



**COMMONWEALTH of VIRGINIA**  
*Office of the Attorney General*

**Jason S. Miyares**  
Attorney General

202 North 9th Street  
Richmond, Virginia 23219  
804-786-2071  
FAX 804-786-1991  
Virginia Relay Services  
800-828-1120

**TO: KARIN CLARK**  
Virginia Department of Social Services

**FROM: MICHELLE A. L'HOMMEDIEU** *MAL*  
Assistant Attorney General

**DATE: December 6, 2023**

**SUBJECT: Exempt Final Regulation – Update Personnel Policies for Local Departments of Social Services, 22 VAC 40-675-210. (6382/10196)**

I am in receipt of the attached regulation to amend the Personnel Policies for Local Departments of Social Services concerning political activity regulation 22 VAC 40-675-210. You have asked the Office of the Attorney General to review and determine if the State Board of Social Services (“State Board”) has the statutory authority to promulgate this regulation and if it comports with applicable federal and state law.

Virginia Code § 63.2-217 mandates that the State Board promulgate regulations that are necessary to carry out the provisions of Title 63.2 and Virginia Code § 63.2-219 includes promulgation of personnel policies of local departments of social services within the State Board’s authority and responsibility. The proposed amendment to the regulation reflects the change in the federal Hatch Act (5 U.S.C.S. § 1501 *et seq.*).

Based on my review, it is my view that the State Board has the authority to promulgate the final regulation, subject to compliance with the provisions of Article 2 of the Administrative Process Act (“APA”) and Executive Order 19 (2022), and has not exceeded that authority. To date, the Board has not yet acted on this regulation; and the Agency Background Document available on Town Hall reflects the anticipated future date of Board action.

Based on the foregoing, it is my view that the amendments to this regulation are exempt from the procedures of Article 2 of the APA under Virginia Code § 2.2-4006(A)(4)(c). If you

Karin Clark  
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have any questions or need additional information about this regulation, please contact me at 786-6005.

cc: Kim F. Piner, Esq.  
Attachment

**Project 7758 - Exempt Final**

**Department of Social Services**

**Update Personnel Policies for Local Departments of Social Services to**

**Align with Federal Law**

**22VAC40-675-210. Political activity.**

A. No local department employee shall ~~make use of his official authority or influence to:~~

1. Use his official authority or influence to ~~↓~~ interfere with or affect the result of a nomination or election to public office or position;
2. Directly or indirectly coerce, command, or advise a state or local officer or employee to pay, lend, or contribute anything of value to a party, committee, organization, agency, or person for political purposes; or
3. Be a candidate for a partisan public elective office in a primary, general, or special election if the salary of the employee is paid completely, directly or indirectly, by loans or grants made by the United States or a federal agency.

B. The local department's provisions on political activity shall be consistent with the federal Hatch Act (5 USC §§ 1501-1508) and facilitate effective control of prohibited political activity by employees.

C. In general, the Hatch Act covers officers or employees of a state or local department if their ~~principle~~ principal employment is in connection with an activity that is financed in whole or in part by loans or grants made by a federal agency. An employee subject to political activity laws continues to be covered by these laws and regulations while on annual leave, sick leave, leave without pay, administrative leave, or furlough.

D. The board shall promulgate policy consistent with these provisions. Local departments may request to deviate to local jurisdiction political activity policy that is consistent with the federal Hatch Act and applicable state and local laws, regulations, and ordinances. When the local department wants to exercise this option, it must obtain required approvals and submit the required forms to the department in accordance with the administrative manual. The commissioner will provide his analysis to the board, and the deviation request shall be presented to the board for action.