensation, or other benefit provided for or made possible by any Act of Congress appropriating funds for work relief or relief purposes, on account of race, creed, color, or any political activity, support of, or opposition to any candidate or any political party in any election, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

Politics Not To Be Considered in Filling Vacancies

Section 4.3 of Civil Service Rule IV reads as follows:

In his discretion an appointing officer may fill any position by appointment through the competitive system from a certificate of eligibles issued under authority of the Commission, or by promotion, demotion, reassignment, transfer, reinstatement, or restoration in accordance with the Civil Service Regulations. He shall exercise his discretion in all personnel actions solely on the basis of merit and fitness and without regard to political or religious affiliations, marital status, or race.

PURCHASE AND SALE OF PUBLIC OFFICE

Offer To Procure Appointive Public Office

The United States Code, title 18, section 214, reads as follows:

Whoever pays or offers or promises any money or thing of value, to any person, firm, or corporation in consideration of the use or promise to use any influence to procure any appointive office or place under the United States for any person, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

Acceptance or Solicitation To Obtain Appointive Public Office

The United States Code, title 18, section 215, reads as follows:

Whoever solicits or receives, either as a political contribution, or for personal emolument, any money or thing of value, in consideration of the promise of support or use of influence in obtaining for any person any appointive office or place under the United States, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

Promise of Employment, Compensation, or Other Benefit

The United States Code, title 18, section 600, reads as follows:

Whoever, directly, or indirectly, promises any employment, position, work, compensation, or other benefit, provided for or made possible in whole or in part by any Act of Congress, to any person as consideration, favor, or reward for any political activity or for the support of or opposition to any candidate or any political party in any election, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

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