



THE PRINCE GEORGE'S COUNTY  
GOVERNMENT  
OFFICE OF ETHICS AND ACCOUNTABILITY

Rushern L. Baker, III  
County Executive


Robin Barnes-Shell  
Executive Director

To: All County Employees

From: Robin Barnes-Shell, Executive Director, Office of Ethics and Accountability

Date: March 16, 2018

Re: Political Activities by County Employees



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Another election season is upon us, with the Primary Election scheduled for June 26, 2018 and the General Election on November 6, 2018. This memo is designed to provide general guidance to all County employees within the classified service<sup>1</sup>.

As with all complex issues, these general guidelines may not address an employee's specific question and all employees are encouraged to discuss specific concerns with the Office of Ethics and Accountability. County employees who occupy positions in the exempt service<sup>2</sup>,

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<sup>1</sup> Classified service means all positions not specifically defined under Section 902 of Article IX of the County Charter, and which are governed by the provisions of Subtitle 16 of the Prince George's County Code.

<sup>2</sup> The exempt service consists of: (1) elected officials; (2) the Chief Administrative Officer; (3) the directors and deputy directors of offices and departments in the executive branch; (4) the executive directors and members of boards and commissions; (5) the immediate staff of the County Executive; (6) the County Auditor; (7) persons assigned to hourly rated positions for temporary or seasonal help, provided that such persons are not compensated for more than 1000 hours work per twelve-month period; (8) experts or specialists performing temporary services; (9) persons employed as attorneys-at-law, except hearing examiners; (10) employees required to be covered by the State merit system; (11) aides for each member of the Council; (12) the Council Administrator, and (13) other positions recommended by the County Executive and approved by the County Council. *See* COUNTY CHARTER § 902.

including those who work for individual Councilmembers and the immediate staff of the County Executive, should seek specific guidance if they have questions; including any questions regarding their duty of political loyalty.<sup>3</sup> Employees of the following agencies should seek guidance from their appointing authority, or the Maryland Department of Budget & Management or the Maryland State Ethics Commission:

- Clerk of the Court;
- County Health Department;
- Department of Social Services;
- Register of Wills;
- Sheriff's Office; and
- State's Attorney's Office.<sup>4</sup>

**I. Free Speech and the General Right to Engage in Political Activity**

**Working for the County does not affect employees' rights or obligations under the U.S. Constitution, State Constitution, federal or State law.**

**Employees retain their rights to free speech.**

**State and County law permit employees to freely participate in any political activity and express any political opinion, or to refrain from doing so.**

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<sup>3</sup> See *Newell v. Runnels*, 407 Md. 578 (2008) for the standards to ascertain whether employees fall into what are generally known as political patronage positions.

<sup>4</sup> See *Smack v. Dep't of Health & Mental Hygiene*, 378 Md. 298 (2003) (Local Health Department employees subject to State Personnel and Pensions Article); *Menefee v. State*, 417 Md. 740 (2011) (Local DSS employees are subject to the Maryland Tort Claims Act); and COUNTY CODE § 2-291(a)(4.2).

**Political activity is best described as any activity that has as its major purpose promoting the success or defeat of a candidate, political party, question or prospective question submitted to a vote in any election.**

State law expressly protects the constitutional rights of all governmental employees, subject to certain generally accepted judicial limitations. *See* MD. CODE ANN., LOCAL GOV'T § 1-303. This includes the right to free speech preserved to citizens under the federal and State constitutions. *See* U.S. CONST. AMEND. I and MD. DEC. RIGHTS ART. 40. The County Code explains:

An employee may publicly or privately comment upon any matter of public policy of general interest and upon any subject that is not prohibited from disclosure by the Maryland Public Information Act. Notwithstanding the above, an employee may not represent the views of the agency/department in an official capacity nor disclose confidential information as defined under Maryland law.

COUNTY CODE § 16-237. Within the Local Government Article of the Annotated Code of Maryland are additional provisions that expressly secure the right of County employees to engage in political activity and express any political opinion or, conversely, refrain from doing so at their choice. MD. CODE ANN., LOCAL GOV'T § 1-303. This same right is set forth in the County Charter and County Code. COUNTY CHARTER § 909 and COUNTY CODE § 16-234.

Therefore, County employees may choose to engage (or not engage) in any political campaign or issue. This ability extends to supporting or opposing any ballot measure, candidate, elected official, political party, question, or prospective question submitted to a vote at any election. MD. CODE ANN., ELEC. LAW § 1-101(gg).

**II. General Restrictions on Right to Engage in Political Activity**

**Employees may not engage in any political activity while on the job during work hours.**

**Nor may employees advocate the overthrow of the government by unconstitutional or violent means.**

Employee political activity is subject to two statutory restrictions: (1) no political activity can be engaged in while on the job during work hours; and (2) employees cannot advocate for the unconstitutional or violent overthrow of government. MD. CODE ANN., LOCAL GOV'T § 1-304; COUNTY CHARTER § 909; COUNTY CODE § 16-234. County law also prohibits using County resources for private political activities. *See* COUNTY CHARTER § 909; COUNTY CODE § 2-293. Violation of these restrictions may be prosecuted as a misdemeanor. MD. CODE ANN., LOCAL GOV'T § 1-305.

**III. General Restrictions on County Officials**

**Employees may not be required to provide political or private service.**

State law expressly protects employees from being required or coerced to provide political service to a candidate, party, or in any other form. MD. CODE ANN., LOCAL GOV'T § 1-304. County law further protects employees from being compelled to provide any financial support or private service outside of their official job, whether political in nature or not. COUNTY CHARTER §§ 909, 1003.

**IV. Work Hours and County Resources**

**Work hours generally include the required daily hours of work, within a standard work week, prescribed by an appointing authority for individual employees and/or**

**various groups or units of employees under the appointing authority's jurisdiction.**

**Work hours does not include employees' time during an unpaid lunch break.**

**Employees may not use any County resources for any political activity, including but not limited to:**

- **Computers**
- **Copiers**
- **Email**
- **Envelopes**
- **Fax Machines**
- **Letterhead**
- **Paper**
- **Phones**
- **Vehicles**
- **Any other resource or material paid for or provided by the County.**

**If your work email accidentally ends up on a political activity listserv attempt to unsubscribe, or delete the email and report to OIT.**

Questions regarding official work hours may be directed to an employee's Departmental Human Resources Coordinator or their appointing authority. See COUNTY CODE § 16-102(a)(63) (Definition Work Schedules). See generally COUNTY RESOLUTION 21-2017 (Salary Schedule G), ¶ 2, 4, and 5. As noted above, unpaid lunch breaks do not constitute "work hours," and employees are free to engage in political activity during unpaid lunch breaks so long as they are not using County equipment or materials.

All County resources and materials are paid for with taxpayer dollars, thus these resources may not be used to advance the private political causes of individual employees. COUNTY CODE § 2-293(f) (Use of Resources). Failure to abide by these rules may result in disciplinary action, up

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to and including termination of employment. COUNTY CODE §§ 2-297(a)(C) & 16-193(c) (Conduct Related Disciplinary Actions).

Particular attention should be paid to the use of County email. *See* ADMINISTRATIVE PROCEDURE 119, ELECTRONIC INFORMATION POLICY. In the conduct of County business, employees provide their individual email addresses to hundreds of different users over the course of a year. Invariably, employees may end up on numerous mailing lists, including lists related to political activities and campaigns. Intentional receipt of emails related to political activities and campaigns violates Administrative Procedure 119, Electronic Information Policy. Section II(a). When accidentally included on such emails, employees should attempt to unsubscribe from the mailing list. Most political campaign emails offer the option of unsubscribing at the bottom of the email. In cases where this is not an option, employees should assess the best way to cease receipt of the emails or may contact the Office of Information Technology for assistance. Where the sender is an individual, that individual should be contacted and advised to cease sending political emails to the government email account. Where the email does not offer the option of replying, employees should delete the email and contact the Office of Information Technology.

V. **County Seal and Official Uniforms**

**Employees may not use the County Seal in any political activity.**

**Employees required to wear official County uniforms may not wear their uniforms while engaged in any political activity.**

**Employees required to wear official County uniforms may, however, cast their vote while in uniform when in route to or from work.**

The County Seal may not be used by any employee, or any person for that matter, in connection with any political activity. COUNTY CHARTER § 1010 and COUNTY CODE § 1-107. Additionally, no employees, including public safety employees may wear their required County uniforms while engaged in political activity. COUNTY CODE § 2-293(c) (Use of Prestige of Office). *See generally* POLICE DEPT. GEN. ORDERS, Vol. I, Ch. 32, Sec. V, ¶ 24 & 26. The exception to this rule is when such employees are casting their vote at their assigned polling precinct on the way to or from work. MD. CODE ANN., ELEC. LAW § 16-903(b).

**VI. Conclusion**

Employees are urged to err on the side of caution and seek advice where questions remain about the appropriate course of action. Please feel free to contact the Office of Ethics and Accountability.