

POLITICAL ACTIVITY ADVISORY OPINIONS

CSC Advisory No. 1

QUESTION: Are employees of the Guam Energy Office exempted from the Political Activity Law or mini-Hatch Act (4 GCA Section 5101 et seq.)?

ANSWER: The positions of Administrator and Assistant Administrator, as created by P.L. 12-100, are excluded from coverage with the exception of Section 5106. All other employees are covered.

DISCUSSION:

The Guam Energy Office was first established on February 7, 1974 through Public Law 12-100. The statute essentially empowered the Guam Energy Office to administer, manage, and regulate fuel and other energy resources.

Section 3 expressly provided that the agency shall be independent:

"Guam Energy Office: establishment of. (a) There is hereby established within the government of Guam as a separate and independent office, the Guam Energy Office hereinafter referred to as the 'Office'."

Section 3 (b) created the positions of Administrator and Assistant Administrator to oversee the Energy Office. It provided:

"The office shall have an Administrator and Assistant Administrator who shall be appointed by the Governor by and with the advice and consent of the Legislature and such other officers and employees as may be necessary to carry out its functions under this Act, provided, however, that all the officers and employees of the office shall comprise of existing personnel of the government of Guam who are temporarily assigned or loaned to the office."

Section 5 required the Energy Office to adopt rules and regulations, as follows:

"The office shall adopt reasonable rules and regulations governing its operations, said rules and regulations to be promulgated in accordance with the requirements set forth in the Administrative Adjudication Law (Section 2400 et seq. of the Government Code of Guam)."

Section 7 set forth the term of the Energy Office, to wit:

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"The Guam Energy Office shall cease to exist when the purposes and objectives of this Act have been accomplished, subject, however, to the further condition that the office and powers granted it pursuant to this Act shall terminate not later than one (1) year following the effective date of this Act."

Public Law 12-101 immediately followed appropriating funds for the Energy Office and reemphasizing the Legislature's intent that the office be staffed with existing GovGuam employees. Section 2 reads in part:

"The funds appropriated pursuant to Section 1 of this Act which are to be utilized for the payment of salaries shall be used only to reimburse the departments, agencies, or other instrumentalities of the government of Guam whose employees are assigned to the Guam Energy Office, it being the intent of the Legislature that the Guam Energy Office be staffed exclusively by persons employed by the government of Guam."

Executive Order 75-13 issued on February 1975. The Order stated that the existence of the Federal Energy Administration had been extended to June 30, 1976, and mandated that the Energy Office shall continue to operate until the Legislataure enacts a law on the existence of the Energy Office.

Public Law 13-70, enacted October 22, 1975, amended Section 7 of P.L. 12-100 on the term of the Energy Office:

"The Guam Energy Office shall cease to exist when the purposes and objectives of this Act have been accomplished, subject, however, to the further condition that the office and powers granted it pursuant to this Act shall terminate not later than the effective date of the termination of the Federal Energy Administration."

Executive Order 79-10 followed in March 1979. The Order indicated that the administration has requested the Speaker of the Fifteenth Guam Legislature to amend P.L. 12-100 and P.L. 13-70 to extend the existence of the Guam Energy Office in view of the fact that the powers and duties of the Federal Energy Administration had been transferred to the U.S. Department of Energy on October 1, 1977. The Executive Order further provided that the Energy Office shall continue to operate until the legislature enacts a law as to the existence of the Energy Office.

Public Law 16-44, the budget act, enacted October, 1981, transferred five (5) positions of the Guam Energy Office funded from the General

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Fund, to the Water and Energy Research Institute of the University of Guam.

In reliance on P.L. 16-44, and perhaps erroneously since the statute only transferred positions without abolishing the Energy Office, Executive Order 82-24 was promulgated in November 1982, and transferred all programs, funds, equipment, personnel, and obligations to the University of Guam, and purportedly abolished the Energy Office prospective to April 30, 1983.

Executive Order 83-4 issued on January 6, 1983, with the incoming Administration. The Executive Order, the most recent one to date, rescinded Executive Order 82-24, and returned all programs, funds, equipment, and obligations transferred to the University of Guam back to the Guam Energy Office.

The chronology of events must raise certain questions on the Guam Energy Office. First, is the Guam Energy Office legally in existence following the transfer of the Federal Energy Administration to the U.S. Department of Energy on October 1, 1977, since P.L. 13-70, which was never amended by the Legislature, provided that the Guam Energy Office terminate upon the abolishment of the Federal Energy Administration? Second, may Executive Orders "amend" or contradict statutes? Third, are officers and employees of the Guam Energy Office employed pursuant to the provisions of Public Law 12-100? We consider these issues to be noteworthy, although beyond the scope of this opinion. Perhaps they are best left to the Governor, the Attorney General, and the Legislature to answer.

The sole question to be answered by this opinion is whether officers and employees of the Guam Energy Office are covered by the Political Activity Law or the mini-Hatch Act (4 GCA § 5101 et seq.)

The Political Activity Law sets forth a variety of restrictions governing the political activities of GovGuam employees, with specific exceptions. 4 GCA Section 5101 provides:

"Section 5101. Definitions.

In this Chapter:

- (a) "Employee" means a person employed in the Executive Branch of the government of Guam, including autonomous and semi-autonomous 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;

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see also P.L. 14-40 §1
17-77 § 8305
107-511

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- (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;"

Evidently, any officer or employee who falls within the listed exemptions would not be covered by the law, with the exception of Section 5106 on political solicitation which covers every person whether or not an employee.

We first must presume the legal existence of the Guam Energy Office. Our examination must take us back to P.L. 12-100, the enabling act of the Guam Energy Office.

Section 3 of P.L. 12-100 makes it clear that the Guam Energy Office shall be a separate and independent office whose employees are to be on assignment from other government agencies.

Based on our information, the Guam Energy Office is presently staffed with five (5) positions: Director, Special Assistant to the Director, Private Secretary, Program Manager, Engineer III (vacant), and Program Analyst.


P.L. 12-100 expressly provides for an Administrator and Assistant Administrator to oversee the Guam Energy Office. Under the statute, these positions are to be filled in accordance with the appointment and confirmation process available to the Governor and Legislature. Incumbents of these positions are exempted from the mini-Hatch Act (except Section 5106) if they are made subject to the appointment and confirmation process. It would appear from the current organizational chart that the Director and Special Assistant to the Director serve the same functions as the positions of Administrator and Assistant Administrator and therefore would be excluded from the substantial provisions of the mini-Hatch Act if they were appointed and confirmed, or appointed and are to be confirmed in the ordinary course (that is, their names have been submitted to the Legislature for confirmation).

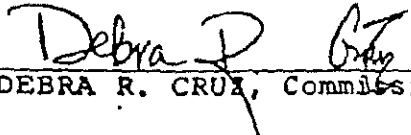
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Other officers and employees would be also exempted if they fall within any of the remaining exceptions. It appears, however, that by the very nature of the positions, the remaining employees are technical and support staff. The incumbents are neither elected officials, special or staff assistants to the Governor since the law makes Guam Energy Office an independent and separate office, retained from time to time to perform professional or special services for a specific fee, persons working on a casual basis, or subject to the appointment and confirmation process.


Dated: August 2, 1988


 WILLIS S. CANNON, Vice-Chairperson



 EDWARD P. MENDIOLA, Commissioner


 DEBRA R. CRUZ, Commissioner


 VICENTE P. PEREZ, Commissioner


 FELIX P. CAMACHO, Commissioner


 JOHN D. ISHMAEL, Commissioner


 MARIA S. CONNELLEY, Chairperson

POLITICAL ACTIVITY ADVISORY OPINIONS

CSC Advisory No. 2

QUESTION 1: Are agency heads who are appointed by a board or commission but not required to be confirmed by the Legislature exempted from the Political Activity Law or mini-Hatch Act (4 GCA, §5101, et seq)?

ANSWER: Agency heads who are appointed exclusively by a board or commission without the requirement of legislative confirmation are not exempted.

DISCUSSION:

4 GCA, §5101 of the Political Activity Law (mini-Hatch Act) sets forth the definition of a covered employee:

§5101. Definitions.

In this Chapter:

(a) "Employee" means a person employed in the Executive Branch of the government of Guam, including autonomous and semi-autonomous 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.

The statute is explicit as to who are exempted. If an individual is employed in the Executive or Judicial Branch and is not holding an elective office, is not a special or staff assistant to the Governor, is not appointed by the Governor with the consent of the Legislature, is not retained from time to time to perform professional or special services for a specific fee, or is not a person working on a casual basis as provided, then the individual is not exempted from coverage of the mini-Hatch Act.

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It should also be noted that the statute does not make distinctions between classified and unclassified employees in defining "employee" and in identifying exemptions.

Agency heads appointed without the requirement of legislative confirmation do not fall within any of the exempted classes set forth in Section 5101 and are therefore covered by the mini-Hatch Act.

DATED: October 4, 1988

Maria S. Connelley
MARIA S. CONNELLEY, Chairperson

POLITICAL ACTIVITY ADVISORY OPINIONS

CSC Advisory No. 3

QUESTION 1: May a Government of Guam employee covered by the mini-Hatch Act volunteer the use of his residence for a political campaign meeting or party, and is such activity an organized solicitation of votes in support of a candidate.

ANSWER: A covered employee who volunteers the use of his residence for a campaign meeting or party would violate the mini-Hatch Act prohibition against political campaigning. Such an activity is also an organized solicitation of votes.

DISCUSSION:

4 GCA §5103 of the mini-Hatch Act provides:

An employee shall not participate in activity in connection with political management or a political campaign, except as permitted by §5102.

§5103 further sets forth specific prohibited activities, to include, among others:

- ° Soliciting, collecting, handling, disbursing or accounting for assessments, contribution or other funds for a political party, partisan political organization or candidate.
- ° Organizing, selling tickets to, seeking support for or actively participating in a fund raising activity of a political party, partisan political organization or candidate.
- ° Taking an active part in an organized solicitation of votes in support of or in opposition to a candidate, including distributing campaign literature, badges, or buttons.

A covered employee who volunteers the use of his residence for a political campaign meeting or party serves as a host or a sponsor for such activity and thereby participates in an activity in connection with a political campaign, and would be in violation of the mini-Hatch Act.

A campaign meeting or party designed to solicit votes for or against a political candidate is considered to be an organized effort to solicit votes. An employee who serves as a host or sponsor for such activity by volunteering the use of his residence is an active participant in the organized effort. The employee would therefore be in violation of the Act.

The activity in question may, depending on the specific facts, constitute a violation of other provisions of §5103 such as those dealing with fund raising events, solicitation, and other forms of political participation.

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QUESTION 2: Is it considered actively participating in a political campaign for a covered employee to help cook or serve food, help set up canopies or chairs for a political meeting or gathering.

ANSWER: A covered employee participates in a political campaign as proscribed by the mini-Hatch Act by being part of an organized political campaign effort.

DISCUSSION:

A covered employee who participates in the organizing, planning, or execution of a political meeting, party, or fundraiser is considered to be participating in a political campaign, and if fundraising is involved, is further considered to be actively participating in a fundraising activity. These activities are the kinds prohibited by the mini-Hatch Act.

A covered employee who is not involved in the organizing, planning, or execution of a political meeting, party, or fundraiser but who is merely attending the activity is not restricted from offering friendly assistance as long as his involvement is incidental, minimal, and not part of the scheme of campaigning or fundraising.

QUESTION 3: May a covered employee position himself by the roadside with a political sign and wave to passengers in a passing vehicle?

ANSWER: NO.

DISCUSSION:

The sort of activity cited in question 3, whether done with a sign or any other election paraphenalia, is clearly intended to solicit votes and constitutes political campaigning and could also be construed as an organized solicitation of votes if done in conjunction with other individuals.

QUESTION 4: May a covered employee display a bumper sticker of a political candidate on his car, or wear a T-shirt or button in support of a candidate?

ANSWER: Yes, as a symbol of individual expression.

DISCUSSION:

A covered employee may display a "bumper sticker," in the general meaning of the phrase, on his car at all times. A 4 x 8 sign on a back of a pickup truck is not a "bumper sticker." Stickers displayed in multiples of 50 could be considered campaigning. (Examples cited for emphasis only.) The point is that there is a line to be drawn in using stickers, pictures, badges, or buttons as symbols of self-expression as intended by the law, and in using these paraphenalia for political campaigning or solicitation,

in violation of the law. What an employee intends will best be evidenced by how and to what extent he uses election paraphernalia.

A covered employee may wear a T-shirt or button in support of a candidate as permitted by the Act to the same extent of reasonableness as the display of a bumper sticker. The employee, however, is prohibited from wearing political shirts, badges, buttons, or similar items on the work premises; although a bumper sticker may be displayed at all times on the employee's vehicle.

QUESTION 5: May a covered employee canvass for a political candidate?

ANSWER: NO.

DISCUSSION:

Canvassing is perhaps the ultimate form of political campaigning. It is an organized drive for soliciting votes for a political candidate. This sort of activity is without a doubt a prohibited activity under the mini-Hatch Act. An employee who canvases would be in serious violation of the law. Since this issue is so clear-cut further discussion is unnecessary.

DATED: October 4, 1988

Maria S. Connelley
MARIA S. CONNELLEY, Chairperson

POLITICAL ACTIVITY ADVISORY OPINIONS

CSC Advisory No. 4

QUESTION: May a covered employee position himself by the roadside with or without a political sign and wave to passing motorists?

ANSWER: Yes, if done as an individual form of expression and not as part of an organized campaign for political candidate.
(This Advisory supersedes the Commission's answer to Question 3 of CSC Advisory No. 3.)

DISCUSSION:

The Civil Service Commission reevaluated its position with respect to Question 3 of CSC Advisory No. 3. This Advisory supersedes the Commission's response to Question 3 of Advisory No. 3.

GovGuam employees may stand by the roadside and wave to passing motorists, with or without a sign, on behalf of a political candidate, as a form of individual expression permitted by 4 GCA §5102 of the mini-Hatch Act. §5102 expressly allows an employee to express his or her opinions on candidates, publicly or privately.

The Commission believes that its opinion gives effect to the permitted activities available under §5102 which continues to endorse employees' First Amendment rights. The activity in question is not the type that endangers public service within the meaning of the mini-Hatch Act and therefore continues to fall under the umbrella of the First Amendment and outside the scope of the mini-Hatch Act.

Employees are cautioned, however, that this activity must be done as an individual expression of opinion and not as an active participant in an organized campaign effort of a political candidate. The Commission will not allow or tolerate its opinion being used as a guise to political campaigning activities still prohibited by the mini-Hatch Act.

Employees are still prohibited from distributing campaign paraphernalia such as buttons, stickers, brochures, etc., and from actively or verbally soliciting votes for political candidates beyond waving and holding signs.

Furthermore, the Commission limits this permitted activity to off-duty hours and while not in a GovGuam uniform (where applicable). Also, employees are prohibited from publicly displaying any sort of identification which shows them to be GovGuam employees while engaging in the activity.

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Employees are reminded that the mini-Hatch Act is still in force although they may engage in the activity permitted by the opinion.

DATED: October 27, 1988


WILLIS S. CANNON
Vice-Chairperson

CIVIL SERVICE COMMISSION

POLITICAL ACTIVITY ADVISORY OPINIONS
CSC Advisory No. 5

QUESTION: May an employee covered by the mini-Hatch Act canvass?

ANSWER: No.

DISCUSSION:

This question was asked and answered in CSC Advisory No. 3 and reaffirmed by the Commission on September 27, 1990. Canvassing is generally regarded as a personal solicitation for votes, customarily done by going "house-to-house". This is prohibited by Section 5103 of the Act. An employee, however, may, as a form of individual expression, wear a T-shirt or button, in support of a candidate and walk and socialize with canvassers. This is permissible while the employee is off-duty, while not in a GovGuam uniform, and the activity is off GovGuam work premises. In no event, may the employee distribute campaign materials, verbally solicit votes, or engage in any other prohibited activity.

The Commission realizes that it must draw fine distinctions between permitted and prohibited activities. This balancing of public policy and individual rights is often a difficult task.

DATED: 10/17/90

Vicente P. Perez
VICENTE PEREZ, Chairman

CIVIL SERVICE COMMISSION

POLITICAL ACTIVITY ADVISORY OPINIONS

CSC ADVISORY NO. 6

QUESTION: Must a GovGuam employee covered by the mini-Hatch Act who plans on being a candidate for public office, resign from his or her position before initiating or circulating nominating petitions?

ANSWER: Yes. A person who initiates or circulates nominating petitions in pursuit of his or her candidacy seeks nomination for election to office and would therefore be a "candidate" under 3 GCA §19101(c). A covered GovGuam employee must therefore resign his or her position before initiating or circulating nominating petitions in support of his or her candidacy.

DISCUSSION: The political activity law is found in Title 4 of the Guam Code Annotated (GCA), Sections 5101 to 5106. This law is commonly referred to as the mini-Hatch Act because of its similarity to the federal Hatch Act.

Section 5103 (b)(6) of the law prohibits a covered employee from being a candidate for public office. Section 5101(f) defines "candidate" as it is defined in 3 GCA Section 19101(c), the Election Code.

Section 19101(c) defines "candidate" as follows:
"Candidate" means an individual who seeks nomination for election or election to office. An individual is a candidate if he does any of the following:

1. Files nomination papers for an office for himself, or consents to have a declaration of nomination for an office filed on his behalf by a qualified political party pursuant to Section 6109 of this Title or by five (5) voters as specified in Section 6110 of this Title; or
2. Receives contributions in an aggregate amount of more than One Hundred Dollars (\$100.00), or makes or incurs any expenditures to bring about his nomination for election, or election to office; or

3. Gives his consent for any other person to receive contributions or make expenditures to aid his nomination for election, or election to office.

Clearly, any person who meets any of the criteria under Section 19101(c) falls within the definition of "candidate", to include a person who seeks nomination for election.

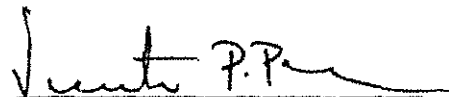
The Commission is of the opinion that a person who plans on running for office and who initiates or circulates nomination petitions in pursuit of the candidacy, "seeks nomination for election" and therefore becomes a candidate under the terms of Section 19101(c).

A covered GovGuam employee who desires on being a candidate for public office must resign from his or her position before initiating or circulating nominating petitions, (or causing or consenting for others to initiate or circulate the petitions).

It should be noted, that for all practical purposes, the initiation or circulation of nomination papers may necessitate expenditures or contributions that would bring the activity into the extended definition of "candidate" under 19101(c) (2) and (3).

A covered GovGuam employee who fails to resign under the circumstances discussed earlier would be violating at least 3 restrictions of the mini-Hatch Act:

1. being a political candidate
2. initiating or circulating nominating petitions, and
3. participating in political management or political campaign.



VICENTE P. PEREZ
Chairperson

FEB 27 1992

POLITICAL ACTIVITY ADVISORY OPINIONS

CSC ADVISORY NO. 7

QUESTION: Is it a violation of the mini-Hatch Act for a person, whether or not an employee, to sell political fund-raising lunches in GovGuam offices or facilities where GovGuam employees perform their official duties?

ANSWER: Yes. Selling political fund-raising lunches in GovGuam offices or facilities where GovGuam employees perform their official duties is a form of political solicitation prohibited by the mini-Hatch Act. The prohibition covers solicitation by any person whether or not an employee. Also, official duties include those of Executive, Judicial, and Legislative employees.

DISCUSSION: Section 5106 of Title 4 of the Guam Code Annotated prohibits any person, whether or not a GovGuam employee, from soliciting or receiving a contribution for any political purpose in any room or building occupied by GovGuam employees in the discharge of their official duties, these include employees of the Executive, Judicial, and Legislative Branches.

Section 5106 cites as an example of solicitation the use of letters or circulars. The Commission is of the opinion that this form of solicitation is inclusive and not exclusive of other forms, such as fund-raising lunches.

Violation of Section 5106 is a criminal misdemeanor. The Attorney General successfully prosecuted a Section 5106 violation in 1989, which resulted in imprisonment and community service for the defendant.

The foregoing discussion focused on political solicitation by "any person" as prescribed by Section 5106. If a covered GovGuam employee were to engage in the selling of political fund-raising lunches regardless of whether it was on GovGuam premises, or whether the employee was on duty or off duty, he or she would be in violation of other provisions of the mini-Hatch Act, such as Section 5103(b) and Section 5103(b) (3), (4).



VICENTE P. PEREZ

FEB 27 1992

POLITICAL ACTIVITY ADVISORY OPINIONS

CSC ADVISORY NO. 8

QUESTION:

Is the Director of the Retirement Fund exempted from the Political Activity Law or mini-Hatch Act?

ANSWER:

Yes. The Director of the Retirement Fund is subject to the appointment and confirmation process and is therefore exempted from the political activity restrictions of the mini-Hatch Act, with the exception of Section 5106 prohibiting political solicitation by any person whether or not an employee.

Other laws, however, may impose restrictions.

DISCUSSION:

The Director of the Retirement Fund is appointed by the Board of Trustees with the approval of the Governor and the advice and consent of the Legislature. 4 GCA §8140.

4 GCA Section 5101(a)(3) exempts a person who is appointed by the Governor and confirmed by the Legislature from the restrictions of the mini-Hatch Act, with the exception of Section 5106 prohibiting political solicitation by any person on government work premises. Although the Director of the Retirement Fund is initially appointed by the Board of Trustees, the fact that the appointment must be approved by both the Governor and the Legislature brings the Director under the exemption provision of Section 5101(a)(3).

There are, however, other laws which may limit the political activities of exempt officials. The Election Code, for instance, prohibits any incumbent government of Guam official whose appointment requires legislative confirmation from running for legislative office. 3 GCA §6104. Merit system laws and policies, such as 4 GCA §§4101 and 4205(b), also protect classified employees from political coercion and discrimination. Provisions of Title 9 of the Crimes and Corrections Code may also be applicable. For example, Section 49.40 forbidding unlawful influence upon a public servant, a felony; or Section 49.90 prescribing official misconduct, a misdemeanor.


GERALD A. TAITANO

Date: 12/15/92

POLITICAL ACTIVITY ADVISORY OPINIONS

CSC ADVISORY NO. 9

QUESTION:

Is the Chief of Aquatic & Wildlife Resources exempted from the Political Activity Law or mini-Hatch Act by serving as a member of the Territorial Land Use Commission?

ANSWER:

The Chief of Aquatic & Wildlife Resources is covered by the mini-Hatch Act. The fact that the incumbent serves as a member of the Territorial Land Use Commission does not exempt the incumbent from the Act.

DISCUSSION:

The Chief of Aquatic and Wildlife Resources, a classified employee covered by the mini-Hatch Act, was appointed by the Governor and confirmed by the Legislature to serve as a member of the Territorial Land Use Commission. A person appointed by the Governor with the consent of the Legislature falls outside the definition of "employee" under 4 GCA §5101 (a) and is ordinarily exempted from the mini-Hatch Act, with the exception of the solicitation clause of 4 GCA §5106 which covers employees and non-employees alike.

The Commission is of the opinion that coverage is endemic in the position of Chief of Aquatic & Wildlife Resources. An incumbent in this position assumes this capacity twenty-four hours a day. It would be reasonable to expect that the incumbent's knowledge and experience as Chief spills over into the role of TLUC member. It would be extremely difficult to delink the incumbent's position as Chief from that of TLUC member when engaging in political activities. The opportunity for political influence would be substantial and dangerous. The prohibitions and protection provided by the mini-Hatch Act would prevent or deter improprieties.

The Commission concludes that the Chief of Aquatic and Wildlife Resources continues to be covered by the mini-Hatch Act notwithstanding his appointment as member of the TLUC.



GERALD A. TAITANO

Date: 12/15/92