

**CITY OF MADISON
OFFICE OF THE CITY ATTORNEY
Room 401, CCB
266-4511**

Date: January 11, 2018

MEMORANDUM

TO: All City of Madison Email Users

FROM: Michael P. May, City Attorney
Steven Brist, Assistant City Attorney

RE: Madison's Code of Ethics and Elections

2018 includes both a spring and fall election, along with the related primaries. Our office regularly receives inquiries about what limitations exist under the City's Code of Ethics, sec. 3.35, MGO, or any related laws regarding elections and campaigns.

This memo provides a summary response to some of the most common questions we get, but does not cover all situations. As always, a change in the factual setting may change the legal analysis.

1. May City employees run for office?

Nothing in the City's Ethics Code prohibits City employees from running for office. The employee will need to take care not to use City resources or time for election purposes (discussed below). Some elective offices may be legally incompatible with the employee's City position, meaning the employee could not hold both positions. Depending on the employee's position with the City, there might be conflict of interest issues when holding an elective office. In addition, the Hatch Act (discussed below) may limit an employee from running for office.

2. May City employees endorse political candidates?

Yes, but the employees may not use their position or other indications of their position with the City. Sec. 3.35(8)(b), MGO, provides in part:

No employee on or off duty shall use her or his title or position or indicia thereof in any elective political activity.

Thus, I may endorse candidate x for judge, but I cannot add "Madison City Attorney" after my name. This rule also comes into play if a photograph includes police or fire officers in uniform, or standing in front of a fire engine or Metro bus, or other indicia of a city position. Note that this applies only to employees, not elected officials.

3. What are the limitations on use of city resources?

The Code of Ethics generally prohibits incumbents (this includes elected officials, employees and committee members) from using City resources for private purposes. There are some exceptions, such as limited use of City email for private purposes. The Code addresses political activity (Sec. 3.35(5)(b), MGO):

The use of City equipment and property including City-owned vehicles, cameras, projectors, audio systems, copy machines, fax machines, computers, telephones, software and uniforms is prohibited for both partisan and non-partisan political activity. Use of City property which is available and accessible to the general public is not considered a violation of this ordinance, nor is it a violation for an incumbent to use photographs existing before the first date that nomination papers may be circulated and taken during the regular course of the incumbent's duties. For the purposes of this Subdivision (b), political activity has the meaning found in Section 3.35(8), MGO.

Not only must candidates be vigilant under these rules, so must City employees and members of committees.

4. May employees wear campaign materials or make political contributions?

Not while on duty. Sec. 3.35(8)(a) and (b), MGO, provide:

- (a) No employee while on duty or on official City business shall, for the apparent purpose of influencing the outcome of any referendum, or improving the chance of election of a person seeking elective office:
 - 1. Wear or display any campaign material.
 - 2. Distribute any campaign literature.
 - 3. Solicit, receive or give subscriptions, contributions or service for any candidate or referendum position.
 - 4. Actively campaign for any candidate or any referendum position.

- (b) No employee while on duty or other official City business or off duty shall in any way coerce or attempt to coerce subscriptions, contributions or service from subordinate employees in support of a political party or a candidate for elective office or for or against a referendum position, or retaliate against or reward an employee for refraining from participating in any political activity

In addition to these restrictions, Wis. Stat. sec. 11.1207(2) states:

No person may solicit or receive from any officer or employee of a political subdivision of this state any contribution during established hours of employment or while the officer or employee is engaged in his or her official duties.

So, under these restrictions, employees may not wear campaign materials or work on campaigns while on duty, nor may they be solicited for contributions. If you receive a phone call or email from a campaign asking for contributions while at work, politely remind the campaign that this is a government office and should be removed from their campaign lists.

None of the above limit an employee's ability to work on campaigns or make campaign contributions outside of working hours. The City's Code of Ethics specifically states that campaign contributions reported under chapter 11 of the Wisconsin Statutes do not constitute a thing of value for conflict of interest issues. Sec. 3.35(2)(a), MGO.

5. Does the federal Hatch Act limit campaign activity?

Generally speaking, no. The Act has been modified in recent years. About the only limitation remaining is that an individual whose salary is paid entirely by federal funds may not run for partisan political office.

If you have other questions, please contact me or ACA Steve Brist.