

Contacting Members of Congress

Legal Opinion: GMP-0029

Index: 6.600, 6.645

Subject: Contacting Members of Congress

December 6, 1991

MEMORANDUM FOR: ALL OGC EMPLOYEES

FROM: Frank Keating, General Counsel, G

SUBJECT: Contacting Members of Congress

At our last brown bag lunch, some of you have expressed an interest in contacting your Congressional representative, or other Members of Congress, regarding Congressional actions important to you. I asked the Office of Equal Opportunity and Administrative Law to examine this issue and provide you with guidance as to appropriate communication with Members of Congress. The purpose of this memorandum is to identify relevant statutes and restrictions governing contact with Members of Congress given your status as Federal employees.

Under existing laws and authorities, Federal employees are permitted to communicate with Members of Congress regarding matters of general interest or specific concerns of the employee. This includes expression of personal opinions regarding political and/or policy issues. Employees may also participate with or assist their collective bargaining representatives regarding communications with the Congress. It is significant to note, however, that these actions must be made in your individual or personal capacity and not in your official capacity with the Agency.

There are specific statutory limitations regarding official contact with Members of Congress. Additionally, the Hatch Act prescribes certain legal prohibitions on political actions and activities in which Federal employees may engage. This memorandum also identifies relevant sections of the Department's Standards of Conduct regulations.

Under the "anti-lobbying" law, 18 U.S.C. 1913, only authorized employees of the Department may communicate with Members of Congress to solicit support for HUD or the Administration's legislative programs. Authorized employees are designated by the Secretary, or have, as a part of their official duties and position description, the responsibility to engage in these communications in an official capacity.

Employees who have not been so designated, or those who are not performing in an official capacity, may not represent to a Member of Congress that they are speaking on behalf of the

Agency. The "anti-lobbying" law prohibits unauthorized employees from using appropriated funds, directly or indirectly, to pay for "any personal service, advertisement, telegram, telephone, letter, printed or written matter or other device" to influence a Member of Congress on any pending or potential legislation. Instead, when communicating an individual or personal concern, it should be made explicitly clear that you are communicating in your individual capacity and not as a representative of the Department. In addition, individual or personal communications, whether oral or written, must not be made on official time. Use of Agency property and equipment is not permitted.

You should also note that the "anti-lobbying" law prohibits unauthorized Federal employees from assisting or soliciting the general public to lobby respective Members of Congress to support or oppose potential legislation. Specifically, while in the performance of your official duties, you should not suggest in a private conversation, speech or written correspondence, that any person, group or organization call or write to a Member of Congress regarding legislative proposals on behalf of the Department.

A second relevant authority, the Hatch Act, 5 U.S.C. 731 et. seq., limits the type of political activity in which Federal employees may engage. Under this Act, Federal employees are prohibited from making political endorsements or from participating in partisan elections. The Hatch Act also contains certain restrictions regarding your communication with Members of Congress. For example, Federal employees may not prepare any material for Members of Congress that will be used expressly for partisan political purposes or activity. Additionally, Federal employees cannot actively campaign or solicit votes for or against a Member of Congress. The Hatch Act also prohibits endorsements in political advertisements.

Finally, you should note that the Department's Standards of Conduct regulations, at 24 CFR 0.735-201 and 0.735-206, prohibit employees from using information obtained in their official position for their own, or someone else's, private gain. These regulations also prohibit disclosure of official information not generally available to the public, such as any proposed legislative or regulatory text, or related preamble, except when explicitly authorized by the Secretary or the General Counsel.

I urge each of you to examine closely the laws and authorities identified in order to become familiar with permissible and appropriate contact with Congress. Questions regarding these matters should be directed to Judy Keeler, Deputy Assistant General Counsel for Personnel and Ethics Law at 708-2205 (FTS 458-2205) or Sam Hutchinson, Assistant General Counsel for Personnel and Ethics Law at 708-2088 (FTS 458-2088).