

MEMORANDUM

To: Brian Noland, Ph.D.
President

From: Mark A. Fulks, J.D., Ph.D.
University Counsel

cc: Adam Green, Ed.D.
Chief of Staff

Date: March 18, 2020

RE: Offenses by Public Officers and Employees (“The Little Hatch Act”)
Use of State-Owned Property for Campaign Advertising or Activities

With the campaign season moving toward the election, the Office of University Counsel submits this reminder for distribution to the university’s faculty and staff.

Generally speaking, the Little Hatch Act prohibits state employees from displaying political campaign materials on state property. Tenn. Code Ann. § 2-19-206.

For our purposes, the Act prohibits ETSU faculty and staff from displaying campaign materials while they are on campus. Campaign materials include campaign literature, banners, placards, streamers, stickers, signs, or other items of campaign or political advertising, including lapel buttons or stickers, hats, t-shirts, or other items advocating for or against a particular candidate, party, committee, or agency. For our purpose, the prohibition extends to all state property, including our main campus and satellite campuses and the land, parking lots, walkways, buildings, facilities, equipment, and state vehicles. The Act also prohibits ETSU employees from using ETSU’s email system to display campaign materials or to send message in support of or against any particular candidate or party.

However, the Act does not prohibit ETSU employees from displaying campaign decals or bumper stickers on the employee’s personal vehicle while it is parked on campus.

The Act does not apply to students and visitors.

Our buildings and facilities may be used for campaign meetings or preparation of campaign activity in support of or against any particular candidate or party if we provide a reasonably equal opportunity for presentation of all sides or views or if we provide reasonably equal access to the buildings and facilities to all sides.

The Little Hatch Act prohibits ETSU faculty and staff from actively engaging in a political campaign on behalf of any party, committee, organization, agency or candidate during work hours. Tenn. Code Ann. § 2-19-207. The Act prohibits faculty and staff from attending political meetings or rallies during work hours. *Id.* Finally, the Act prohibits faculty and staff from using the employee’s official position or employment for political purposes. *Id.*

For additional guidance, I have attached the sections of the Little Hatch Act to this memorandum.

Please refer the faculty and staff to the Office of University Counsel for answers to any questions.

OFFENSES BY PUBLIC OFFICERS AND EMPLOYEES ("LITTLE HATCH ACT")

§ 2-19-201. Definitions

As used in this part, unless the context otherwise requires:

- (1) "Election" includes all elections, local, municipal, primary, general, state, federal and special and any election in the state or any county, municipality or other political subdivision thereof, but does not include referenda or issues submitted to a vote of the people, political convention or caucus;
- (2) "Public funds" and "public lands, offices, buildings, vehicles and facilities" include those owned and supported principally by public money appropriated from the state treasury. "Public lands, offices, buildings, vehicles, and facilities" include those owned and used by a local education agency (LEA);
- (3) "Public officers and employees" means all employees of the executive branch of the state government, or any department, division, or agency thereof, and all appointed officers and employees of any educational institution, establishment, corporation or agency supported principally by state funds, including teachers. Popularly elected officials, officials elected by the general assembly, qualified candidates for public office, members of the governor's cabinet, and members of the governor's staff are expressly excluded from the provisions of this part, except for the provisions of § 2-19-202; and
- (4) "Teacher" means any person employed in a public school system as a teacher, helping teacher, teacher's aide, librarian, principal, supervisor, director of schools, or member of the administrative staff.

Credits: 1972 Pub.Acts, c. 740, § 1; 2015 Pub.Acts, c. 239, §§ 1 to 4, eff. July 1, 2015.

§ 2-19-202. Interference with election or nomination

- (a) It is unlawful for any public officer or employee to use such person's official position, authority or influence to interfere with an election or nomination for office or directly or indirectly attempt to intimidate, coerce or command any other officer or employee to vote for or against any measure, party or person, or knowingly receive or pay assessments of any kind or character for political purposes or for election expenses from any other officer or employee.
- (b) It is the intent of this section to prohibit any political intimidation or coercion of any public officer or employee.

Credits: 1972 Pub.Acts, c. 740, § 1.

§ 2-19-203. Soliciting contributions from recipients of government benefits

- (a) It is unlawful for any public officer or employee knowingly to solicit directly or indirectly any contribution of money, thing of value, facilities or services of any person who has received contracts,

compensation, employment, loans, grants or benefits, or any person whose organization, agency or firm has received such benefits financed by public funds, state, federal or local, for political purposes or campaign expense.

(b)(1) As used in this subsection (b), unless the context otherwise requires, “contribution” means any advance, conveyance, deposit, distribution, transfer of funds, loan, loan guaranty, payment, gift, or subscription, of money or thing of value, including, but not limited to, use of a facility or provision of personal services, for use on behalf of any candidate for political office, or for any political purpose or campaign expense.

(2) It is unlawful knowingly to solicit, accept, or collect, directly or indirectly, any contribution from a public officer or employee if the solicitor or the solicitor's principal is, directly or indirectly, in a supervisory capacity over such officer or employee or is otherwise able to control the retention, promotion, demotion, or terms or conditions of employment of such officer or employee.

(3) The provisions of this subsection (b) shall not be construed to prevent voluntary contributions from political action committees and associations of public officers and/or employees.

Credits: 1972 Pub.Acts, c. 740, § 1; 1979 Pub.Acts, c. 280, § 1; 2006 Pub.Acts (1st Ex.Sess.), c. 1, § 5, eff. Feb. 15, 2006.

§ 2-19-204. Promises of government benefits

It is unlawful for any public officer or employee, directly or indirectly, to promise employment, position, work, compensation, contracts, loans, grants, appropriations or other benefits provided principally from public funds as a consideration, favor or reward for any political activity, support or opposition to any candidate, party or measure in any election.

Credits: 1972 Pub.Acts, c. 740, § 1.

§ 2-19-205. Deprivation of government benefits

It is unlawful for any public officer or employee, directly or indirectly, to deprive, attempt to deprive, or threaten to deprive any person of employment, position, work, compensation, contracts, loans, grants, appropriations or benefits provided principally from public funds for any political activity, support or opposition to any candidate, party or measure in any election.

Credits: 1972 Pub.Acts, c. 740, § 1.

§ 2-19-206. State-owned property used for political purposes

(a) It is unlawful for any elected or appointed official of the state, or any employee of the state or any department, division or agency thereof, to display campaign literature, banners, placards, streamers,

stickers, signs or other items of campaign or political advertising on behalf of any party, committee or agency or candidate for political office, on the premises of any building or land owned by the state, or to use any of the facilities of the state, including equipment and vehicles, for such purposes.

(b) It is unlawful to use public buildings or facilities for meetings or preparation of campaign activity in support of any particular candidate, party or measure unless reasonably equal opportunity is provided for presentation of all sides or views, or reasonably equal access to the buildings or facilities is provided all sides.

(c) This section shall not be construed to prohibit an employee from displaying a decal or bumper stickers on the employee's personal vehicle while parked on state property.

(d)(1) Subsections (a), (b), and (c) shall not apply to teachers.

(2) It is unlawful for any teacher to display campaign literature, banners, placards, streamers, stickers, signs, or other items of campaign or political advertising on behalf of any party, committee or agency, or candidate for partisan or nonpartisan public office elected by the people, on the premises of any building or land owned by a local education agency (LEA), or to use any of the facilities of the LEA, including equipment and vehicles, for such purposes. This subdivision (d)(2) does not apply to the display of campaign banners, placards, streamers, stickers, signs, or other items of campaign or political advertising on LEA-owned property or the use of LEA equipment, when the display or use is a part of and solely for the purpose of the LEA's program of student education relative to the electoral process. Except for the use of LEA-owned equipment and vehicles, this subdivision (d)(2) does not apply to a teacher during hours in which the teacher is not performing school duties.

(3) This subsection (d) shall not be construed to prohibit any teacher from displaying a decal or bumper sticker on the teacher's personal vehicle while the vehicle is parked on LEA property.

Credits: 1972 Pub.Acts, c. 740, § 1; 2008 Pub.Acts, c. 650, § 1, eff. March 25, 2008; 2015 Pub.Acts, c. 239, § 5, eff. July 1, 2015.

§ 2-19-207. Political activities interfering with state business

(a) It is unlawful for any person employed by the state to engage actively in a political campaign on behalf of any party, committee, organization, agency or political candidate, or to attend political meetings or rallies or to otherwise use such person's official position or employment to interfere with or affect the result of any regular or special primary election conducted within the state, or to perform political duties or functions of any kind not directly a part of such person's employment, during those hours of the day when such person is required by law or administrative regulation to be conducting the business of the state.

(b)(1) Nothing in this section shall be construed to deprive any official or employee of the state from voting for the party or candidate of such person's choice or to deprive such person of the right to express such person's personal opinion concerning any political subject, party or candidate.

(2) Elected officials, state employees on leave or during those hours not required by law or administrative regulation to be conducting the business of the state, and persons duly qualified as candidates for public office are expressly excluded from this section.

(3) No rule or regulation which has been promulgated or shall be promulgated by any department, division, agency, or bureau of state government shall be more restrictive of the political activity of state employees on leave or during those hours not required by law or administrative regulation to be conducting the business of the state than those restrictions already set forth in this section.

(c)(1) Subsections (a) and (b) shall not apply to teachers.

(2) It is unlawful for any teacher employed by an LEA during those hours of the day when the LEA requires the teacher to be performing school duties to:

(A) Engage actively in a political campaign on behalf of any party, committee, organization, or agency;

(B) Engage in a campaign for a candidate for partisan or nonpartisan public office elected by the people;

(C) Attend political meetings or rallies;

(D) Use the teacher's employment to interfere with or affect the result of any regular or special primary election conducted within the state; or

(E) Perform political campaign duties or functions.

(3) Nothing in this subsection (c) shall be construed to deprive a teacher from voting for the party or candidate of the teacher's choice or to deprive the teacher of the right to express the teacher's personal opinion concerning any political subject, party, or candidate.

(4) A teacher on leave or during those hours in which the teacher is not required to be performing school duties is not subject to the restrictions in subdivision (c)(2). No policy or rule of an LEA shall be more restrictive of the political activity of a teacher on leave or during those hours in which the teacher is not required to be performing school duties than those restrictions set forth in this subsection (c).

Credits: 1972 Pub.Acts, c. 740, § 1; 1982 Pub.Acts, c. 822, § 1; 2015 Pub.Acts, c. 239, §§ 6, 7, eff. July 1, 2015.

§ 2-19-208. Penalty

A violation of this part is a Class C misdemeanor.

Credits: 1972 Pub.Acts, c. 740, § 1; 1989 Pub.Acts, c. 591, § 113.