#### Department of Fish and Game

#### DEPARTMENTAL BULLETIN

Number: 2009-05 (Supersedes 2004-02)

Date Issued: October 27, 2009 Expires: Until Superseded

To: All Employees

**FGOM Holders** 

Subject: Incompatible Activities Policy and Political Activities Policy

Ms. Catherine Kennedy, Office of General Counsel,

<u>CKennedy@dfg.ca.gov</u> (916-657-4091)

The attached Incompatible Activities and Political Activities policies ensure that officers and employees of the Department do not engage in any situation where prejudice, bias, or opportunity for personal gain that is the motivating force in the conduct of State business. These policies supersede the Incompatible Activity Policy issued on June 29, 2004. As these policies cannot cover all examples, you should contact your supervisor if you have questions about activities that might be considered inconsistent, incompatible, or in conflict with your duties.

Every Department employee is required to abide by these policies. Please sign the attached acknowledgement form and return it to your supervisor. Supervisors will forward the forms to the Administrative Officer/Personnel Liaison who will then forward them to the appropriate Personnel Specialist. The acknowledgement form will be retained in each employee's Official Personnel File.

These policies will be incorporated into the Fish and Game Operations Manual in the next revision process.

Helen Carriker Deputy Director, Administration

#### Attachments:

- Incompatible Activities Policy
- Political Activities Policy
- Incompatible Activities and Policy Political Activities Policy Notice of Receipt by Employee

# DEPARTMENT OF FISH AND GAME INCOMPATIBLE ACTIVITIES POLICY AND POLITICAL ACTIVITIES POLICY NOTICE OF RECEIPT BY EMPLOYEE

This is to acknowledge that I have received and will abide by the Department of Fish and Game's Incompatible Activities and Political Activities policies	
Frankovaska Nama (Dlagga Drint)	
Employee's Name (Please Print)	
Division/Region/Branch	
Employee's Signature	Date

Please return this form to your **Supervisor** who will forward it to the respective Administrative Officer/Personnel Liaison. The Administrative Officer/Personnel Liaison will then forward it to the appropriate Personnel Specialist.

## DEPARTMENT OF FISH AND GAME INCOMPATIBLE ACTIVITIES POLICY

Officers and employees of the Department of Fish and Game (Department) are prohibited from engaging in any situation where prejudice, bias, or opportunity for personal gain are the motivating force in the conduct of State business. State business must be conducted in an impartial manner for the good of the people of the State of California.

The following policy applies to each officer and employee of the Department regardless of tenure or pay status, including exempt appointees and civil servants, All management personnel are responsible for ensuring that their staff members are informed of this policy and that all prospective employees are informed that they must abide by this policy,

The following statements, examples, and guidelines are not an attempt to specify every situation that may constitute an incompatible activity, but rather are intended solely to illustrate general principles of avoiding incompatible activities,

#### Incompatible Activities Prohibited

Government Code Section 19990 provides that:

"A State officer or employee shall not engage in any employment, activity, or enterprise which is clearly inconsistent, incompatible, in conflict with, or inimical to his/her duties as a State officer or employee.

Each State officer and employee shall during his/her hours of duty as a State officer or employee and subject to such other laws, rules, or regulations as pertain thereto, devote his/her full time, attention, and efforts to his/her State office or employment."

"State officer or employee" includes all civil service employees, civil service exempt officers, retired annuitants and appointed officials in the Department."

#### Employees and State Officers may not

- 1. Use, for private gain, purpose or advantage, State time, facilities, equipment, supplies, prestige, or influence of a State employee or State employment.
- 2. Use, for private purpose, State postage, even though reimbursement is made before or after use.
- 3. Use, for private gain, advantage, or purpose, any departmental symbol, badge, uniform or identification card.

- 4. Solicit, receive, or accept, directly or indirectly, any gift (including entertainment, loan, favor, money, service, gratuity, hospitality, etc.) or any other thing of value from any person or organization under circumstances from which any party could reasonably infer that the gift was a reward for any official action. Gifts delivered to or left for the employee must be returned if the donor is known. If the donor is unknown, the employee must deliver the gift to a State or charitable institution and must file a report with the Personnel Officer, Human Resources Branch in writing, through normal channels.
- 5. Solicit, receive, or accept money or other consideration from anyone other than the State:
  - (a) For an act required in the regular hours of State employment as part of their duties as a State officer or employee, or for the performance of such an act outside the regular hours of State employment,
  - (b) For performing an act either in or outside of the regular course of hours of State employment which the Department would be required or expected to render in the regular course of State business,
  - (c) For giving oral or written advice or assistance to any person not connected with the Department on any matter relating to the Fish and Game Code, or on any matter which will later be subject to review or control by the Department (e.g., outside consulting contracts.)
- 6. Endorse or recommend to the public the use of a commercial product or service, either in their official capacity or in the name of the Department.
- 7. Engage in any of the following actions:
  - (a) Perform any work for private gain or profit, or have any direct or indirect financial, managerial, or other interest<sup>1</sup> in any organization, law firm, or consulting firm engaged in matters relating to the interpretation, application, and/or enforcement of the Fish and Game Code.
  - (b) Perform any work for, or have any direct or indirect financial, managerial, or other interest in, any organizations representing persons before the Department or the Commission.
  - (c) Use any information developed in connection with any investigation, project, or contained in departmental records or files to perform any statistical research or other similar informational services outside the course of their work assignment.

<sup>&</sup>lt;sup>1</sup>"Other interest" does not preclude membership in bar associations, community organizations, etc.

- (d) Use confidential information for private gain or to the advantage of another; provide confidential information to unauthorized persons; or provide or use the names of persons from Department records for an unauthorized mailing list.
- (e) Perform any act in other than his/her capacity as a State officer or employee, knowing that such action may later be subject, directly or indirectly, to control, inspection, review, audit, or enforcement by the employee, officer, Department, or the Commission. This subdivision does not apply to recreational activities (e.g., fishing, hunting, etc.) that are generally available to the public.
- (f) No employee or officer who has been given authority to make purchases for materials or services for the Department shall make such purchases from any business entity in which they have a financial interest.
- 8. Engage in an employment activity or enterprise which involves such time demands as would render performance of his/her duties as a State officer or employee less efficient.

The Department does not wish to unnecessarily inquire into the private affairs of its employees. It does, however, require their cooperation in avoiding activities that will cause embarrassment to it and the State of California. An employee must contact his/her supervisor if he/she plans to undertake any activity that might be considered clearly inconsistent, incompatible, or in conflict with his/her duties as a State employee or officer. If the supervisor is unable to make a determination, he/she shall refer the matter to the Office of General Counsel.

Employees may be subject to adverse action, including reprimand, suspension, demotion, or termination of employment, depending on the severity of the violation. (see Gov. Code Section 19572, subd. (r).)

#### Appeal Procedures

Employees have the right to appeal the application of this policy to their individual situation. Represented employees should follow the appeal process stated in their applicable Memorandum of Understanding (MOU). If there is no process in the MOU, the employee may file a written appeal with the Personnel Officer. All nonrepresented employees may file a written appeal with the Personnel Officer. The written appeal should include the reason(s) the employee disagrees with the application of this policy to their individual situation.

An employee in Bargaining Units # 1 and # 4 may request that the Department grant an exception to the prohibition of outside employment contained in the applicable incompatible activity statement. If the exception is denied it shall be reviewed, upon written request by the employee, by a committee composed of two representatives of the Department and two representatives of the Union. The committee, within fifteen (15) calendar days of the date the committee is convened for the review process, will issue a recommendation to the Director or his/her designee for decision. The Director or designee shall issue a written decision within fifteen (15) calendar days of the date the committee submits its recommendation to the Director or designee.

An employee in Bargaining Unit # 2 may request that the Department grant an exception to the prohibitions on outside employment contained in the applicable incompatible activity statement. If the exception is denied, upon written request by the employee, it shall be reviewed by a committee composed of two representatives of the Department and two representatives of California Association of State Attorneys and Administrative Law Judges (C.A.S.E.). The committee will issue a recommendation to the Director or designee for decision.

### DEPARTMENT OF FISH AND GAME POLITICAL ACTIVITIES POLICY

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The following statements, examples, and guidelines are intended solely to illustrate general principles of avoiding prohibited political activities.

#### **Political Activities**

#### Employees may not:

- 1. Engage in any of the political activities prohibited by Government Code sections 3201 3209, or by the Hatch Act (5 U.S.C., § 1502(a).)
  - (a) Under the California Government Code, employees may not:
    - Solicit or receive any assessment, subscription, contribution, or service for any political purpose from anyone on an employment list, or any State officer or employee.
    - 2) Permit entry onto State premises under his/her control by any person whose purpose is to make, collect, receive, or give notice of any political assessment, subscription, or contribution. No person may send any letter of notice to a State premise for these purposes nor may any person on a State premise perform such activities.

Promise to use their official authority or influence to obtain civil service benefits for any person on the condition that such person or anyone else aid any candidate, officer, or party, if such employees have been nominated for or are seeking any elective office. Such employees may not promise or threaten to use their official power in order to coerce or persuade the vote or political action of a State officer or employee.

<sup>1</sup>The Hatch Act restricts the political activities of public employees. It applies to federal employees, as well as to employees of state and local agencies that receive federal funds.

#### (b) Under the Hatch Act, employees may not:

- 1) Use official authority or influence for the purpose of interfering with, or affecting the result of, an election or a nomination for office.
- Directly or indirectly coerce, attempt, command, or advise a State or local officer to pay, lend, or contribute anything of value to a party, committee, organization, agency, or person for political purposes.
- 3) Be a candidate for partisan elective offices.'

#### (c) Under the Hatch Act, employees may:

- 1) Be a member of such organizations as the Mexican-American Political Association, Young Democrats, Young Republicans, etc.
- 2) Express opinions on political subjects and candidates.<sup>2</sup>
- 3) Attend and participate in political rallies and conventions.
- 4) Sign nominating petitions in support of individuals who wish to become candidates for office.
- 5) Make voluntary contributions to regularly constituted political organizations, provided such contributions are not made in a State or Federal building or to some other officer or employee of the Department or Commission, or to any other officer or employee who is subject to the Hatch Act, wear political badges or buttons or display political stickers on private automobiles. However, to assure that no member of the public will believe political bias is being exercised for or against him/her, employees who have direct contact with the public are prohibited from making any partisan display such as wearing a political badge or button during working hours.

<sup>2</sup> A public employee's right to free speech is not absolute. Controversial parts of speech advancing only private interests do not necessarily invoke First Amendment protection. (Dambrodt v. Central Michigan University (6<sup>th</sup> Cir. 1995) 55 F.3d 1177, 1187.) The law requires a balancing between the interests of the employee, as a citizen, in commenting upon matters of public concern and the interests of the state, as an employer, in promoting the efficiency of the public services it performs through its employees. Rankin v. McPherson (1987) 483 U.S. 378.)