



TORII LEGAL ASSISTANCE

OFFICE OF THE STAFF JUDGE ADVOCATE



VIOLATE THE HATCH ACT AND YOU MAY GET FIRED BY: RUDY WARTELLA

On June 9, 2010, a federal employee working for the Department of Treasury was removed from her employment for violating the Hatch Act. The Merit Systems Protection Board (MSPB) ordered the removal based on the following five counts:

Count One: knowingly soliciting political contributions when she invited 16 people to a political fundraiser for then-Presidential candidate Barack Obamaⁱ.

Count Two: knowingly soliciting a political contribution to a Presidential candidate's political campaignⁱⁱ.

Count Three: violating the law by engaging in activity while on duty directed at the success of Obama and then Vice-Presidential candidate Joseph Bidenⁱⁱⁱ.

Count Four: violating the law by sending each e-mail from her government-issued computer and e-mail account and while occupying her government office, a room she used in the discharge of her official duties.

Count Five: violating the law by using her official authority or influence for the purpose of affecting the result of the 2008 Presidential election^{iv}.

The employee admitted to the charged activities, but didn't think that she violated the Hatch Act. In Hatch Act cases, the MSPB looks to the seriousness of the violation and the following aggravating and mitigating factors:

- (1) the nature of the offense and the extent of the employee's participation;
- (2) the employee's motive and intent;
- (3) whether the employee had received advice of counsel regarding the activity at issue;
- (4) whether the employee ceased the activities;
- (5) the employee's past employment record; and
- (6) the political coloring of the employee's activities.

The MSPB found the violations warranted removal. The MSPB further ruled that it was not necessary to prove that the employee knew she/he was violating the Hatch Act to sustain removal since knowledge of the Hatch Act (a federal law) is imputed to all federal employees (ignorance of the law is no defense).

The lesson from this case is clear: Hatch Act violations are serious and violators may be fired. To learn more about the Hatch Act, please go the following website: <http://www.osc.gov/hatchact.htm>. The Hatch Act applies to federal civilian employees. **The prohibitions on political activities for Soldiers are contained in Army Regulation 600-20, paragraph 5-3 and Appendix B.**

ⁱ Specifically, on or around September 18, 2008, the respondent sent an e-mail to 16 people entitled "FW: Michele Obama Speaking in Clinton, MD on Sunday 9/21" (the fundraiser e-mail). The e-mail read in pertinent part: "I don't know your political persuasions but thought you might be interested in the following. Michele Obama will be a speaker at an Obama fundraiser . . . The event costs \$75

for the dinner, show and speaker or \$35 for the speaker part Only. . . . Please see the link below to sign up and pass on." The e-mail contained a link to Obama's campaign website to find details about the fundraiser.

ⁱⁱ Specifically, on or around September 5, 2008, the respondent sent an e-mail entitled "FW: Obama Insight" (the Obama insight e-mail) to 14 people, three of whom were federal contract employees [Warren, Prentiss, and Barnes]. The e-mail contained a link to a website that presented a slideshow containing a campaign graphic and text, magazine covers, and pictures of Obama, his wife and family at campaign events. The first slide stated in pertinent part: "The Choice *is* Clear . . . Stand For Change . . . Become a part of the largest grassroots movement in the history of presidential politics. Make a donation below and own a piece of this campaign."

ⁱⁱⁱ Specifically, the respondent sent the e-mails referenced in Counts One and Two and several additional e-mails in September 2008 to from 2 to 18 recipients per e-mail. The e-mails included titles like "Vote in November great slide show," "Obama in Oregon," and "The Obama Shuffle," and contained information, text or pictures pertaining to Obama and/or Biden. For example, the respondent sent the Vote in November e-mail to 15 people; it contained a slideshow presentation that depicted images of the civil rights movement and of Obama and Biden; and some of the slides contained text, for instance, "It's Time VOTE November 4, 2008"; "Obama-Biden 'Yes We Can'"; and "Remember!!!! Many People Made Great Sacrifices . . . Even Died For Our Rights, Honor Them By Going To The Polls And Casting Your Ballot."

^{iv} Specifically, the respondent sent the September 5, 2008 Obama insight e-mail to recipients including Warren, Prentiss and Barnes, and the e-mail enclosed a slideshow presentation which in turn contained a solicitation for a political contribution as noted in Count Two. Further, the respondent sent the "Obama Shuffle" e-mail to recipients including Warren. The e-mail read in pertinent part: "This is funny, let's do the Obama Shuffle. . . . We have to learn this and teach others so that we can do this when Obama Wins. Please forward to everyone you know. . . ." The e-mail also contained a link to a website where recipients could watch a video, which began with a woman saying in pertinent part: "we have a hustle for Obama it's called Seniors [unintelligible] for Obama . . . we want each and every senior all around the world to join us doing this Hustle, when Obama wins, we are going to be doing this Hustle, so come on join us, let's do it. . ." and displayed people wearing campaign tee-shirts and line-dancing.

