

MEMO ON PARTISAN ELECTIONS

February 10, 2015

TO: Senate Ethics and Elections Committee Members

FROM: Angela Stallbaumer, Policy Specialist/Attorney with the Kansas Association of School Boards

SUBJECT: Impact of Partisan School Board Elections on Candidacy of Certain Military Service Members and Federal, State, and Local Employees

For many members of the armed forces and subsets of persons in federal, state, and local government employment, a switch to partisan school board elections would result in their being unable to serve on local school boards. The reasoning for such findings is explained briefly below.

There are a number of restrictions on the political activities of U.S. military service members and federal, state, and local government employees. The basis for some of these restrictions may be found in federal law, and others are housed in U.S. Department of Defense Directives.

One of the most commonly known acts on political activity at the federal level is the Hatch Act, 5 U.S.C.A. § 7321 *et seq.* The Hatch Act is a United States federal law, and its main provision prohibits employees in the competitive service outside of an Executive agency and employees in the executive branch of the federal government, except the president, vice-president, and certain designated high-level officials of that branch, from engaging in partisan political activity. See 5 U.S.C.A. § 7322 for definitions of terms under the act. In short, for covered federal employees, 5 U.S.C.A. § 7323(a)(3) provides that they may not run for nomination or as a candidate for election to a **partisan** political office, and the remainder of the act spells out additional restrictions to their other political activities.

Although it is commonly believed to apply to military personnel, the definition of employee for the purposes of the Hatch Act in 5 U.S.C.A. § 7322 specifically excludes members of the uniformed services.

Instead, Armed Forces personnel (including members on active duty, members of the National Guard even when in a non-Federal status, and retired members) are subject to Department of Defense Directive 1344.10 (hereafter “DoDD 1344.10”) concerning political activities to varying degrees. The intent of this directive is substantially similar to the effect of the Hatch Act, and it is considered to be in the same category as an order or military regulation. Any military personnel violating its provisions can be considered in violation of Article 92 (Failure to obey order or regulation) of the Uniform Code of Military Justice (10 U.S.C. §§ 801-946).

Under DoDD 1344.10, active duty service members may not: actively participate in partisan political activities, including fundraisers (not including mere attendance); serve as an officer of a political club; speak at a partisan gathering or participate in any radio or television programs (including organized blog debates or discussions) that advocate for or against a political party, candidate, or cause; **seek nomination or candidacy for civil office** (except as identified below); display a large political sign, banner, or poster on a personal vehicle; display a political sign, poster banner, or other campaign materials visible to the public at the individual’s residence on a military installation; or attend political events as an official representative of the Armed Forces unless authorized by the Service Secretary concerned. For the purposes of this directive, “partisan political activity” means any activity supporting or relating to candidates representing, or issues specifically identified with, national or State political parties and associated or ancillary organizations or clubs.

One exception to the prohibition from holding civil office, which may be found in Section 4.2.4.1. of DoDD 1344.10, provides any enlisted member on active duty may seek, hold, and exercise the functions of a **nonpartisan** civil office as a member of a school board, provided

that the office is held in a non-military capacity and there is no interference with the performance of military duties. Similarly, Section 4.2.4.2. authorizes the same service on an independent school board located exclusively on a military reservation under virtually the same conditions.

The application of DoDD 1344.10 and the restrictions placed on different subsets of service members vary. The restrictions on holding office are very much impacted by the office sought by the service member, the full-time/part-time active or nonactive classifications of the member, and the military branch and/or reserve component the member is involved in. For example, there are many more restrictions on the political activities of "active duty" members as opposed to members not on active duty. So, only a few of the restrictions on political activity would apply to someone who's a member of the National Guard but not serving any active duty assignment and not full-time National Guard. If a member of the National Guard is on active duty or full-time, then the full spectrum of the directive's restrictions would apply for holding certain types of offices. Also, if the service member is a retired regular or reserve component member, then there is more leniency in holding state and local office so long as it doesn't interfere with any involvement he or she still has with military service. See Section 4.5 of DoDD 1344.10 for more information.

In addition, 5 U.S.C.A. § 1501 *et seq.* put restrictions on the political activities of some state or local officers or employees. Individuals employed by a state, municipality, or other political subdivision of a state or agency or department thereof whose principal employment is in connection with an activity financed in whole or in part by loans or grants made by the United States or a federal agency may not be candidates for elective office according to 5 U.S.C.A. § 1502(a)(3). Granted, this moratorium on candidacy only applies if the salary of the employee is paid completely, whether directly or indirectly, by U.S. or federal agency loans or grants. And, 5 U.S.C.A. § 1503 clarifies that these statutes do not prohibit any state or local officer or employee from being a candidate in any election which is nonpartisan.

In conclusion, making local school board elections partisan would make it impossible for many members of the Armed Forces and selected employees of federal, state, and local governments to serve on local boards. As an association representing many of the school boards in this state, we ask the esteemed legislators on this committee to consider the impact a change to partisan elections would have on the diverse pool of candidates and serving board members that our local boards currently enjoy. Thank you so much for your time and attention, and feel free to contact us at (785)273-3600 with any follow up questions.