



**CUYAHOGA COUNTY
AGENCY OF INSPECTOR GENERAL**

ADVISORY OPINION

Advisory Opinion #: IGADV-0010
Date Issued: May 1, 2017
Issue Summary: Voluntary Political Activities

I. PURPOSE

In June 2016, Cuyahoga County substantially revised the Cuyahoga County Ethics Code, including sections relating to political activity by County employees.¹ In the 2016 Revisions, the County incorporated Ohio Revised Code § 124 and Ohio Administrative Code §123 regarding political activity by government employees.² Accordingly, this guidance is intended to be consistent with similar rules applied by the State of Ohio to similarly-classified employees under similar circumstances.³

The County Ethics Code creates a revised set of rules that apply to County employees. Because the 2016 revision replaces and supersedes the prior code and related executive orders⁴, the Agency of Inspector General (“AIG”) offers this advisory to guide County employees who want to participate in election-related activities, make campaign contributions, run for elected office or become an employee or volunteer of a political campaign. Guidelines for appropriate employee activities concerning ballot issues that relate to, or affect, the County are also provided.

II. DEFINITIONS

For purposes of this policy, the following definitions apply:

Ballot issue: Issue to be voted on by all citizens of the state, county or municipality. The three types of ballot issues are initiated statute, initiated constitutional amendment, and referendum.

¹Ordinance No. O2016-0002, Enacted 4/26/2016, Effective 5/27/2016;

² Cuyahoga County Code §403.13.

³ See Ohio Department of Administrative Services, *Political Activity Policy*, Policy No. 100-08.

⁴ The County’s 2016 revisions supercede and render null, among other things, Executive Order 2013-002 requiring a mandatory 60-day leave prior to any election regardless of the office sought, whether the election is contested, the time required for related activities or the likelihood of conflicts. Separately, EO 2013-002 is likely unenforceable and unconstitutional because it is arbitrarily fixed and overbroad.

Classified employee: Classified employees are employees who are not specifically included in the unclassified service.

Conflict of Interest: A conflict of interest exists when the interests of the person might interfere with the public interests the person is required to serve in the exercise of the person's authority and duties in the person's office or position of employment.

County Time: County time includes regular time, overtime, earned exchange time, command time or other time during which an employee is required to provide services to the County for pay or compensation. County time does not include time during which the employee is not required to provide services to the County for pay or compensation.⁵

County Property: County property includes conference rooms, computers, printers, office supplies, e-mail systems, telephones, copiers, fax machines and other items owned by the County.

Non-partisan: Under RC 3505.05, a non-partisan ballot includes candidates for election to judicial office, office of member of state board of election, office of members of a board of education, municipal or township offices for municipal corporations and townships in which primary elections are not held for nomination of candidates by political parties, and municipal offices of municipal corporations having charters which provide for separate ballots for elections for such municipal offices. Nonpartisan ballots do not include any words, designations, or emblems that describe a candidate's political affiliation.

Partisan: Partisan Political Offices are those in which candidates are selected in a partisan primary, or by the nominating petitions identified with a political party, or in which candidates are associated on the ballot with a political party.

III. GUIDANCE

A. Election-related activities. Different laws and rules apply to the permissibility of various election-related activities of classified versus unclassified County employees. As explained more fully below, so as to avoid any suggestion that government resources are being improperly used to assist candidates for public office, both classified and unclassified employees must avoid engaging in election-related activity on County time, on County property, or using County equipment (including conference rooms, computers, printers, office supplies, e-mail systems, telephone, copiers, fax machines, or any other County property or equipment). In addition, County employees may not engage in any election-related activities which interfere with, or pose a conflict of interest with respect to, their County duties and responsibilities.

⁵ For example, the County permits employees time for lunch, breaks, and vacation time. The County does not monitor activities or require the employee to provide services during these periods. Thus, these time periods are not considered County time. Similarly, employees who serve a term of office without required hours of service do not have "County time" as that phrase is used in this guidance.

B. Classified employees are prohibited by law from engaging in certain election-related activities. Persons in active pay status serving in the classified civil service are significantly limited, by law, in their ability to engage in various partisan political activities at any time, particularly elections involving candidates selected by the various political parties. Examples of both permissible and impermissible activities by classified employees are detailed below.

1. Permissible election-related activities for classified employees. On their own time, classified employees may, by law, play only a relatively limited role in partisan campaign activities and may be somewhat more involved in non-partisan election related activity. The following are examples of activities employees in the classified service may participate in **on their own time**:⁶

- Registration and voting;
- Making voluntary contributions to political candidates or organizations;
- Attending political rallies;
- Wearing political buttons or badges.
- Signing nominating petitions in support of individuals;
- Expressing, to other individuals, opinions orally or in writing;
- Displaying political materials at home or on their own personal vehicle;
- Circulating non-partisan petitions or petitions relating to issues;
- Running for office for which the candidates are not selected by political parties;
- Serving as an official election judge (poll worker) in accordance with the applicable poll worker leave policy.

2. Prohibited election-related activities for classified employees. The following are examples of activities in which employees in the classified service may not, by law, participate, **even on their own time**:⁷

- Candidacy for public office in a partisan election (i.e. – an election in which candidates are selected by political parties);

⁶ See O.A.C. § 123 *et seq.*

⁷ See O.A.C. § 123 *et seq.*

- Candidacy for public office in a nonpartisan general election if the nomination to candidacy was obtained in a partisan primary or through the circulation of nominating petitions identified with a political party;
- Filing of petitions meeting statutory requirements for partisan candidacy to elective office;
- Circulation of official nominating petitions for any candidate participating in a partisan election;
- Service in an elected or appointed office in any partisan political organization;
- Acceptance of a political party-sponsored appointment to any office normally filled by partisan election;
- Campaigning by writing for publications, by distributing political material, or by writing or making speeches on behalf of a candidate for partisan elective office, when such activities are directed toward partisan political success;
- Solicitation, either directly or indirectly, of any assessment, contribution or subscription, either monetary or in-kind, for any political party or partisan candidate;
- Solicitation of the sale, or actual sale, of political party tickets;
- Partisan activities at the election polls, such as solicitation of votes for other than nonpartisan candidates and nonpartisan issues;
- Providing assistance to any political candidate, political party or other partisan political organization with organizational and recruitment activities, when such activities are directed toward party success;
- Service as witness or challenger for any party or partisan committee;
- Participation in political caucuses of a partisan nature;
- Participation in a political action committee which supports partisan activity.

3. Disciplinary Action. The AIG may institute an investigation when there is reason to believe a classified employee has engaged in prohibited election-related and/or partisan activity. Such actions, if proven, may amount to a violation of Ohio or County law and could result in discipline of the employee up to and including removal.

C. Unclassified employees may, **on their own time**, engage in election-related and partisan activities. Employees in the unclassified service, who serve at the pleasure of the appointing authority and are not subject to competitive examination, may, on their own time, engage in partisan and election-related activities, unless otherwise specifically precluded by federal or state law. Unclassified employees may not solicit classified County employees for the financial benefit of a political party or a candidate for public office.

D. Use of County time, property and equipment. Even when employees may participate in election-related activities, they may not, in general, engage in those activities while on County time, on County property, or using County equipment. Further guidance is provided below:

1. Misperceptions may occur if an employee participates in election related activities during hours that others believe are likely to be County Time. The AIG strongly recommends that if an employee chooses to participate in election-related activities, those activities should preferably be conducted on the weekends or outside normal work hours to eliminate any chance of an inadvertent violation of the law, or even the appearance of impropriety. Nonetheless, an employee may engage in permissible political activity during normal work hours but only if the employee uses a lunch hour, personal leave, compensatory/exchange time, vacation leave or other non-county time for that purpose.
2. Employees who choose to participate in permissible election-related activities should, do so only using a personal phone, computer or other personal communications device.
3. In order to maximize compliance with limitations against using County time, property and/or equipment for political purposes, employees should take the following precautions:
 - a. Direct incoming election-related telephone calls away from County government offices.
 - b. Accurately and carefully document the use of personal leave, compensatory time, or vacation leave when used for any permissible election-related activities. This includes ensuring that all proper approvals have been obtained.
 - c. Interpret the terms “property” and “equipment” broadly to include County offices, conference rooms, computers, printers, office supplies, email systems, telephones, copiers, fax machines, or any similar place or item.
 - d. Take steps to avoid even the inference of the official endorsement of a candidate by the County or an agency of the County by exercising caution when displaying a political pin, badge or other political paraphernalia at work.

E. Running for Elected Office

1. **Classified employees.** A classified County employee, by law, may not be a candidate in a partisan election or a candidate in a non-partisan election if their nomination was obtained in a partisan primary or through the circulation of nominating petitions identified with a political party.

2. **County employee candidacy guidelines.** County employees who choose to run for office and who are otherwise permitted to do so under Ohio law, must also abide by the following guidelines:
 - a. **Conflicts.** Conflicts of interest and appearances of conflicts of interest must be avoided. Employees who are otherwise permitted to do so may run for elected offices including without limitation local school boards, city councils in smaller jurisdictions, and other similar positions as long as no substantial conflict exists, as determined by the employee's appointing authority, between the employee's duties and the proposed candidacy. The AIG should be consulted prior to any employee embarking upon any formal candidate related activity. Failure to engage in such a consultation could result in the removal of an employee who has already undertaken candidate activity.

 - b. If an employee runs for an office with duties that conflict with the employee's governmental duties, the employee may be informed that assuming that office, if elected, will necessitate termination of County employment.

 - c. **Notice Requirement.** Prior to initiating any formal actions to run for an elected office, employees must provide notice of his or her intent to run to the AIG counsel. This notice allows the AIG to:
 - i. Consult with appropriate supervisors and determine whether an apparent or potential conflict of interest exists between the employee's job duties and the duties of the elected office or any activities likely to take place during the employee's candidacy;

 - ii. Ascertain whether the employee is required to leave County service prior to taking any official action in support of such a candidacy, is seeking (or should seek) a leave of absence to accommodate campaign activity and whether such a leave is operationally feasible for the agency (see discussion below); and

 - iii. Provide and discuss with the employee the political activity restrictions to help assure that the employee does not violate this policy.

 - d. **Instances requiring notice include without limitation:**
 - i. Classified and/or unclassified employees running for non-partisan elected office, such as school board member, township trustee, or city council member.

ii. Unclassified employees running for political party leadership positions, such as local or County central committee positions.

iii. Unclassified employees running for full-time partisan office.

e. Requested Leaves of Absence. Some employees may wish to request unpaid leaves of absence from their County jobs when running for elected office.

i. When such requests are made, the Supervisor will determine if such a request is reasonable and if so, the period for which such a leave should be granted, considering the employee's position and how the leave of absence would impact the operations of an agency.

ii. If it is decided that such a leave should be granted, the Supervisor may recommend a specific time period for the employee to take a leave of absence if, in their view, the particular election campaign is likely to adversely affect the employee's ability to fulfill his or her job responsibilities, but the agency can work around the employee's leave of absence.

F. Use of Vacation and Other Leave for Campaign Activity. An employee wishing to take time off from work to assist in permissible campaign activity may do so if the employee has obtained permission to be absent from work. Because an employee may use vacation or other similar leave for any purpose, such an employee may engage in any permissible campaign activity while on any such approved leave. An employee wishing to take an extended leave to engage in political activities may request unpaid leave, up to six months. Unpaid leave may be granted by the Supervisor and will be denied if such leave would pose operational problems to the agency.

G. Ballot & Levy Issues

1. County employees may, without violating this policy, use County time and equipment to provide information relating to ballot or levy issues that may affect the County and its departments.

2. Other permissible employee conduct. Concerning ballot or levy issues relevant to County interests or responsibilities, employees may:

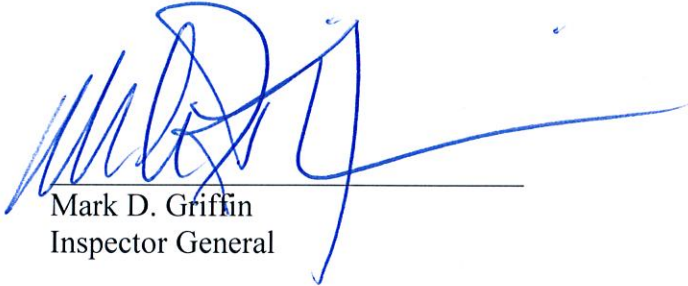
a. Disseminate, either verbally or in writing, objective information concerning the ballot or levy issue and its impact, particularly as it may relate to a specific department. The public may direct questions to affected departments and, as a result, those departments may need to prepare and disseminate objective information sheets about the matter in order to prepare their employees to answer questions;

b. Correct or clarify factual errors or misinformation concerning a ballot or levy issue.

3. Impermissible employee conduct. County employees may not use County time or resources to:

- a. Engage in political activities unrelated to their job duties; or
- b. Develop, produce and /or disseminate campaign materials regarding a ballot or levy issue that is unrelated to their job duties.

H. Poll Worker Service. Classified or unclassified employees who wish to work on Election Day as poll workers (also known as an election judge) may do so after notice and approval of their supervisors.



Mark D. Griffin
Inspector General

This advisory opinion is solely the opinion of the Agency of Inspector General with regard to its interpretation of the Cuyahoga County Ethics Ordinance. This advisory opinion is not binding on any external entity, including, but not limited to, the Ohio Ethics Commission.