

Ethics

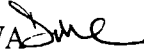
THE WHITE HOUSE
WASHINGTON

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MEMORANDUM FOR WHITE HOUSE OFFICE
OFFICE OF POLICY DEVELOPMENT AND
OFFICE OF THE VICE PRESIDENT STAFF

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SUBJECT: Presidential Campaign-Related Political Activity

This memorandum provides employees of the White House Office, the Office of Policy Development and the Office of Vice President with guidance regarding Presidential campaign-related political activity.¹ With the Vice President's formal decision to seek election to the Presidency, we wanted to review the rules governing campaign activity by federal employees.

I. Governing Principle

Under the Hatch Act Reform Amendments of 1993 (the Act), most employees² paid from appropriations for the Executive Office of the President (EOP) may engage in political activity: 1) while on duty, 2) while in a federal building, and 3) while using government vehicles, provided that "*the costs associated with that activity are not paid for by money derived from the Treasury of the United States.*" 5 U.S.C. § 7324(b)(1). Activities which incur costs include:

¹ General guidance regarding permissible political activity by federal employees under the Hatch Act Reform Amendments of 1993 is provided in the White House Staff Manual, *Legal And Ethical Regulations for White House Employees*, Section D (1997).

² Executive Office of the President (EOP) staff members whose duties continue outside normal duty hours and while away from post may engage in political activity while on duty; all other EOP staff members only may engage in political activity during non-duty hours and while not in a federal building. 5 U.S.C. § 7324(b).

faxing, copying, use of computers and printers, and long-distance phone calls.³ It is important that staff members consider this principle in relation to their activities during the Vice President's election campaign; it often will help avoid a problem before it arises.⁴

II. Distinguishing Political and Official Activity

Perhaps one of the more difficult aspects of evaluating on-duty conduct is discerning the difference between official and political activity. As a general matter, activity is political if its primary purpose involves the Vice President's role as a candidate for office or the President's and Vice President's roles as leaders of the Democratic Party (e.g., appearing at party functions, fundraising, campaigning for specific candidates). 6 O.L.C. 214, 217 (1982). Activity is official if it relates to the President's policies, programs or legislative agenda, even if it concerns matters on which opinion is politically divided. *Id.* Obviously, however, there are gray areas in between these two definitions; if you have questions regarding particular activities, you should contact the Counsel's Office or the Vice President's Counsel Office for guidance.

III. Prohibitions on Certain Political Activity

While White House staff may engage in political activity, there are still certain restrictions on such conduct. A number of criminal statutes prohibit the use of federal programs, property or employment for political purposes. Violation of these statutes is punishable by imprisonment and a substantial fine. It is therefore imperative that staff observe the prohibitions outlined below.

Federal employees, including White House employees, may not:

- (1) use their official authority or influence for the purpose of interfering with or affecting the result of a nomination or an election of any candidate;
- (2) intimidate, threaten, command or coerce any federal employee to engage in or not to engage in any political activity;

³ Certain costs are not considered to be borne by the Treasury because they are costs that the government already has incurred for official purposes in the absence of political activity, e.g., office space; employee salaries. 5 C.F.R. § 734.503. But see IV, Section D.

⁴ It is important to understand that for the purposes of this memorandum, the official responsibilities that customarily have been performed by the Political Affairs Office constitute "official" and not "political" activities. Therefore, the restraints cited herein do not in general affect the activities, office maintenance, or other costs undertaken or incurred in the discharge of such responsibilities.

- (3) **ever knowingly solicit, accept or receive a political contribution from any person, including a subordinate or other federal employee;**⁵
- (4) run for the nomination or as a candidate for election to a partisan political office;
- (5) knowingly solicit or discourage the participation in any political activity of any person who has an application for any compensation, grant, contract, ruling, license, permit or certificate pending before the staff member's office;
- (6) promise or withhold federal benefits (jobs, grants, contracts) based on political support or nonsupport -- including favoring or penalizing employees or withholding employment to induce someone to make a political contribution or otherwise participate in political activity; or,
- (7) knowingly solicit or discourage the participation in any political activity of any person who is the subject of, or a participant in, an ongoing investigation, audit, or enforcement action being carried out by the employee's office.

IV. Limitations on Campaign Activities By White House Staff

We have set forth below guidelines to ensure that political activity undertaken by White House staff is within the limits prescribed by law and White House policy. While these guidelines will cover many day-to-day situations that arise, the simplest rule to follow is the "common-sense" practice that anything obviously political that involves the use of resources should be done by the campaign, even if doing it here can be "legally" justified.

A. Campaign Meetings on Government Property

1. Small meetings involving campaign or political officials and White House staff members may be held in a White House staff member's office, the West Wing or the Old Executive Office Building, or, if it is a luncheon or breakfast meeting, in the White House Mess, provided that such meetings do not interfere with the conduct of Government business. Such gatherings must be organized by White House staff members who are permitted to engage in political activity in a federal building. Government buildings, including White House offices and meeting rooms, should not be used for meetings or events organized by a campaign or political committee.

2. Campaign fundraising activities of any kind are prohibited in or from government buildings. In addition, federal employees are prohibited from soliciting or accepting

⁵ The sole exception to this prohibition is for federal labor or employee organizations. Please consult our Office before undertaking any action implicating this exception.

campaign contributions. This means that fundraising events may not be held in the White House; also, no fundraising phone calls or mail may emanate from the White House or any other federal building.

3. Campaign-sponsored or other political activities (receptions, dinners, meetings, but not fundraisers) may be held in the Executive Residence, provided that the President, First Lady or some other family member attends the event. Similarly, campaign or other political events (other than fundraisers) also may be held at the Vice President's Residence as long as the Vice President, Mrs. Gore, or some other family member attends the event. The costs of such events at either residence must be paid by the proper campaign or political committee.

B. Campaign Contributions by Executive Branch Employees

Under 18 U.S.C. § 603, as amended, civilian Executive Branch employees are no longer prohibited from giving a political contribution to the authorized election campaign of their "employer or employing authority," which was previously interpreted as potentially including election campaigns of the President or Vice President. While White House and other Executive Branch employees may now make voluntary contributions to such campaigns, their political activity continues to be governed by the limitations imposed by the Hatch Act, as amended.

C. Receipt of Campaign Contributions at the White House

Federal law prohibits the receipt and acceptance of campaign contributions in federal buildings. Occasionally, contributions intended for a campaign committee may be addressed to the White House and delivered with other mail. Such contributions that come to the White House Office should be taken to Dan Burkhardt in the Correspondence Department in the Old Executive Office Building, Room 94; those that come to the Office of Vice President should be taken to Bill Mason in the Correspondence Department in the Old Executive Office Building, Room 263.

There should be no acknowledgment of receipt of a contribution from the White House to the contributor. If a contribution is accompanied by a letter that primarily addresses governmental issues, a response to those issues may be prepared and sent from the White House; however, there should be no reference to the contribution.

D. Use of Leave

1. Some White House staff members, as leave-earning employees, are entitled to specific amounts of annual leave. As discussed below, such leave may be used for political purposes; however, one cannot take an "advance" on annual leave to engage in political activities. Those White House staff members who are not entitled to annual leave (e.g., commissioned officers) may use a maximum of 15 days of compensatory leave (i.e., the equivalent of vacation time) for political purposes.

2. All White House staff members must perform their official duties for a minimum of 40 hours per week or 80 hours per two-week pay period in order to receive their full federal salary. If a staff member does not complete 40 hours of official duty in any week, the difference between the number of hours completed and 40 hours must be covered by annual leave, leave without pay, official holidays or made up in the second week of that pay period. The difference cannot be made up in a subsequent pay period.

3. White House staff members who complete a minimum of 40 hours of official duty during any full week (Monday-Sunday) may be absent from their official duty station for no more than one weekday (Monday-Friday) solely for the purposes of engaging in political activity without taking annual leave, compensatory leave, or leave without pay. If a staff member desires to be absent for political purposes for more than one weekday in any week, each additional weekday must be covered by annual leave or leave without pay, regardless of the number of official hours worked during that week. In other words, it is not permissible for a staff member to put in 40 hours of official duty in the first three days of the week and then take the remaining two weekdays off for campaigning without using annual leave, compensatory leave, or leave without pay.

4. Sick leave cannot be used to cover an absence from official duty for the purpose of engaging in political activity.

5. White House staff members are permitted to take leave without pay to cover absences from official duties for the purposes of engaging in political activity.

6. Staff members may use only eight hours of compensatory leave for political activity during any 7-day period unless additional leave is approved by Counsel's Office.

7. When annual leave, compensatory leave or leave without pay is used for political purposes:

(a) Staff members must submit a request for leave for political purposes in advance of the leave period to their White House department supervisor for approval.

(b) Following approval, the office supervisor should forward the request to the Counsel's Office for approval prior to the leave period.

E. USE OF GOVERNMENT VEHICLES AND MESSENGERS

Generally, government vehicles -- including White House vehicles -- may not be used for political purposes. This means that White House cars may not be used to transport staff members or materials to or from any political committee office, including the Vice President's campaign committee, or event. In addition, White House messengers may not be used to deliver

or pick up materials from the DNC or the Vice President's campaign committee. White House vehicles also may not be used to transport staff members or political materials to airports or any other locations if the purpose of the trip is political.

The only exception, excluding official use for compelling security considerations,⁶ is for travel to or from a political event in the following circumstances:

- (1) the White House staff member is the Chief of Staff or an EOP agency head; and,
- (2) the use of the vehicle will occur during the regular work week (Monday through Friday, excluding weekends and holidays); and,
- (3) the political or candidate campaign committee pays for the anticipated cost of the vehicle prior to the travel.

Because of the special requirements surrounding departures and arrivals from Andrews Air Force Base, White House vehicles may be used to transport White House staff members to that facility when they are accompanying the President, Vice President, First Lady or Mrs. Gore on a campaign trip. The campaign committee must reimburse the government for the costs of a large rental vehicle for the President or Vice President, as well as for the costs of any other vehicles that are not solely related to the security of the principal traveler (e.g., staff vans).

When the President or Vice President is participating in a campaign event in the Washington, D.C., area or another location where White House cars are available for official purposes, White House cars may be used for the Presidential motorcade, with appropriate reimbursement for all vehicles -- including the amount for a large rental vehicle for the President or Vice President -- except those vehicles essential to the security of the President or Vice President (e.g., Secret Service vehicles).

F. USE OF COMMUNICATIONS SYSTEMS AND COPYING MACHINES

Generally, official White House resources should not be used for campaign purposes. In certain instances where official resources are used for purposes that may be considered campaign-related, there must be prompt reimbursement for the costs incurred by the government. To ensure that White House resources are not used to support campaign activity, White House staff should use only that equipment that has not been paid for from appropriated funds for political

⁶ Compelling security considerations requiring use of a government vehicle include, for example, a threat to the life or safety of a staff member or overriding national security concerns. Specific approval must be requested from and provided by the Counsel's Office prior to the use of a government vehicle for compelling security considerations.

activity; if no such equipment is available, the campaign committee should undertake the activity in question.

1. In those limited circumstances in which government communications systems -- telephone, telegraph, telecopy or radio -- are used for campaign-related purposes, appropriate reimbursement or payment at the "usual or normal charge," 15 C.F.R. § 100.7(a)(1)(B), must be made by the proper political campaign committee.

2. Because of the need for liaison between limited numbers of White House staff members and various political committees, telephones may be used for local calls. However, White House telephones must not be used, even locally, for regular committee activities such as recruiting volunteers or fundraising.

3. Government credit cards must not be used for campaign-related or other political calls, whether made from inside or outside the White House.

4. Government operators should not be used by staff members to place campaign-related or other political long distance calls.

5. Campaign-related long distance telephone calls made from the White House may be made only if charged to a credit card issued by the proper campaign or political committee (or on telephones installed and maintained by such committees for exclusive use in dealing with campaign or political matters).

6. The incoming WATS System (800 # or 888#) should not be used to call into the White House on campaign or political matters.

7. White House Communications Agency (WHCA) facilities provided outside the White House in connection with travel may continue to be used during mixed and wholly political trips. The facilities must be used exclusively for communications relating to trip planning and arrangements and not for direct political purposes such as campaign fundraising and crowd-building.

8. Government copying machines also should not be used to reproduce materials for transmittal to a campaign or political committee.

G. USE OF PHOTOGRAPHS

1. White House photographers may continue to photograph all Presidential, First Lady, Vice Presidential and Mrs. Gore activities for the purpose of creating an archival record of this Administration. However, as a general rule, photographs taken by White House photographers at political events should not be used for distribution to individuals attending such events or for any other political or campaign purpose.

2. Photographs taken at events in the Executive Residence or the Vice President's residence (other than politically-sponsored events), at West Wing and East Wing meetings, and at non-political events outside the White House may be distributed consistent with regular practices.

3. A campaign or political committee will be expected to provide a photographer at all campaign and political events for which it desires to distribute photographs to the participants. White House photographers will not photograph receiving lines or greetings at campaign or political events, except to the extent necessary for archival purposes.

4. A campaign or political committee may purchase, for its use, photographs taken by White House photographers in those limited circumstances where those photographs provide the only source for a particular picture. All photograph purchase requests from the campaign or political committee must be directed to the Director of the White House Photo Office. A record of all campaign photo requests will be maintained by the Director of the Photo Office, who will be responsible for billing the campaign or political committee for all photo orders on a monthly basis at the normal rate and according to the procedures established by the Government for the purchase of such pictures.

H. CORRESPONDENCE

1. Campaign and political correspondence should not be produced at the White House using White House resources, nor can White House stationery, stamps or related supplies be used in the preparation of such correspondence at another location.

2. As stated earlier, federal law prohibits the receipt of contributions in Federal buildings. Occasionally, contributions intended for a campaign committee may be addressed to the White House and delivered with other mail. Such contributions should be taken to Dan Burkhardt, OEOB Room 94 for the White House Office; for the Office of Vice President they should be taken to Bill Mason, OEOB Room 263. There should be no acknowledgment of receipt of a contribution from the White House to the contributor. If the contribution is accompanied by a letter that deals primarily with governmental issues, a response dealing with those issues may be prepared and sent from the White House; however, there must be no reference to the contribution.

VI. CONCLUSION

These guidelines are designed to address many of the issues that you may confront during the Vice President's election campaign. Staff members are encouraged to contact our Office -- or the Vice President's Counsel's Office for OVP staff -- for guidance if you have any questions about appropriate activity by White House employees.

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OFFICE OF POLICY DEVELOPMENT

DOMESTIC POLICY COUNCIL

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