

MINUTES OF THE SENATE ELECTIONS AND LOCAL GOVERNMENT.

The meeting was called to order by Chairperson Barbara P. Allen at 1:30 p.m. on March 8, 2001 in Room 245-N of the Capitol.

All members were present except:

Committee staff present: Dennis Hodgins, Kansas Legislative Research Department
Ken Wilke, Office of the Revisor of Statutes
Mike Heim, Kansas Legislative Research Department
Nancy Kirkwood, Committee Secretary

Conferees appearing before the committee:

Others attending: See attached list.

Senator Clark moved to approve minutes of the committee for dates January 10th through February 28th. Senator Jackson seconded the motion. Motion carried to approve minutes.

HB 2185- improvement district; revenue bonds, maturity.

Representative Tafanelli testified in support of **HB 2185**. (Attachment 1)

Written testimony from Kevin Cowan, Shareholder Attorney, Gilmore and Bell, supporting **HB 2185** was distributed to committee. Mr. Cowan was in attendance yesterday, March 7, 2001 to testify, however due to time constraints, the hearing on **HB 2185** was postponed until today, March 8, 2001, and Mr. Cowan was unable to attend today's hearing (Attachment 2).

Senator Clark made a motion to move HB 2185 favorably for passage. The motion was seconded by Senator Jackson. Motion carried.

HB 2246- drainage districts, powers and duties of governing body.

It was made known that Dave Comstock, Dir. Division of Engineering and Design, withdrew his opposition from **HB 2246**.

Senator Jackson made a motion to move HB 2246 favorably for passage. Senator Schmidt seconded the motion.

HB 2119 - certain part and recreation districts; relating to movements.

Chairperson Barbara P. Allen recognized Ashley Sherard to offer an amendment to the threshold limit changing "line 17 from \$10,000 to \$20,000, and changing line 25 from \$10,000 to \$20,000".

Senator O'Connor made a substitute motion to amend HB 2119 on " lines 17 and 25", and pass HB 2119 favorably as amended. Senator Schmidt seconded the motion.

Senator Brownlee made a motion to insert the language of SB 227 as amended into HB 2119. Senator Huelskamp seconded the motion.

Due to questions on **SB 227** which was not available to committee, Chairperson Allen postponed taking action on **HB 2119** at this time.

HB 2068-relating to the acquisition of property.

Senator Clark made a motion to move HB 2068 favorably for passage. Senator Jackson seconded the motion. The motion carried.

March 8, 2001

SB 314 - concerning the KS highway patrol, relation to restrictions on certain activity.

Susan Bechard, Kansas State Trooper Assn., appearing on behalf of Steve Kearney, Executive Director, Kansas State Troopers Association, gave an explanation on the Attorney General Opinion 84-40 regarding political restrictions concerning members of the Kansas Highway Patrol (Attachment 3).

Mike Heim gave a brief explanation on the Hatch Act at the committee's request(Attachment 4).

Chairperson Allen decided to postpone taking action on **SB 314** at this time.

Chairperson Allen informed the committee it would meet next week, but no date has been set at this time.

The meeting adjourned at 2:20 p.m.

L. FANELLI
 REPRESENTATIVE, 47th DISTRICT
 JEFFERSON AND NORTHEAST
 DOUGLAS COUNTY AREA
 7075 122nd STREET
 OZAWKIE, KANSAS 66070
 (785) 945-3808

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TOPEKA

HOUSE OF
 REPRESENTATIVES

COMMITTEE ASSIGNMENTS

MEMBER: E-GOVERNMENT
 HIGHER EDUCATION
 TAXATION
 GEN GOVT & HUMAN RESOURCES
 BUDGET

TESTIMONY
ELECTIONS AND LOCAL GOVERNMENT COMMITTEE
MARCH 7, 2001
HB 2185

**Madam Chairman and members of the Elections and Local Government
 Committee:**

**Thank you for the opportunity to come before you today and speak in support of
 HB 2185. HB 2185 would allow for improvement district revenue bond issues with a
 maturity length of up to 40 years instead of the current limitation of 30 years to be
 sold to the United States Department of Agriculture/Rural Development. A similar
 change was made to K.S.A. 10-103, which is part of general bond law in 1981.
 K.S.A. 10-103, however, only applies to general obligation bond issues of Kansas
 municipalities and is therefore not applicable to improvement district revenue bond
 issues.**

**In addition, K.S.A. 10-1201 et seq., which relates to utility revenue bond issues and
 provides for a maturity length of up to 40 years, is applicable only to cities and not
 improvement districts.**

**These proposed changes are intended only to apply to improvement district revenue
 bonds sold to the U.S. Government or an agency thereof. In addition, the changes
 are meant to make the maturity length provisions applicable to such bonds
 consistent with other Kansas bond law provisions. Thank you for your time and
 consideration.**

Lee Tafanelli
Representative-47th District

Senate Elec & Loc Gov
03-08-01
Attachment 1

GILMORE & BELL

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

ONE MAIN PLACE

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316-267-2091

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Testimony to the Senate Committee on Elections and Local Government by Kevin M. Cowan of Gilmore & Bell, P.C. on March 7, 2001

Honorable Chair and distinguished members of the Committee, my name is Kevin M. Cowan and I am a shareholder with the law firm of Gilmore & Bell, P.C., in our Wichita office. Gilmore & Bell specializes in tax-exempt and taxable bond financing for state and local government entities and is one of the nation's leading public finance law firms. The firm has 31 attorneys and has offices in Kansas City and St. Louis, Missouri and in Wichita, Kansas.

I have been a municipal finance attorney for 7 years. My practice area at Gilmore & Bell primarily relates to traditional local government capital needs. I have worked on numerous Kansas local government bond issues that evidence and embody loans from the United States Department of Agriculture--Rural Development ("USDA/RD"). In the capacity of bond counsel, I have worked and continue to work on a wastewater collection and treatment system capital improvement project and related revenue bond issues for the Lakewood Hills Improvement District, a public corporation organized pursuant to K.S.A. 19-2753 *et seq.* in Jefferson County, Kansas, which bond issue is to be purchased by USDA/RD. In connection with my participation and representation in such transaction, I wish to provide my written testimony in support of HB 2185.

USDA/RD administers a program under which it makes loans (i.e., buys bonds) at reasonably low interest rates to finance various public projects (most frequently water supply or wastewater system improvements) of rural local government entities who don't otherwise have effective access to traditional capital markets. Typically, the maturity length of the bonds sold to USDA/RD is the relatively long period of 40 years, which long period keeps annual debt service payments at a more manageable level for the rural local government issuers of such bonds.

The changes to K.S.A. 19-2777 proposed by HB 2185 are technical changes and relate specifically to revenue bonds (i.e., bonds supported solely by a pledge of, and lien upon, a dedicated revenue stream, such as wastewater treatment and collection system revenues, with no pledge of ad valorem taxes) issued and sold by an improvement district to USDA/RD to evidence a loan under the program described above. As it currently exists, K.S.A. 19-2777 provides for a maximum maturity length of 30 years for improvement district revenue bonds and therefore precludes the sale of 40 year improvement district revenue bonds to USDA/RD. The

proposed technical changes to K.S.A. 19-2777 would remedy such preclusion and allow the sale of such 40 year bonds to USDA/RD under authority of K.S.A. 19-2777.

A similar legislative change was made to K.S.A. 10-103, which is part of the Kansas general bond law, in 1981 to accommodate the USDA/RD program. K.S.A. 10-103, however, applies only to *general obligation* bond issues (i.e., bonds supported by the full faith and credit of an entity, including unlimited ad valorem taxes) of Kansas municipalities and is therefore not applicable to improvement district *revenue* bond issues. In addition, K.S.A. 10-1201 *et seq.*, which (a) relates to utility revenue bond issues, (b) provides for a maturity length of up to 40 years and (c) is frequently used to authorize the issuance of revenue bonds that are purchased by USDA/RD, *is used primarily by cities, is not always applicable to improvement districts and therefore in most instances cannot serve as authority for a 40 year improvement district revenue bond issue.*

I urge the passage of HB 2185. The proposed changes to K.S.A. 19-2777 by HB 2185 are intended only to apply to improvement district revenue bonds sold under K.S.A. 19-2777 and the USDA/RD program, or any similar program of the U.S. Government, and will not affect other sales of improvement district revenue bonds, which will continue to be subject to the existing maximum maturity length of 30 years. *Most importantly, the changes proposed by HB 2185 will make the maturity length provisions applicable to such improvement district revenue bonds consistent with other Kansas local government bond law provisions, thereby providing improvement districts access to the benefits of the USDA/RD program on the same basis as other Kansas local government entities.*

Honorable Chair and members of the Committee, I thank you for the Committee's indulgence and attention to this technical matter, which I believe is important to rural improvement districts in the state of Kansas. If there are any questions regarding this matter, please feel free to contact me at the address shown above.

Memorandum

To: Chairman Allen & Members of the Sen. Elections and Local Government Committee

From: Steve Kearney

Date: 3/08/01

Re: Senate Bill 314

Attached please find a copy of Attorney General Opinion 84-40 regarding political restrictions concerning members of the Kansas Highway Patrol. This opinion by then Attorney General Robert T. Stephan sets forth his analysis about the issue contained in Senate Bill 314.

The Attorney General opined in 1984 regarding what he believed would be permissible activities by members of the Highway Patrol should the statute in existence then and currently in existence since SB 314 be put to a court challenge. However, the current statute still controls and conflicts with the Attorney Generals opinion, and only an expensive court battle would clarify the matter.

Members of the Kansas Highway Patrol that wish to participate in political activities and be more active in their communities would be hard pressed to violate the Kansas statutes. It is our request that this committee favorably consider SB 314 and afford the Kansas Highway Patrol the same opportunities to participate in political activities as any other state employee pursuant to other existing statues that we have already discussed. Thank you for your time and attention to this matter.

Senate Elec + Loc Gov
03-08-01
Attachment 3

Have KHP Political activity



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2218
CONSUMER PROTECTION: 296-0751
ANTITRUST: 296-5299

May 14, 1984

ATTORNEY GENERAL OPINION NO. 84- 40

Bert Cantwell
Superintendent
Kansas Highway Patrol
122 S.W. Seventh Street
Topeka, Kansas 66603

Re: State Boards, Commissions and Authorities--Kansas Highway Patrol--Patrol Created; Restrictions

Synopsis: In conformity with the provisions of K.S.A. 1983 Supp. 74-2113(e), as amended by Section 1 of 1984 Senate Bill No. 745, members of the Kansas Highway Patrol: 1. May be members of political clubs, but not officers of said clubs or members of a committee of such a club; 2. May not work as a volunteer for a partisan candidate, but may work as a volunteer for a non-partisan candidate for public office; 3. May put a political sign in their yards; 4. May place a candidate's bumper sticker on their personal automobiles; 5. May contribute money to a candidate's campaign committee, but may not engage in fund-raising activities for a partisan candidate; 6. May be a candidate in a nonpartisan contest for city council or school board; 7. May not be a partisan candidate for a political office, even if they take a leave of absence without pay prior to filing for the office, with the understanding they would either resign or come back to work once the outcome of the election is known; 8. May attend a political rally when on an off-duty status, provided the member does not engage in any prohibited activity at said rally. Cited herein: K.S.A. 1983 Supp. 74-2113, as amended by 1984 Senate Bill No. 745, 5 U.S.C.A. §7324, U.S. Const., First Amend.

* * *

Bert Cantwell
Page Two

Dear Mr. Cantwell:

You request our interpretation of K.S.A. 1983 Supp. 74-2113(e), as amended by Section 1 of 1984 Senate Bill No. 745. Specifically, you have submitted a list of political activities (enumerated below), and inquire whether members of the Kansas Highway Patrol are prohibited from engaging in such activities by the aforesaid statute.

K.S.A. 1983 Supp. 74-2113(e) [as amended] provides as follows:

"No member of the patrol, including the superintendent, shall in any way be active or participate in any political contest in any primary, general or special election or participate in politics, except to cast such member's ballot. For any violation of this provision, the offender shall be summarily removed by the superintendent from the patrol." (Emphasis added.)

As the underscored portion of the above-quoted statute indicates, a member of the patrol may not "participate in politics." The parameters of this prohibition are none too clear, and it might be argued that, since the statute impacts upon rights granted all citizens under the First Amendment to the U.S. Constitution, it is invalid due to facial overbreadth. Therefore, it is necessary to consider whether the statute is overbroad, and invalid on its face, or whether it can be saved through a limiting construction.

In Broadrick v. Oklahoma, 413 U.S. 601, 37 L.Ed.2d 830 (1973), the U.S. Supreme Court considered an overbreadth attack upon an Oklahoma statute, patterned after the federal Hatch Act, which, in part, prohibited classified employees from taking part in the "affairs of any political party or in any political campaign." See 37 L.Ed2d at 834; 5 U.S.C.A. §7324(a)(2). The plaintiff state employees had engaged in partisan political activities in violation of the aforementioned statute, and challenged its validity on the grounds of vagueness and overbreadth. The Supreme Court held that the statute was clearly constitutional as applied to the conduct with which the employees were charged, i.e. partisan political activity, and further held that, because the statute was not "substantially overbroad," the employees could not challenge the statute on the ground that it might be unconstitutionally applied to others. In so holding, the court noted that the traditional rules of standing were altered in the First Amendment

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area to permit "attacks on overly broad statutes with no requirements that the person making the attack demonstrate that his own conduct could not be regulated by a statute drawn with the requisite narrow specificity." Id., 37 L.Ed.2d at 840. However, the court stated that the application of the overbreadth doctrine has been employed "sparingly and only as a last resort," and has not been invoked "when a limiting construction has been or could be placed on the challenged statute." Id., 37 L.Ed.2d at 841. Further, the court found that overbreadth must be "substantial" before a statute regulating conduct will be invalidated on its face. In this regard, the court determined that the Oklahoma statute was not substantially overbroad, relying on prior interpretations by the state's attorney general and the state personnel board that restricted the scope of the statute to "partisan political activity."

Officials at the Kansas civil service board indicate that the board has not had occasion to construe the prohibition against "participating in politics" included within K.S.A. 1983 Supp. 74-2113(e) [as amended]. Neither has this office had occasion to construe or limit the application of said statute. However, the West Virginia Supreme Court, in interpreting a state statute generally proscribing "political activity," which statute had not been limited by any administrative interpretation, held that the statute only proscribed those political activities, the limitation of which the U.S. Supreme Court had decided was constitutionally permissible and included within the federal Hatch Act. Weaver v. Schaffer, 290 S.E.2d 244 (W.Va. Sup. Ct. 1980). In our judgment, K.S.A. 1983 Supp. 74-2113(e) [as amended] should be interpreted as prohibiting the same political activities as the statute which was construed in the Weaver case. In this regard, the following activities were held to be prohibited in Weaver: (1) holding a party office; (2) working at the polls; (3) acting as a party paymaster for other party workers; (4) organizing a political party or club; (5) actively participating in fund-raising activities for a partisan candidate or political party; (6) becoming a partisan candidate for, or campaigning for, an elective public office; (7) actively managing the campaign of a partisan candidate for public office; (8) initiating or circulating a partisan nominating petition or soliciting votes (i.e., campaigning) for a partisan candidate for public office; (9) serving as a delegate, alternate or a proxy to a political party convention.

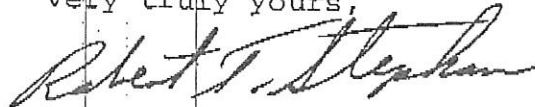
In response to your specific questions, and in accordance with the above-cited authorities, it is our opinion that the members of the Highway Patrol:

1. May be members of political clubs, but not officers of said clubs or members of a committee of such a club;

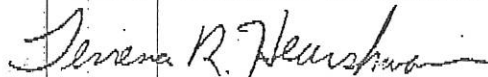
Bert Cantwell
Page Four

2. May not work as a volunteer for a partisan candidate, but may work as a volunteer for a non-partisan candidate for public office;
3. May put a political sign in their yards;
4. May place a candidate's bumper sticker on their personal automobiles;
5. May contribute money to a candidate's campaign committee, but may not engage in fund-raising activities for a partisan candidate;
6. May be a candidate in a nonpartisan contest for city council or school board;
7. May not be a partisan candidate for a political office, even if they take a leave of absence without pay prior to filing for the office, with the understanding they would either resign or come back to work once the outcome of the election is known;
8. May attend a political rally when on an off-duty status, provided the member does not engage in any prohibited activity at said rally.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Terrence R. Hearshman
Assistant Attorney General

RTS:BJS:TRH:jm

PROVISIONS

The Hatch Act Rewrite

After nearly two decades, Congress succeeded in revamping a law that limits the political activity of nearly 3 million federal workers. With backing from President Clinton, the House on Sept. 21 cleared a bill (HR 20 — H Rept 103-16; S 185 — S Rept 103-57) to revise and simplify the 1939 Hatch Act by tightening on-the-job restrictions while easing off-duty limits on most federal and postal employees. Clinton signed the bill into law Oct. 6 (PL 103-94).

The law bars federal employees from engaging in political activity while on duty — including wearing a campaign button on the job, a form of political expression that had been permitted under the old Hatch Act.

While off duty, federal employees may hold office in a political party, participate in campaigns and political rallies, publicly endorse candidates and raise political funds from within their agency's political action committee. But the law bars them from running for partisan elective offices and soliciting contributions from the general public.

Hatch Act revision supporters said the old law, which originally was intended to safeguard against cronyism, had become outdated in an era of career professionals dominat-

ing the federal work force.

But opponents of the measure complained that relaxation of Hatch Act standards threatened to politicize the federal work force. Vigorous opposition to the bill in the Senate led members to forge a compromise agreement maintaining current Hatch Act restrictions for certain high-level employees and sensitive agencies.

Previous efforts to revise the law had stalled after three Republican presidents vetoed or threatened to veto the bills. But with Clinton's support, bill sponsors Rep. William L. Clay, D-Mo., and Sen. John Glenn, D-Ohio, steered measures through the House and Senate, respectively.

The House on March 3 initially passed a relatively lenient bill, but House members ultimately accepted a more restrictive Senate version Sept. 21, clearing the bill for the president. The Senate passed its version, 68-31, July 20. (1992 Almanac, p. 222)

The law also includes two unrelated provisions. One allows the pay of federal and postal workers to be garnished, providing a limited exception to sovereign immunity protections that had barred such action. The other is a non-binding, sense-of-the-Senate resolution regarding aid to Nicaragua. The law also:

By Jeanne Ponessa

Political Activities

● **Policy.** States that federal employees should be encouraged to exercise, fully and freely and without fear of reprisal, their right to participate or to refrain from participating in the political process.

● **Federal employees.** Defines employees that fall under its sweep to be any individual, other than the president or vice president or General Accounting Office workers, employed or holding office in an executive agency or in a competitive civil service position that is not in an executive agency.

● **Postal workers.** Extends to United States Postal Service and Postal Rate Commission workers.

● **Other workers.** Covers employees of the District of Columbia government other than the mayor, city council members and the recorder of deeds. It excludes members of the armed forces. Military personnel fall under separate Defense Department rules governing the political activities of the military.

● **Partisan political office.** Defines a partisan political office as one for which a candidate is nominated or elected as representing a party that received electoral votes in the last presidential election. The definition does not include any office or position within a political party or affiliated organization.

● **Political contribution.** Defines a political contribution as a gift or contribution made for any political purpose.

● **Off-duty political activities.** Allows federal employees to manage political campaigns or take an active role in political parties and groups. Such activities include:

● Seeking and holding positions in local and national political parties.

● Stuffing envelopes, organizing and participating in phone banks and participating in voter registration drives.

● Carrying posters at a political rally, distributing campaign material and soliciting votes off the job.

● Organizing and participating in political meetings.

● Publicly endorsing candidates.

● Soliciting contributions for the political action committee of a federal employees' organization from other members of that employees' organization who do not work under the person soliciting funds.

Federal employees had been prohibited from any kind of solicitation of funds. Under the new law, employees may solicit or receive political contributions only from an employee who is a member of the same agency's political action committee. Still, even this provision is qualified. Federal employees are barred from soliciting funds from a member of political action committee when the targeted employee is a subordinate worker.

● **Off-duty limits.** Prohibits the following activities by federal employees while on or off the job:

● Running for partisan political office.

● Using official authority to interfere with or affect the result of an election.

● Soliciting or discouraging the political activity of any person who has business pending before the employee's office. Such business includes an application for any compensation, grant, contract, ruling, license, permit or certificate. A federal employee also is barred from soliciting or discouraging political activity by any person who is the subject of an ongoing audit, investigation or enforcement action.

● **Exceptions for sensitive posts.** Keeps in place the original Hatch Act restrictions, forbidding active participation in political management or political campaigns for certain federal employees in sensitive positions.

Such employees include employees at the Federal Election Commission; Federal Bureau of Investigation; Secret Service; Central Intelligence Agency; National Security Council; National Security Agency; Defense Intelligence Agency; Merit Systems Protection Board; Office of Special Counsel; Office of Criminal Investigations of the Internal Revenue Service; Office of Investigative Programs of the U.S. Customs Service; Office of Law Enforcement of the Bureau

of Alcohol, Tobacco and Firearms; Criminal Division of the Justice Department; administrative law judges, career Senior Executive Service employees and Contract Appeal Board members.

- **On-duty political activity.** Bars federal employees from engaging in political activity while on duty, in any room or building used by government employees for official business. Such activities also are barred when a government employee is wearing a uniform or official insignia identifying their office or position or using any U.S. government vehicle. The law prohibits a federal employee from wearing a campaign button on the job, a form of political expression that had been permitted under the old Hatch Act.

- **Exceptions.** Makes exceptions for employees whose duties continue outside normal hours and away from the normal post, and whose jobs are paid for by an appropriation for the Executive Office of the President or are subject to presidential appointment and Senate confirmation, and involve determination of U.S. foreign policy.

- **Areas with many federal workers.** Permits the Office of Personnel Management to write rules making exceptions for the local political involvement of federal employees who live in certain areas such as Maryland, Virginia, the District of Columbia, or areas in which the majority of voters are federal employees.

- **Coercion.** Makes it illegal for any person to intimidate, threaten, command or coerce any federal employee to engage in or not engage in a political activity. The law makes it illegal to threaten federal workers to vote or not vote for any particular candidate, to make or not make a political contribution for any candidate or to work or not work for a particular candidate.

- **Violations.** Allows employees who violate the law to be fired. Any person who intimidates, threatens or coerces a federal employee to participate in political activity also may face fines of up to \$5,000 or up to three years in jail.

- **Other Penalties.** States that a minimum penalty of 30 days' suspension without pay may be imposed if the Merit Systems Protection Board, a quasi-judicial agency that safeguards the civil service against political partisanship and other unfair practices, finds by a unanimous vote that a violation does not warrant firing.

- **Prohibited recommendations.** Specifies that a federal manager making a personnel decision such as a hiring, promotion or transfer has to make that decision without regard for any recommendations by a member of Congress or congressional employee, state elected official or official of a political party; or any recommendations

made on the basis of the party affiliation of the prospective employee. Those politically affiliated individuals cannot make such recommendations and agencies or employees cannot solicit or accept such recommendations. The head of each agency has to ensure that employees and applicants are aware of these restrictions.

- **Permitted recommendations.** Allows an agency or manager to solicit and accept recommendations regarding a prospective federal employee only if the recommendation is furnished by a former employer and addresses only the work performance and ability or security standards of the job candidate.

- **Effective date.** Takes effect 120 days after enactment.

Garnisheeing wages

- **Garnisheeing wages.** Allows creditors to garnishee wages of federal employees through the same legal process that they follow with a private citizen. Garnisheeing wages, a legal remedy for taking a part of the regular pay of an employee, has been used by creditors to recoup debts from a financially delinquent private individual. Previously, federal employees had been exempted from having wages garnisheed.

- **Garnishment limitations.** Limits the percentage of wages that could be garnisheed to 25 percent or the amount by which the disposable earnings for the week exceed 30 times the federal minimum wage, whichever is less. It requires that child support and alimony judgments against a federal employee be given precedence over other legal garnishment orders.

Nicaragua

- **Nicaragua.** States that it is the sense of the Senate that no further aid go to Nicaragua until there is an investigation of the potential involvement of the Sandinista National Liberation Front in any terrorist activities that threaten U.S. security or the political stability and economic prosperity of the Western Hemisphere. The non-binding resolution states that an explosion in Managua, Nicaragua, on May 23 exposed a cache of weapons and 310 passports from 21 different countries including the United States. It also says that documents in the possession of those apprehended in connection with the Feb. 26 bombing of the World Trade Center have been traced to Nicaragua. The provision raises a question about the ability of the Nicaraguan government to stop the export of terrorism by the Sandinista National Liberation Front.

Hatch Act – Current Law

Prior to 1993
Amendments

The Hatch Act, enacted in 1939 and subsequently amended, covers the political activity of competitive and excepted service employees in Federal Executive agencies and civilians in the Department of Defense. U.S. Postal Service and Postal Rate Commission employees are covered by the Act. District of Columbia Government employees are deemed to be Federal Executive branch employees for purposes of the Hatch Act.

Part-time and temporary employees are included under the Hatch Act. Intermittent or occasional employees, such as consultants, are also covered but only during the 24-hour period of any day in which they are actually employed.

Employees covered by the Hatch Act continue to be covered while on annual or sick leave, leave without pay, administrative leave, or furlough.

■ Background and Current Provisions

Prior to enactment of the 1939 statute, the Civil Service Commission had made some 3,000 administrative decisions about permissible and prohibited political activity by competitive service employees. These decisions were incorporated into the Act by reference.

The Office of Personnel Management (OPM) prescribes regulations on political activity of Federal Employees. The Office of Special Counsel (OSC) investigates and prosecutes violations of the Hatch Act. The Civil Service Commission had primary responsibility to enforce the Hatch Act statute prior to 1979. With the enactment of the Civil Service Reform Act of 1978, the Office of Special Counsel was created as an independent office of the Merit Systems Protection Board and empowered with the investigative and prosecutorial authority of the Hatch Act.

In 1989, the OSC was established as an independent agency with passage of the Whistleblower Protection Act

Excerpted from the Library of Congress, Congressional Research Service report "Political Activities: Proposals in the 103d Congress to Amend the Hatch Act," revised April 22, 1993.

of 1989 (P.L. 101-12). Decisions rendered by the United States Civil Service Commission regarding political activity were published in the *Political Activity Reporter*. The Office of Special Counsel issues advisory opinions about the Hatch Act in response to individual inquiries. These advisory opinions are kept in an internal chronological file at the OSC.

When the OSC prosecutes a Hatch Act violation case through the Merit Systems Protection Board, the decision in that case is published in the *Merit Systems Protection Reporter*.

Permissible Activities

OPM regulations state that each employee retains the right to:

- Register and vote in any election;
- Express his [or her] opinion as an individual privately and publicly on political subjects and candidates;
- Display a political picture, sticker, badge, or button;
- Participate in the nonpartisan activities of a civic, community, social, labor, or professional organization, or of a similar organization;
- Be a member of a political party or other political organization and participate in its activities to the extent consistent with law;
- Attend a political convention, rally, fundraising function, or other political gathering;
- Sign a political petition as an individual;
- Make a financial contribution to a political party or organization;
- Take an active part, as an independent candidate, or in support of an independent candidate, in a partisan election covered by 5 CFR 733.124;
- Take an active part, as a candidate or in support of a candidate, in a nonpartisan election;
- Be politically active in connection with a question which is not specifically identified with a political party, such as a constitutional amendment, ref-

- erendum approval of a municipal ordinance, or any other question or issue of a similar character;
- Serve as an election judge or clerk, or in a similar position, to perform nonpartisan duties as prescribed by State or local law; and
- Otherwise participate fully in public affairs, except as prohibited by law, in a manner which does not materially compromise his [or her] efficiency or integrity as a Federal employee or the neutrality, efficiency, or integrity of the employees' agency.

Prohibited Activities

OPM regulations also state that activities prohibited include but are not limited to:

- Serving as an officer of a political party, a member of a national, State, or local committee of a political party, an officer or member of a committee of a partisan political club, or being a candidate for any of these positions;
- Organizing or reorganizing a political party organization or political club;
- Directly or indirectly soliciting, receiving, collecting, handling, disbursing, or accounting for assessments, contributions, or other funds for a partisan political purpose;
- Organizing, selling tickets to, promoting, or actively participating in a fundraising activity of a candidate in a partisan election or of a political party, or political club;
- Taking an active part in managing the political campaign of a candidate for public office in a partisan election or a candidate for political party office;
- Becoming a candidate for, or campaigning for, an elective public office in a partisan election;
- Soliciting votes in support of or in opposition to a candidate for public office in a partisan election or a candidate for political party office;
- Acting as a recorder, watcher, challenger, or similar officer at the polls on behalf of a political party or a candidate in a partisan election;
- Driving voters to the polls on behalf of a political party or a candidate in a partisan election;
- Endorsing or opposing a candidate for public office in a partisan election or a candidate for political party office in a political advertisement, a broadcast, campaign, literature, or similar material;

- Serving as a delegate, alternate, or proxy to a political party convention;
- Addressing a convention, caucus, rally, or similar gathering of a political party in support of or in opposition to a partisan candidate for public office or political party office;
- Initiating or circulating a partisan nominating petition;
- Soliciting, collecting, or receiving a contribution at or in the Federal workplace from any employee for any political party, political fund, or other partisan recipient;
- Paying a contribution at or in the Federal workplace to any employee who is the employer or employing authority of the person making the contribution for any political party, political fund, or other partisan recipient; and
- Soliciting, paying, collecting, or receiving a contribution at or in the Federal workplace from any employee for any political party, political fund, or other partisan recipient.

■ Definitions

For the purposes of these permissible and prohibited activities, the following definitions apply:

- Contribution — any gift, subscription, loan, advance, deposit of money, allotment of money, or anything of value given or transferred by one person to another, including in cash, by check, by draft, through a payroll deduction or allotment plan, by pledge or promise, whether or not enforceable, or otherwise.
- Election — includes a primary, special, and general election.
- Employer or employing authority — the immediate employing agency head, agency principals, or an employee's supervisor.
- Federal workplace — means any site, installation, building room, or facility in which any Executive department or agency conducts official business, including, but not limited to, office buildings, forts, arsenals, navy yards, post offices, vehicles, ships, and aircraft.
- Partisan — when used as an adjective, refers to a political party.
- Political party — a national political party, a State political party, and an organization affiliated with a political party.