

January 2, 1996

Ms. Lydia G. Guerra  
Idaho Commission on Hispanic Affairs  
5460 West Franklin Road, Suite B  
Boise, ID 83705

**THIS CORRESPONDENCE IS A LEGAL GUIDELINE OF THE  
ATTORNEY GENERAL SUBMITTED FOR YOUR GUIDANCE**

Re: State Employee's Activities in Political Organizations

Dear Ms. Guerra:

Your letter of December 7, 1995, requests an opinion of the Attorney General regarding a state employee's activity in political organizations. You pose the question separately with regard to classified and non-classified state employees in specific situations. I will address each of your inquiries in turn.

**I.**

**ANALYSIS**

**A. Classified State Employees**

The political activity of classified employees is governed by Idaho Code § 67-5311, a copy of which is enclosed.<sup>1</sup> Idaho Code § 67-5311(1) prohibits classified employees from political activity in three specific areas: (1) using the employee's official authority or influence to interfere with elections or nominations to office; (2) coercing any other state officer or employee to contribute in any way to political organizations; (3) being a candidate for, or holding, elective partisan offices.

Idaho Code § 67-5311(2) enumerates rights retained by classified state employees. The list contains 14 retained rights, the last of which includes the right to "otherwise participate fully in public affairs, except as prohibited by law, in a manner which does not materially compromise the neutrality, efficiency, or integrity of the employee's administration of state functions." Idaho Code § 67-5311(2)(n).

1. May Classified State Employees Participate in Politically Oriented Organizations?

The answer to your question is yes, classified state employees may participate in politically oriented organizations. In your example, you reference participation in the

Idaho Hispanic Caucus as a political organization. A classified state employee has the right to “be a member of a political party or other political organization and participate in its activities; . . . .” Idaho Code § 67-5311(2)(e). Thus, a classified state employee may be a member of the Idaho Hispanic Caucus and participate in the political activities enumerated in Idaho Code § 67-5311(2), but must not violate the prohibitions of Idaho Code §§ 67-5311(1) or 67-5311(2)(n).

2. May Classified State Employees Attend Politically Oriented Meetings During Normal Work Hours?

Classified state employees may attend politically oriented activities during normal work hours if they have obtained the necessary leave from supervisors and record the time as vacation, compensatory time, leave without pay or other appropriate time coding. In addition, if the Commission on Hispanic Affairs sends an employee to a political organization’s meeting to represent the Commission then such political activity could be within the course and scope of the employment.

**B. Non-Classified State Employees**

Idaho Code § 67-5311 applies only to classified state employees. Non-classified state employees are not specifically prohibited by statute from participation in politically oriented organizations. Generally, non-classified state employees are at-will employees and have no protectable property interest in maintaining their status as a state employee. Thus, they can be removed without cause.<sup>2</sup>

1. May a Commissioner Appointed by the Governor Participate in Politically Oriented Organizations?

The Idaho Commission on Hispanic Affairs is created by Idaho Code § 67-7201. Of the nine members, five are appointed by the Governor, two by the Speaker of the House of Representatives, and two by the President Pro Tempore of the Senate. All commissioners are non-classified state employees, and each commissioner is removable at the will of the appointing authority.

Generally, a non-classified state employee may participate in politically oriented organizations as he or she sees fit. If a commissioner becomes politically active, then the appointing official may take that activity into account with regard to the commissioner’s continued at-will employment. Thus, the answer to your question is personal to the commissioner more than it is legal. The legal answer to your inquiry is that the commissioner has no statutory prohibition from engaging in political activity.

2. May Commissioners Attend Political Meetings During Normal Work Hours?

Since a commissioner is compensated pursuant to Idaho Code § 59-509(g), he or she is only compensated when acting in the actual performance of his or her duties as a commissioner. Thus, the question is not whether a commissioner is attending a political activity during normal work hours but whether the attendance involves the actual performance of his or her duties as a commissioner. If the commissioner attends such political activities on behalf of the commission and thereby exercises of the powers and duties of the commission as set forth in Idaho Code § 67-7205, then the commissioner should be paid for such activity. However, if the political activity is of a personal nature and not on behalf of the commission and in the actual performance of duties as a commissioner, then no compensation should be given.

### 3. Termination Based on Political Activity

An employer terminating a non-classified employee by reason of the employee's political activity should be wary of potential consequences. A cause of action for interference with the freedom of speech or the right of association potentially exists for the employee in conjunction with a wrongful termination or breach of contract suit. We do not opine on the validity of such causes of action but note only that such have been raised by terminated employees in other jurisdictions.

### **C. Constitutional Limitation on State Employee's Political Activity**

An additional applicable limitation on state employee political activities is that such activity, if during time compensated by state funds, must not personally benefit a public officer. Article 7, section 10 of the Idaho Constitution prohibits a public officer from profiting from public resources. Thus, it is inappropriate to compensate a state employee from public funds for performing non-official, personal or campaign-related tasks that benefit public officers. Further, over time this provision has been interpreted to mean that state time or resources (including but not limited to use of the telephones, fax machines, photocopiers, state mail system, etc.) may not be used for political or campaign-related activity.

## **CONCLUSION**

Political activity of classified state employees is governed by Idaho Code § 67-5311. Statutorily authorized activity conducted by the employee on his or her own time is proper as part of classified state employment. Attendance at such activities during work hours is improper unless authorized as time away from work or if the activity falls within the course and scope of the classified employment. Non-classified state employees, such as Commissioners of the Idaho Commission on Hispanic Affairs, are not statutorily prohibited from participating in political activity. However, as non-classified

state employees, they serve at the pleasure of the appointing authority who may take account of an appointee's political activities when considering continuation in at-will employment. Finally, any use of state funds, time or resources for political or campaign related activity is prohibited.

I hope this letter adequately addresses your inquiry. If you have any further questions regarding this, please do not hesitate to contact me.

Very truly yours,

KEVIN D. SATTERLEE  
Deputy Attorney General  
Contracts & Administrative Law Division

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<sup>1</sup> Note that the general prohibition of article 7, section 10 of the Idaho Constitution also applies and is discussed later in further detail.

<sup>2</sup> The doctrine of at-will employment for non-classified employees can have limitations on causes for termination based on express or implied contracts of employment. Each situation requires a case-by-case analysis.