



NATIONAL CONFERENCE OF STATE LEGISLATURES CENTER FOR ETHICS IN GOVERNMENT

Peggy Kerns, Director ♦ Natalie O'Donnell Wood, Senior Policy Specialist
7700 East First Place ♦ Denver, CO 80230 ♦ 303-364-7700

Testimony to the Pennsylvania Senate Rules and Executive Nominations Committee

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Mr. Chair and members of the committee, thank you so much for inviting me to Harrisburg. It's my first trip to your capitol in my 10 years at NCSL so I'm grateful for the chance to check another dome off my list! My name is Natalie O'Donnell Wood and I work in NCSL's Denver office for our Center for Ethics in Government. Our constituencies are state legislators and legislative staff. I would like to speak to you today about the work we do for state legislatures and to address some of the provisions and trends we have seen with respect to staff and political activity, and the ethical implications therein.

Overview of the Center for Ethics in Government

Ten years ago NCSL established the Center for Ethics in Government to work toward restoring the public trust and confidence in representative democracy through promoting ethical behavior for state legislators, staff, lobbyists, and advocates. We try to do this in a few different ways. We research and analyze state ethics laws and trends; write articles and briefs on ethical issues; hold sessions at NCSL meetings to address ethics and public integrity; and hold trainings and workshops on values-based ethics and ethical decision making. We also have a great website, with resources and comprehensive information on ethics and lobbying: www.ncsl.org.

Values-based ethics

I want to briefly explain the Center for Ethics in Government's philosophy on ethics and ethical decision making. The Center trains on value-based ethical decision making, or the idea that ethics are the standards of conduct that indicate how a person should behave, based on his or her values. Many times when we see states focus on ethics reform, the emphasis is put on changing and complying with laws or rules, which focus on what one can and can't do. While these laws are extremely important, ethical behavior is also about what you ought to do...it requires

introspection on what you consider moral or important and acting a certain way based on that. Obeying rules and laws make us legal - but the ethical standards of public officials and their staff might be higher than what the law requires. Public perception also becomes important.

I mention this as a preface to my comments because while the laws are extremely important in guiding and regulating us, public officials, staff, lobbyists and advocates also should think about and seek advice on not just what is legal, but what is ethical.

With that said, I will reiterate my comment that ethics-related laws, rules, and formal guidelines are extremely important in helping public officials and their staff make informed decisions that have the public's best interests in mind. They create a standard of behavior to which everyone must adhere. They seek to ensure fairness and impartiality. They provide black and white guidance in an often gray world. And they serve as the foundation upon which an ethical climate can flourish.

Staff and political activity

Many states have had these goals in mind when addressing what is before your committee today – legislative employees and political activity. I will briefly discuss three main points:

- I. The rationale for such policies.
- II. Which states have addressed the issue and where they provide guidance.
- III. How the proposed Pennsylvania Senate's rules compare.

I. Rationale

Why provide guidance on political activity and conduct? Alaska's standards of conduct for legislators and all legislative employees, found in state law, provide some justification. Alaska prefaces its prohibitions on political activity by saying,

“The legislature finds... high moral and ethical standards among public servants in the legislative branch of government are essential to assure the trust, respect, and confidence of the people of this state; a fair and open government requires that legislators and legislative employees conduct the public's business in a manner that preserves the integrity of the legislative process and avoids conflicts of interest or even appearances of conflicts of interest; and compliance with a code of ethics is an individual responsibility;

thus all who serve the legislature have a solemn responsibility to avoid improper conduct and prevent improper behavior by colleagues and subordinates.”

With respect to staff and political activity in particular, guidance can offer direction and instruction for staff amid what can sometimes be confusing territory. The 2002 NCSL Guide for Writing a State Legislative Personnel Manual states:

“Few employment issues are as complex or potentially troublesome for legislative staff as those related to political activity. This is especially true for partisan staff whose work draws them close to the campaign interests of their elected officials. It is therefore crucial to give legislative employees clear and unambiguous guidance about the rules that govern their political activities.”

As you can see by the wealth of example language in the handouts I’ve provided, the general consensus among the states is that it is improper to use public resources for political gain. Creating policies on this topic articulates and affirms the legislative institution’s commitment to upholding the public trust. It also protects the institution. Legislatures that have not had such guidelines in place, or have not enforced or trained on them, have suffered. Washington and Wisconsin are both examples of states that faced legal problems and scandals related to this issue. As a result, they both sought to change the ethical culture in their legislatures and restore the faith in the institution by creating very detailed policies and protocols on staff and political activity.

II. State Action

As with any policy topic, states, chambers, and legislative offices have taken different approaches to setting out political activity provisions. Many states have enacted statutes, which apply to either the legislative or the executive branches or both. Many offices include information in their employee personnel manuals or codes of conduct. Others have provided language or guidelines in chamber rule. There are states that have some combination of the three. It is also possible that state employees can find guidance from opinions of the state ethics commission or in published or unpublished opinions from legislative or other legal counsel.

Statutes

At least **31 states** have statutes that restrict or prohibit state employees from participating in various forms of political activity. Depending on the state, these restrictions apply to employees in the executive or legislative branches of government, or both. Most statutes focus on political work on state time or using state resources. A prohibition on soliciting campaign contributions, especially on state property, is another common element. Some state statutes protect employees from being coerced or threatened into political participation or contributing funds (IN, KS, MI, MO, NM, NC).

Many state statutes assert an employee's right to participate in political activities, just as any other citizen can. Alabama's law enumerates many allowed activities that other states prohibit (joining parties, clubs, contributing) but cautions that they must occur on an employee's own time or approved leave. Lists found in Idaho and Michigan are similar. Indiana's language is common, stating that "except when on duty or acting in an official capacity and except where otherwise provided, no employee shall be prohibited from engaging in political activity or be denied the right to refrain from engaging in such activity." Alabama and Arkansas are similar.

In states where the statute is applicable to legislative staff, language tends to be more general, such as California's, which states: "A state officer or employee shall not engage in any employment, activity, or enterprise which is clearly inconsistent, incompatible, in conflict with, or inimical to his or her duties as a state officer or employee." According to the Chief Counsel for the Senate Ethics Committee, this law guides Senate staff and the specifics of adherence to it are handled internally as a matter of custom and practice. Washington has a statute that is similarly worded, and the state ethics commission uses it as partial basis for restrictions on campaign activity on state time. Alaska, Arkansas, and Washington have perhaps the most comprehensive statutes with respect to limitations on legislative staff. They are fairly explicit concerning which activities are allowed, which are prohibited, and include other guidance for legislators and staff. The language from these statutes is included in the handout I've provided.

In the 2009-2010 biennium, at least six states have considered or are considering legislation that would change or enact laws on the topic of legislative employees and political activity (MA, MO, NH, NJ, NY and OH). Twelve examined the issue from 2005-2008.

Rules

Comprehensive guidance on staff and political activity occurs less commonly in chamber rule, but at least **17 states** have chamber rules in one or both houses on the topic. Limitations range from accepting contributions on state property, to lobbying, to using state resources for political matters, to receiving extra compensation for non-legislative or improperly exerted duties.

Sometimes the onus is on the members to not use or influence staff. In other rules the prohibition is aimed at the employee. The rules of the New Jersey Assembly and Senate are very clear in banning partisan staff from campaign or political work during state time, on state property, or with state resources. They allow staff to voluntarily do campaign work when “not present in state facilities” or when “not obligated for perform legislative duties.” They also provide an exemption that would allow campaign work on state time, or with state resources or property if “it occurs on rare or isolated occasions; its performance imposes little or no cost to the state; and is incidental and subordinate to other work which has a primarily public purpose.” The rules give a definition of campaign work but do not list specific examples. They do specifically prohibit the mailing of materials that discuss the activities or opinions of a legislator during a year in which the legislator is a candidate.

Other rules do not specify prohibited activity, but reiterate that legislative staff must adhere to the provisions set forth in state law (FL Senate and ND). With respect to other guidance on staff conduct, some rules address limitations on staff and lobbying, accepting things of value, using their position for improper influence, receiving financial benefits, or address other similar conflicts of interest – example language from these chambers is also included.

Besides the aforementioned New Jersey rules, those that address staff and political activity include the Senate in Arkansas, Florida, and Hawaii; the House or Assembly in Iowa, Minnesota and New York; and both chambers in California, Georgia, Massachusetts, New Mexico, North Dakota, Oregon, and Washington.

Manuals & Staff Codes of Conduct

The most detailed information on this topic can be found in employee and staff personnel manuals and codes of conduct. I have provided a handout with examples applicable to **30 offices or chambers** in **24 states**. Personnel manuals most commonly ban the use of state time and resources for political or campaign work. Many manuals go on to state that staff must or may use vacation time, or some variation of personal time. The degree of specificity varies – Delaware’s expressly forbids political activity during state time, but offers no examples. Louisiana’s House manual “highly discourages” participating in legislative campaigns. The examples I have provided from Connecticut, Illinois, Washington, and Wisconsin go into great detail listing definitions and providing examples of allowed and prohibited activity.

Referring back to the NCSL Guide for Writing a State Legislative Personnel Manual, it states, “generally speaking, more detail is better when writing the political activity section of the personnel manual...policies for partisan staff may be less restrictive, but they also may require finer descriptions than those for nonpartisan staff.”

An interesting exception to what I’ve covered today is Kansas. In 2000, the state’s ethics commission opined, following an Attorney General decision, that personal staff of elected officers may use their time (state time) to promote the campaign of any candidate regardless of who employs them. They may not use state resources such as phones, computers, printers and the like. Kansas’ statute also lists out this exemption.

III. Proposed rules of the Pennsylvania Senate in a national context

The proposed Pennsylvania Senate Rules regarding staff and political activity give guidance, contain specific examples, and are comprehensive. The scope of the rules, to whom they apply, and the detail they provide are similar to provisions found in Washington and Wisconsin. Both states include like examples of prohibited activity for staff and provide the Chief Clerk with some oversight responsibilities. The Washington Senate, which has one manual for nonpartisan and caucus staff, also distinguishes between forbidden “electoral campaigning” activities and permitted “issue politics.” To illustrate, staff are prohibited from designing “campaign strategies or mail(ing) plans for a candidate, ballot issue, or caucus,” but they can “develop and explain non-election strategies for legislative and policy goals, including recommended partisan

positions.” Their guidelines also create prohibitions based on deadlines to prevent the line between campaign work and policy work from blurring.

Illinois’ Legislative Service Offices, which are nonpartisan, and Connecticut’s rules for their central staff have similar, detailed guidance on what constitutes prohibited political activity. Ohio’s Legislative Code of Conduct also shares elements with the proposed rules in that both address and limit certain activities for members and staff and both stress adherence to statutory financial disclosure requirements.

While the aforementioned states set staff codes of conduct in manuals, the Pennsylvania Senate would enact its code in rule. Chamber rules in New Jersey are similar in that they highlight limitations on staff and political activity and provide definitions. As stated earlier, approximately 27 chambers have language concerning staff conduct and political activity in rules, but most are not as comprehensive.

De minimis exceptions have been built in to other states’ provisions. Alaska’s statute states the exception as: “minimal use of state assets if use does not interfere with the performance of state work, is applied infrequently, is considered nominal or limited, or (if) the legislator or employee reimburses state.” California and New Jersey, as previously outlined, have similar provisions.

The prohibition on soliciting or receiving campaign contributions on state time is quite common in other states and can be found in statute, rule and manuals. The restriction on Senate members or supervisory staff from requiring subordinate staff to perform campaign duties or contribute is likewise found in many places.

The comprehensive guidelines on printing and distributing newsletters are similar language found in Oregon and Washington.

Part II, section 1. (a – e) of the proposed rule, which outlines and defines what constitutes an employee’s “own time,” is among the more specific provisions I’ve seen.

Finally, many states have language that is similar to part II, section 7, of your proposed rule, which states that employees “should not be required to perform tasks unrelated to their official duties,” but most have not elaborated as thoroughly on this provision in conjunction with restrictions on political activity.

To sum, many state legislatures have addressed staff conduct, in particular mixing staff time, responsibilities and resources with political or campaign activity. They have created provisions in a variety of places. Because these issues can often be confusing for staff, especially partisan staff, creating clear definitions, distinct boundaries and explicit guidelines, and oversight can help mitigate confusion.

The NCSL Ethics Center conducted a survey of state ethics committees and commissions in 2002 to gauge the national ethical climate. Survey respondents felt that legislators play a direct role in creating an ethical climate, saying, "Unethical conduct should be prohibited, and the laws should be enforced. But, tough laws will not make people more ethical. Leadership must come from the bodies themselves, opening up the process, changing old habits, and making ethics a priority for members who have not already made it one."

From the results of that study we believe there are three primary ways states can instill ethics into the system.

- Increase the level of sensitivity among public officials and employees to ethical issues – which can be done by training on values-based ethics and teaching on the rules and laws.
- Set high standards for ethical behavior – which can involve having clear, well-written laws and rules and having leaders, members and staff set the example.
- Live up to them.

Thank you again for inviting me to speak to you. I'm happy to answer any questions.