

# Political Activities on Campus

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## Introduction

University employees, students and visitors should be aware of laws and University regulations affecting political campaigns and activities on campus and restrictions on the use of State property. State laws can be somewhat confusing in this area in that some laws apply to elections for candidates rather than elections on ballot measures. However, many of the restrictions are the same.

## Rights and Duties of Employees

Employees, in addition to their Constitutional rights, also have rights under NDSU policy and State law. Per State law, employees cannot be prohibited from engaging in political activity, except when the employee is on duty, acting in an official capacity, or the activity is prohibited by state or federal law. (N.D.C.C. §§ 34-11.1-02, 34-11.1-04)

NDSU Policy 160 recognizes the right of employees to be involved in political activity and the political process, but provides restrictions on the use of the employee's position at the University or facilities for such activities. NDSU Policy 160 stipulates that:

- Employees cannot make a political commitment for NDSU or use their official position to imply an endorsement of any candidate by NDSU.
- Employees cannot allow their political activities to interfere with their duties. Twelve-month employees can, subject to the normal approval process, take annual leave to participate in political activities, but they cannot engage in political activities while on duty.
- If an employee is elected to the State Legislature, the employee must take an unpaid leave of absence during the Legislative Session although, with Presidential approval, the employee can receive a limited percentage of salary, up to 20%, if the employee is still doing work for the University, e.g., on weekends, etc.
- "Use of computing and networking resources shall be limited to those resources and purposes for which ac-

cess is granted. Use for political purposes is prohibited (see Section 39-01-04 of the ND Century Code)." (NDUS Policy 1901.2 - Computer and Network Usage)

In addition to University policy, State law specifically prohibits:

- Using State property or services for "political purposes." (N.D.C.C. § 16.1-10-02) "Political purpose" is defined as any activity undertaken in support of or in opposition to the election or nomination of a candidate to public office. N.D.C.C. § 16.1-10-02 does not technically apply to measures that are on the ballot although other restrictions may apply.
  1. The purpose of this law is to prohibit the misuse of public funds or public property for political purposes. *Saefke v. VandeWalle*, 279 N.W. 2d 415 (N.D. 1979). Under *Saefke*, using a public building as a backdrop for a campaign ad would be permissible, however, as it was considered a very minor or trivial use. Attorney General's letter to Sen. Harvey Tallackson (May 13, 1996).
  2. N.D.C.C. § 16.1-10-02 permits the use of state buildings and grounds for political purposes to the extent such activity is protected by the First Amendment. State law does not prohibit circulation of initiative and referendum petitions on capitol grounds or in state buildings where those places are considered public forums. Attorney General letter to Rod Backman, Director of the Office of Management and Budget (May 16, 1996). (However, the University can place reasonable time, place and manner restrictions on such activities and many of our buildings are non-public forums, meaning we can prohibit such activities in them.)

- Using a State vehicle while engaging in political activity (N.D.C.C. § 39-01-03), or receiving reimbursement for mileage for a private vehicle or per diem while engaging in political activity (N.D.C.C. § 39-01-05). "Political activity" is defined like "political purpose" in that it is activity for or against a candidate running for public office. This prohibition does not technically apply to measures on the ballot although, again, other restrictions may apply.
- Wearing buttons which indicate support or opposition to an initiated measure is not prohibited political activity under N.D.C.C. § 39-01-04. Employees should refrain from exploiting the institutional privileges of their professional positions to promote political candidates or partisan activities. (N.D.A.G. letter to Sen. L. Robinson, February 10, 1992). Thus, supervisors, and instructors particularly, should refrain from wearing buttons supporting a candidate for public office while on duty. Whether a public employer can prohibit all employees from wearing buttons for candidates while on duty is an open question. State law, N.D.C.C. § 34-11.1-02, certainly implies that it could, as this could be considered "political" activity while on duty. First Amendment rights could be a factor in this question, however.

There are some employees on campus that are federal employees that may be covered under the federal Hatch Act (5 U.S.C. § 7323). However, an NDSU employee is not directly covered by the Hatch Act (5 U.S.C. § 1501(4)(B)). Policies of certain organizations that receive federal funding, like the Cooperative Extension Service, may have restrictions which are imposed by federal guidelines or regulations on employees of that organization.

### Campaigning on Campus

The University has certain procedures and restrictions for campaigning on campus and the use of University facilities. Guidelines entitled "Campaigning Procedures for State/National Elections" are available from the Student Life Office. These guidelines deal with such things as restrictions on door to door solicitation in residential housing, free literature distribution through student mailboxes and on bulletin boards, and reservation of contact tables and meeting rooms in the Memorial Union. The University also has time, place and manner restrictions for persons passing out leaflets on campus. Individuals must register with the Memorial Union Office.

- In a letter from the Attorney General to Rep. Eliot Glasheim (December 12, 2004), the Attorney General reiterated the lawful use of state buildings which are public forums for free speech pursuant to the First Amendment, subject to reasonable time, place and manner regulations. It was also determined that a temporary prohibition of short duration against all solicitations of students during student orientation is a permissible content neutral restriction on the time, place and manner of expression that is narrowly tailored to serve a significant government interest, and may be lawfully applied so long as ample alternative channels of communication are open.

Use of campus facilities is generally limited to official University purposes or activities sponsored by University departments or organizations, recognized student organizations, or outside nonprofit organizations for nonpolitical purposes. There are occasional exceptions made. During political campaigns organizations such as the College Democrats or College Republicans often sponsor activities of an educational nature but, if the Memorial Union is used, there must be open admission.

Employees or students that are participating in campaigns need to also be careful of various State laws regulating how campaigns are conducted. For example:

- In advertisements for candidates, the name and address of the sponsor must appear (N.D.C.C. § 16.1-10-04.1).
- Political ads for candidates or measures cannot be knowingly false or misleading (N.D.C.C. § 16.1-10-04).
- Persons cannot use the Great Seal of North Dakota on any political signs, badges or advertisements (N.D.C.C. § 54-02-01).
- On election day, persons cannot buy, sell or give away political buttons or badges around the polls or intended to be worn at the polls (N.D.C.C. § 16.1-10-03), cannot campaign (N.D.C.C. § 16.1-10-06), and cannot pay someone's expense to go to the polls (N.D.C.C. § 16.1-10-06.1). A free ride to the polls would be allowed, however.



## Voting Requirements

To vote in state and local elections, the voter must be a U.S. citizen, 18 years of age or older, and have been a resident of the precinct for 30 days (N.D.C.C. § 16.1-01-04). Voters can vote in Presidential elections without having to meet the 30 day requirement. Residency requires both an intent to become a North Dakota resident and an act to further that purpose such as physical presence and a domicile in the State. A person can have only one residence at a time. Therefore, if a student votes as a resident in North Dakota, then the student has "lost" his or her out-of-state residency. The decision to vote as a resident is significant. Remember that residency rules for tuition are somewhat different than voting residency rules.

Sometimes students are upset if they are challenged at the voting polls. North Dakota law does provide for a number of officials to be present at the polling places. These officials include election inspectors, election judges and poll clerks. The political parties may also have a poll challenger and a poll checker present. City and school district elections are handled somewhat differently.

While these officials cannot obstruct a student's right to vote, a student can be challenged as can any other voter. The voter must then sign an affidavit that he or she is a legal elector of the precinct. Again, this means that the voter has been a resident in the precinct for at least 30 days.

Absentee ballots are allowed and available in all elections for any qualified elector in the state (N.D.C.C. § 16.1-07-01).

- Any qualified elector of this State, including an individual who is in the armed forces of the United States, is in the merchant marine of the United States, or is a United States citizen living outside the United States who resided in this State immediately prior to the individual's departure from the United States, may vote by absentee ballot at any general, special, or primary state election, any county election, or any city or school district election.
- An elector who votes by absentee ballot may not vote in person at the same election.
- At any time in an election year, any qualified elector may apply to the county auditor, the auditor or clerk of the city, or the business manager of the school district, for an official ballot to be voted at that election. The ballots won't be available until closer to the election, however.

- A voter may obtain an application form for an absentee ballot for a general, special, primary, or county election from either the county auditor or a city auditor.
- An applicant who is a qualified elector and on active duty as a member of the United States armed forces or the United States merchant marine, or an applicant who is a qualified elector living outside the United States, may receive an absentee ballot by mail, facsimile, or electronic mail.

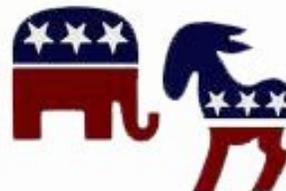
## Political Campaign-Related Activities on Campus - Allowed and Not Allowed

For more information generally on the "do's" and "don'ts" of political activities on campuses, see "*Political Campaign-Related Activities of and at Colleges and Universities.*"

[http://www.acenet.edu/AM/Template.cfm?Section=Search&section=Legal\\_Issues\\_and\\_Policy\\_Briefs1&template=/CM/ContentDisplay.cfm&ContentFileID=3982](http://www.acenet.edu/AM/Template.cfm?Section=Search&section=Legal_Issues_and_Policy_Briefs1&template=/CM/ContentDisplay.cfm&ContentFileID=3982)

## Conclusion

While political activities are a fundamental responsibility of citizenship and a right to be enjoyed, wrongfully using the University's name or its property in such activities is restricted and, in some cases, can even be criminal. By paying attention to the restrictions as noted above, there should be few problems and political activities can be enjoyed as one of the great benefits of American citizenship.



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## Legal Watch

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### References:

- 5 U.S.C., The Federal Hatch Act.
  - AG Letter Opinion (Feb. 10, 1992).
  - AG Letter Opinion 96-F-12.
  - AG Letter Opinion 2002-L-61.
  - AG Letter Opinion 2004-L-75.
  - American Council on Education. (November 2007) *"Political Campaign-Related Activities of and at Colleges and Universities."* Hogan & Hartson, LLP.
  - N.D.C.C. § 16.1-07-01 : Absent voter—Who may vote.
  - N.D.C.C. § 16.1-10-02 : Use of State or political subdivision services or property for political purposes.
  - N.D.C.C. § 16.1-10-03 : Political badge, button, or insignia at elections.
  - N.D.C.C. § 16.1-10-04 : Publication of false information in political advertisements—Penalty.
  - N.D.C.C. § 16.1-10-04.1 : Certain political advertisements to disclose name of sponsor—Name disclosure requirements.
  - N.D.C.C. § 16.1-10-06 : Electioneering on election day—Penalty.
  - N.D.C.C. § 16.1-10-06.1 : Paying for certain election-related activities prohibited.
  - N.D.C.C. § 34-11.1-02 : Political activities.
  - N.D.C.C. § 34-11.1-04 : Violations for misuse reported by employee—Reprisals prohibited—Furnishing false information.
  - N.D.C.C. § 39-01-03 : Motor vehicle owned by the state or an international peace garden not to be used for private use or in political activities.
  - N.D.C.C. § 39-01-04 : Political activity defined.
  - N.D.C.C. § 39-01-05 : Expenses not to be collected by state officers or employees engaged in political activity.
  - N.D.C.C. § 54-02-01 : Great Seal—Permitted uses—Penalty for commercial use.
  - NDSU Campaigning Procedures for State/National Elections 2007-2008.
  - NDSU Policy 160: Political Activities of University Employees.
  - NDUS Policy 1901.2: Computer and Network Usage.
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