

HAFA ADAI

*Welcome to the
Civil Service Commission's
Political Activity
presentation*

PRESENTED BY

Roland P. Fejarang

Personnel Management Administrator

Eric D. Miller

Administrative Counsel

Daniel D. Leon Guerrero

Executive Director

and

The Staff of the CIVIL SERVICE COMMISSION

DISCLAIMER

This presentation is brought to you by the staff
of the **Civil Service Commission**
to assist personnel of government of Guam
agencies and department's to follow the law
and the rules in regards to Political Activity.

**Please note, nothing presented or said
here is binding on the Commission.**

POLITICAL ACTIVITY PURSUANT TO 4 G.C.A. §5101 - §5106

On June 15, 2012, Chapter 5, Political Activity was amended by Public Law 31-217, which removed many prohibitions formerly in place for **most** government of Guam employees.

Who is Covered?

- (a) Employee means a person employed in the **Executive Branch** of the government of Guam, including autonomous and semiautonomous agencies thereof, or in the **Judicial Branch**...(cited in part)

This law applies to all classified and unclassified employees of the above **two (2)** branches of government.

Who is not Covered?

...with the following exceptions...(cited in part)

- (1) A person holding elective office;
- (2) A special or Staff Assistant to the Governor;
- (3) A person appointed by the Governor with the consent of the Legislature;
- (4) A person retained from time to time to perform professional or special services for a specific fee; and
- (5) A person working on a casual basis on the days he performs no services.

TRUE or FALSE

A **less** restrictive, unclassified employee may be a candidate in a partisan election.

CORRECT ANSWER

FALSE

4 GCA §5103

- Prohibited Activity
 - (4) Being a candidate;

Activity

- (c) Activity means the independent action of an employee, the action of an employee in open or secret cooperation with others and the indirect action of an employee through an agent. Activity does not mean the independent action of the **husband or wife** of an employee, upon his or her own initiative and in his or her own behalf;

PERMITTED ACTIVITY

- (a) An employee may engage in political activity to the fullest extent consistent with the restrictions set forth in § 5103, so long as such activity does not materially compromise his efficiency or integrity as an employee, or the neutrality, efficiency or integrity of his department or agency. Each employee specifically retains the right to register and vote in an election and, while not on duty and while not in a uniform identifying him as an employee, to:

- (1) Express his opinion as an individual citizen privately and publicly on political issues and candidates;
- (2) Display a political picture, sticker or badge or button;
- (3) Participate in the non-partisan political activities of a civic community, social labor, professional or similar organization;
- (4) Be a member, officer, or delegate of a political party or other political organization and participate in its activities to the fullest extent consistent with § 5103;
- (5) Attend a political convention, rally, fund-raising function, or other gathering;

- (6) Sign a political petition as an individual citizen;
- (7) Make, as an individual citizen, a contribution to or expenditure on behalf of a political party or organization or candidate;
- (8) Be free from any obligation to contribute to any political fund or to render any political service;
- (9) Participate in political activity in connection with a question not specifically identified with a political party: for example, soliciting signatures for petition relative to changing working conditions or campaigning for an issue in a referendum; and
- (10) Serve as member of a precinct board or other election official who performs duties under Title 3 GCA.

Restricted Employees

(b) Employees of the following government entities are **prohibited from taking an active part in political management or political campaigns:**

- (1) the Guam Election Commission;
- (2) the Civil Service Commission;
- (3) the Office of Public Accountability;
- (4) the Criminal Investigation Unit of the Tax Enforcement Division of the Department of Revenue and Taxation;
- (5) the Sworn police officer; and
- (6) the Prosecution Division of the Office of the Attorney General. For the purposes of this Section, the term "active part in political management or in a political campaign" means to campaign for or against candidates, or otherwise engage in political activity in concert with a political party, a candidate for partisan political office, or a partisan political group.

Prohibited Activity

- (a) An employee shall not use his official authority or influence for the purpose of interfering with or affecting the result of an election.
- (b) Specific activities in which employees are prohibited from participating include, but are not limited to:

- (1) soliciting, collecting, handling, disbursing or accounting for assessments, contributions or other funds for a political party, partisan political organization or candidate;
- (2) organizing, selling tickets to, seeking support for or actively participating in a fund-raising activity of a political party, partisan political organization or candidate;
- (3) taking an active part in managing the political campaign of a candidate;
- (4) being a candidate;
- (5) discharging, promoting, demoting or changing the compensation of any other employee or promising or threatening to do so, because said other employee advocates or fails to advocate through contribution, voting or otherwise, a candidate; and
- (6) using government travel allowances, government transportation, government supplies or government facilities for the benefit of any political party, partisan political organization or candidate.

The Political Activity law allows more voluntary participation regarding political activities, on the employees part.

For those in the less restrictive group which is the majority of the government work force.

THINGS TO REMEMBER

- Although as a less restricted employee you may now participate in partisan elections, you should never do so while wearing a government of Guam uniform or official insignia.
- Never use your official title or position while engaged in political activity, or while on duty at work.
- Never invite subordinate employees to political events.
- All government employees shall be free from any obligation to participate or contribute to any political fund or to render any political service.

TRUE or FALSE

- A **less** restrictive employee may take annual leave to participate in an organized street wave for a particular candidate.

CORRECT ANSWER

TRUE

4 GCA §5102

(5) Attend a political convention, rally, fund-raising function, or other gathering;

TRUE or FALSE

A **less** restrictive employee may display a huge sign on the back of their truck bed for a candidate running for office.

CORRECT ANSWER

TRUE

4 GCA §5101

(1) Display a political picture, sticker or badge or button;

LEONARDO M. RAPADAS
Attorney General



PHILLIP J. TYDINGCO
Chief Deputy Attorney General

OFFICE OF THE ATTORNEY GENERAL



July 3, 2014

INFORMATION AND GUIDANCE

Ref: CSC 14-0479

To: Executive Director, Civil Service Commission
From: Assistant Attorney General, Civil Division
Subject: Use of annual leave by government employees for political purposes

On June 9, 2014, you requested our opinion on two issues. First, whether a GovGuam employee can request and use his annual leave to participate in political activities such as rallies, fund raising and the like. Second, whether a GovGuam employee may park his vehicle carrying a large political sign in a parking space designated for government use. You cited us to 4 GCA 5101 and 5102, from the Mini-Hatch Act, regarding political activity by government employees.

The Mini-Hatch Act simultaneously protects an employee's right to engage in political activity away from his job and prohibits an employee from both using his authority to campaign and from campaigning during work hours. GCA 5101, et seq. An employee may not campaign at the workplace. 4 GCA 5106.

The First Amendment to the United States constitution guarantees all persons the right to participate in the political process, including government employees. Garcetti v. Ceballos, 547 U.S. 410, 417 (2004). However, to be protected, the employee's speech on a political matter must be on a matter of public concern and must not be outweighed by any injury the speech may cause to the efficiency of government operations. Waters v. Churchill, 511 U.S. 611, 675 (1994).

Garcetti, supra, sets forth a two pronged inquiry as to whether speech by a government employee is protected. First, did the employee speak as a citizen on a matter of public concern? Second, if the answer to the first question is yes, did the government possess an adequate justification for treating the employee differently from any other member of the public? Garcetti v. Ceballos, 547 U.S., at 418 Lane v. Franks, 2014 WL 2765285 (2014).

In both of the instances you inquire about, the employee would be speaking on a matter of public concern and the government cannot justify treating him differently from members of the public. These benign political activities are engaged in frequently by the general public and do not threaten government efficiency.

We believe that an employee may use his annual leave to participate in political activity. The government grants every employee annual leave to use as he sees fit and has little interest in how an employee spends his free time. It might be unconstitutional to prohibit an employee from spending his free time on political activities.

We further believe that an employee may park his truck bearing a political sign in a government slot so long as he does not campaign on behalf of a candidate while on the job. A sign does not differ from a bumper sticker expressing political preferences except for size. Since the sign remains outside the building, it is acceptable so long as the employee does not campaign on the agency premises.

We trust that this answers your inquiries.

Respectfully Submitted,



DAVID J. HIGHSMITH

Investigations by the Civil Service Commission

“When **any person** has reason to believe that an employee has violated §5103, he may report the matter to the Civil Service Commission. On receipt of a **written** report which seems to the Commission to warrant an investigation, the Commission may investigate the matter in accordance with the provisions of the rules and procedures, if any, established by the Civil Service Commission and the following:

(a) All hearings shall be conducted before the entire Commission; and

(b) The decision of the Commission *shall include a determination of* whether a violation of § 5103 has occurred and whether a violation warrants the **removal** of the employee from his employment. Should the Commission determine that removal is *not warranted but that a violation of § 5103 did occur*, a penalty of *not more than thirty (30) days' suspension without pay shall be imposed at the direction of the Commission.*”

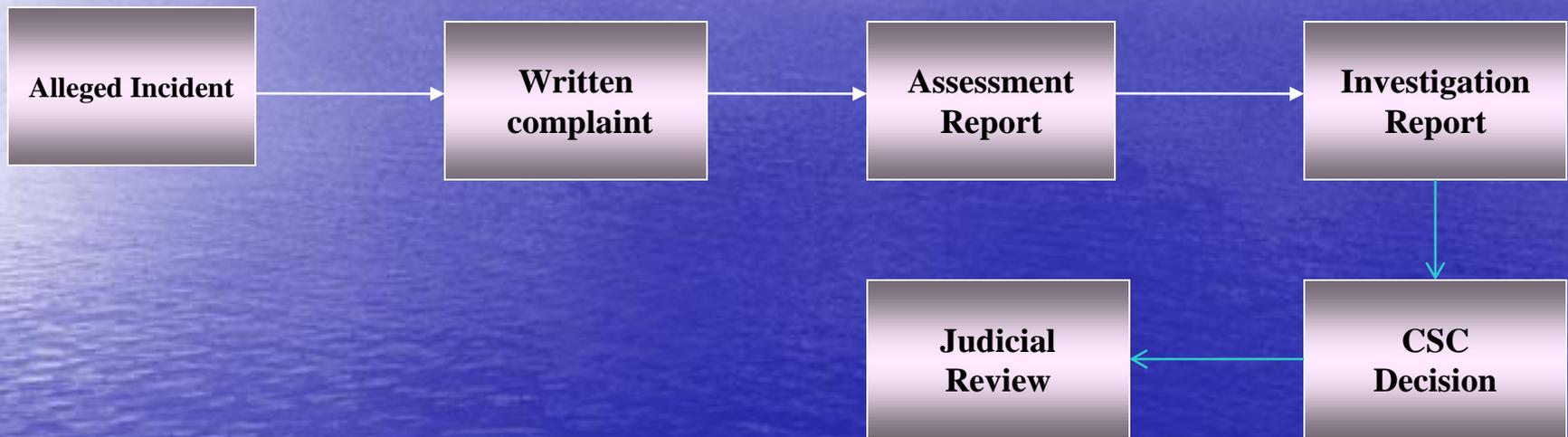
PROCESS OF THE INVESTIGATION

Written complaint

Staff **Assessment** report before the Board of Commissioners *(to determine to approve an investigation or not into the matter)*

Staff **Investigation** report before the Board of Commissioners *(to determine to approve or disapprove the investigation findings or not on the matter)*

Appeal for Judicial review



MINI HATCH FLOW CHART

SI YU'OS MA'ASE!

QUESTIONS

4 GCA PUBLIC OFFICERS & EMPLOYEES
CH. 5 INVESTIGATIONS BY CIVIL SERVICE COMMISSION

1

CHAPTER 5
POLITICAL ACTIVITY

- § 5101. Definitions.
- § 5102. Permitted Activity.
- § 5103. Prohibited Activity.
- § 5104. Activities Not Affected.
- § 5105. Investigations by Civil Service Commission.
- § 5106. Other Restrictions: Penalty.
- § **5101. Definitions.**

In this Chapter:

(a) *Employee means a person employed in the Executive Branch of the government of Guam, including autonomous and semiautonomous agencies thereof, or in the Judicial Branch with the following exceptions:*

- (1) A person holding elective office;
- (2) A special or Staff Assistant to the Governor;
- (3) A person appointed by the Governor with the consent of the Legislature;
- (4) A person retained from time to time to perform professional or special services for a specific fee; and
- (5) A person working on a casual basis on the days he performs no services.

Employees includes a person on administrative annual, or sick-leave unless such person has resigned and has received a lump-sum payment for such leave. Subject to (5) above, it includes persons not providing professional services for a specific fee who are hired on a temporary, part-time, emergency or casual basis;

(b) *Election means any local, primary, general or special election;*

(c) *Activity means the independent action of an employee, the action of an employee in open or secret cooperation with others and the indirect action of an employee through an agent. Activity does not mean the independent action of the husband or wife of an employee, upon his or her own initiative and in his or her own behalf;*

- (d) *Political Party* means a national political party, a territorial political party and an affiliated organization;
- (e) *Partisan and non-partisan* when used as adjectives refer to political parties; and
- (f) *Candidate* means:
 - (1) an individual as defined in 3 GCA '8101, Subsection (b); and
 - (2) a candidate for an office in a political party.

§ 5102. Permitted Activity.

(a) An employee may engage in political activity to the fullest extent consistent with the restrictions set forth in § 5103, so long as such activity does not materially compromise his efficiency or integrity as an employee, or the neutrality, efficiency or integrity of his department or agency. Each employee specifically retains the right to register and vote in an election and, while not on duty and while not in a uniform identifying him as an employee, to:

- (1) Express his opinion as an individual citizen privately and publicly on political issues and candidates;
- (2) Display a political picture, sticker or badge or button;
- (3) Participate in the non-partisan political activities of a civic community, social labor, professional or similar organization;
- (4) Be a member, officer, or delegate of a political party or other political organization and participate in its activities to the fullest extent consistent with § 5103;
- (5) Attend a political convention, rally, fund-raising function, or other gathering;
- (6) Sign a political petition as an individual citizen;
- (7) Make, as an individual citizen, a contribution to or expenditure on behalf of a political party or organization or candidate;
- (8) Be free from any obligation to contribute to any political fund or to render any political service;
- (9) Participate in political activity in connection with a question not specifically identified with a political party: for example, soliciting signatures for petition relative to changing working conditions or campaigning for an issue in a referendum; and
- (10) Serve as member of a precinct board or other election official who performs duties under Title 3 GCA.

(b) Employees of the following government entities are prohibited from taking an active part in political management or political campaigns:

- (1) the Guam Election Commission;
- (2) the Civil Service Commission;
- (3) the Office of Public Accountability;
- (4) the Criminal Investigation Unit of the Tax Enforcement Division of the Department of Revenue and Taxation;
- (5) the Sworn police officer; and

(6) the Prosecution Division of the Office of the Attorney General. For the purposes of this Section, the term "active part in political management or in a political campaign" means to campaign for or against candidates, or otherwise engage in political activity in concert with a political party, a candidate for partisan political office, or a partisan political group.

§ 5103. Prohibited Activity.

(a) An employee shall not use his official authority or influence for the purpose of interfering with or affecting the result of an election.

(b) Specific activities in which employees are prohibited from participating include, but are not limited to:

- (1) soliciting, collecting, handling, disbursing or accounting for assessments, contributions or other funds for a political party, partisan political organization or candidate;
- (2) organizing, selling tickets to, seeking support for or actively participating in a fund-raising activity of a political party, partisan political organization or candidate;
- (3) taking an active part in managing the political campaign of a candidate;
- (4) being a candidate;
- (5) discharging, promoting, demoting or changing the compensation of any other employee or promising or threatening to do so, because said other employee advocates or fails to advocate through contribution, voting or otherwise, a candidate; and
- (6) using government travel allowances, government transportation, government supplies or government facilities for the benefit of any political party, partisan political organization or candidate.

§ 5104. Activities Not Affected.

Nothing in this Chapter shall preclude the use under a rental agreement of government of Guam facilities by a political party, partisan political organization or candidate.

§ 5105. Investigations by Civil Service Commission.

When any person has reason to believe that an employee has violated §5103, he may report the matter to the Civil Service Commission. On receipt of a written report which seems to the Commission to warrant an investigation, the Commission may investigate the matter in accordance with the provisions of the rules and procedures, if any, established by the Civil Service Commission and the following:

(a) All hearings *shall be conducted before the entire Commission; and*

(b) The decision of the Commission *shall include a determination of whether a violation of § 5103 has occurred and whether a violation warrants the removal of the employee from his employment. Should the Commission determine that removal is not warranted but that a violation of § 5103 did occur, a penalty of not more than thirty (30) days' suspension without pay shall be imposed at the direction of the Commission.*

§ 5106. Other Restrictions: Penalty.

No person, whether or not an employee, shall solicit or receive a contribution or distribute literature for any political purpose in any room or building occupied in the discharge of official duties by any person employed by the Executive, Legislative or Judicial Branches of the government of Guam. For purposes of this Section, soliciting a contribution includes solicitation by letter or circular addressed to and delivered to an employee in said room or building. Any person who violated this Section is guilty of a misdemeanor.

Website information;

<http://www.guamlegislature.com>

<http://www.justice.gov.gu/compileroflaws/GCA/title4.html>